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*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
EYE CARE LEADERS PORTFOLIO	§	Case No. 24-80001 (MVL)
HOLDINGS, LLC, <i>et al.</i> , ¹	§	
	§	(Jointly Administered)
Debtors.	§	
	§	

**DEBTORS' MOTION FOR ENTRY OF
(I) AN ORDER (A) APPROVING BIDDING PROCEDURES AND
CERTAIN BID PROTECTIONS, (B) SCHEDULING A BID DEADLINE,
AUCTION, AND SALE HEARING AND APPROVING THE FORM AND MANNER
OF NOTICE THEREOF, AND (C) APPROVING CURE PROCEDURES AND THE
FORM AND MANNER OF NOTICE THEREOF; (II) AN ORDER APPROVING THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR
OF LIENS, CLAIMS AND INTERESTS; AND (III) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors' principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXNB.USCOURTS.GOV/](https://ecf.txnb.uscourts.gov/) NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK AND FILED ON THE DOCKET NO MORE THAN TWENTY-FOUR (24) DAYS AFTER THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 23, 2024, AT 10:30 A.M. IN ROOM 1424, EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, 14TH FLOOR, COURTROOM 2, DALLAS, TEXAS 75242.

YOU MAY PARTICIPATE IN THE HEARING EITHER IN PERSON OR BY AN AUDIO AND VIDEO CONNECTION.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S DIAL-IN FACILITY. YOU MAY ACCESS THE FACILITY AT 1.650.479.3207. VIDEO COMMUNICATION WILL BE BY THE USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR THE LINK ON JUDGE LARSON'S HOME PAGE. THE MEETING CODE IS 160 135 6015. CLICK THE SETTINGS ICON IN THE UPPER RIGHT CORNER AND ENTER YOUR NAME UNDER THE PERSONAL INFORMATION SETTING.

HEARING APPEARANCES MUST BE MADE ELECTRONICALLY IN ADVANCE OF ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE LARSON'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

The above-captioned debtors and debtors in possession (the "Debtors") respectfully state the following in support of this motion (this "Motion"):²

Relief Requested

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"): (a) approving bidding procedures (the "Bidding Procedures") for the proposed sale (the "Proposed Sale") of all or a portion of the Debtors' assets (the "Assets") and certain bidding protections set forth therein and described herein; (b) approving the form of asset purchase agreement (the "APA") to be filed prior to the hearing on this Motion; (c) scheduling an auction (the "Auction") and a hearing to approve the results of the auction (the "Sale Hearing"); and (d) approving the form and notice

² Capitalized terms used but not yet defined herein shall have the meanings ascribed to them later in this Motion or in the First Day Declaration, as applicable.

related to the Sale Hearing. The Debtors further seek entry of an order, substantially in a form or forms to be filed prior to the Sale Hearing (the “Sale Order”): (w) approving the sale (or multiple sales) of the Assets free and clear of liens, claims, interests, and encumbrances; (x) approving the assumption and assignment of such executory contracts and unexpired leases of the Debtors (if any) (collectively, the “Assumed Contracts”) as may be requested by a Stalking Horse Bidder (if any) or the Successful Bidder(s) and the proposed cure amounts with respect thereto; (y) approving the assumption of certain liabilities; and (z) granting related relief.

Provision Highlights Pursuant to Section E of the Complex Case Procedures

2. The below chart contains a summary of the material terms of the proposed Bidding Procedures Order, as required by Section E of the Complex Case Procedures:³

Relevant Complex Case Procedure	Summary	References
Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder. Complex Case Procedures ¶ 19(a)	<u>Stalking Horse Declaration.</u> Following entry of the Bidding Procedures Order, and in the exercise of their business judgment and in their sole discretion, the Debtors may, without any obligation to do so, after consulting with the Consultation Parties, select one or more bidders to act as a stalking horse (each being a “<u>Stalking Horse Bidder</u>” with the relevant bid being a “<u>Stalking Horse Bid</u>”) for some or all of the Debtors’ assets. <u>Break-Up Fee.</u> The Debtors may, but are not required to, agree to provide a break-up fee in an amount not to exceed 3.0% of the cash component of a Stalking Horse Bid (the “<u>Break-Up Fee</u>”). The Break-Up Fee will only be payable if (a) a Stalking Horse Bidder, being ready, willing, and able to close its transaction, is not the Successful Bidder at the Auction, (b) the Court authorizes the Debtors to enter into an alternative transaction, and (c)(i) if such alternative Transaction is a Sale Transaction, such Sale Transaction actually closes or (ii) if such alternative Transaction is a Plan Transaction, a disclosure statement is approved by the Court. To the extent a determination is made to provide a Break-Up Fee, the Debtors will file notice of the same with the Bankruptcy Court. <u>Initial Overbid and Bidding Increments.</u> To the extent a	Bidding Procedures Order ¶¶ a–b, 1, 11 Bidding Procedures §§ IX, X(e).

³ This summary is qualified in its entirety by reference to the provisions of the documents referenced. In the event of any inconsistencies between this summary and such documents, the terms of the applicable documents shall control.

Relevant Complex Case Procedure	Summary	References
	Stalking Horse Bidder has been named, the initial overbid must exceed the purchase price of the Stalking Horse Bid by at least the amount of the Break-Up Fee plus an additional \$250,000. Thereafter, or in the event no Stalking Horse Bidder has been named, the minimum bidding increment shall be \$250,000. The amount of the minimum bidding increment may be increased or decreased by the Debtors at the Auction, in their sole discretion, in consultation with the Consultation Parties. The Bidding Procedures Order does not include no-shop or non-solicitation provisions, or any requirement that a Stalking Horse Bidder (if any) receive a “credit” equal to the Break-Up Fee.	
Provisions Governing Qualification of Bidders. Complex Case Procedures ¶ 19(b)	As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver the following documents to the Debtors, B. Riley, and the Consultation Parties at the addresses set forth in the Bidding Procedures no later than the Bid Deadline, in a form and substance acceptable to the Debtors and their advisors (the “<u>Required Bid Documents</u>”): (a) Evidence of the Potential Bidder’s financial ability to close a Transaction, in a form and substance acceptable to the Debtors in their sole discretion in consultation with the Consultation Parties. Such evidence may take the form of, among other things, current audited financial statements, bank statements, evidence of a non-contingent financing commitment, or such other documentation as the Debtors may accept in their sole discretion; (b) A letter stating that the Potential Bidder’s offer is irrevocable until immediately following the closing of the Sale or confirmation of a chapter 11 plan, as applicable, and setting forth (i) the nature of the proposed Transaction, and if a Sale Transaction, whether such is a going concern or asset sale, which specifically identifies the assets or groups of assets to be purchased, and which includes the proposed consideration and the liabilities (if any) to be assumed, (ii) any assets expected to be excluded from the Sale, and (iii) the structure and financing of the Transaction (including, but not limited to, the sources of financing); (c) If a Sale Transaction, a binding, executed, and definitive copy of the form APA, together with all schedules thereto, marked to show changes to the APA and schedules that the Potential Bidder proposes, including the purchase price in U.S. dollars for each asset or group of assets subject to the applicable bid, by Debtor, and a specific allocation of consideration among the groups of assets being bid upon (all asset bids must also contain an allocation); (d) If a Plan Transaction, an executed binding term sheet, together with such additional information as may be necessary	Bidding Procedures Order ¶ 1 Bidding Procedures §§ V, VI

Relevant Complex Case Procedure	Summary	References
	to fully describe the elements of the proposed Plan Transaction, including the consideration to be paid; (e) A good faith earnest money cash deposit (the “<u>Deposit</u>”) in an amount equal 10% of the total Transaction price; <i>provided</i> that no Deposit is required for any credit bid component of a Transaction; (f) Evidence of corporate authority to enter into the Transaction; (g) An executed confidentiality agreement; and (h) Any additional information reasonably requested by the Debtors. Any creditor that has a valid, perfected, unavoidable, and enforceable security interest in the Debtors’ Assets shall be deemed a Qualified Bidder.	
Provisions Governing Qualified Bids. Complex Case Procedures ¶ 19(c)	<u>Bid Deadline.</u> A Qualified Bidder who desires to make a bid must deliver written copies of its bid, along with the Required Bid Documents to the Debtors, B. Riley, and any official committee appointed in these chapter 11 cases at the addresses contained in the Bidding Procedures no later than March 11, 2024, at 4:00 p.m. Central Time (the “<u>Bid Deadline</u>”). <u>Qualified Bids.</u> Any bid that contemplates a Transaction will be deemed a “Qualified Bid” and considered by the Debtors only if the bid: (a) is on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the APA; (b) clearly identifies (i) the particular Assets to be purchased, (ii) the liabilities and obligations to be assumed, and (iii) whether the bidder intends to operate the Debtors’ businesses as a going concern, or to liquidate the business; (c) contains no contingencies of any type, other than Bankruptcy Court approval of the Transaction and any applicable regulatory conditions; (d) other than any Stalking Horse Bid(s) that may be designated by the Debtors, is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment); (e) contains the acknowledgements and representations as	Bidding Procedures Order ¶ 1, 3 Bidding Procedures §§ VI, VII

Relevant Complex Case Procedure	Summary	References
	listed in the Bidding Procedures; (f) includes a list of assumed contracts and assumed liabilities (if any) and provides that the bidder will be responsible for any Cure Amounts associated with such assumption; (g) includes a commitment to consummate the Transaction and the assumption of the assumed liabilities (if any) within not more than ten (10) days after entry of an order by the Bankruptcy Court approving such Transaction, subject to applicable regulatory approvals; (h) identifies any regulatory and third-party approvals required for the bidder to consummate the Transaction, and the time period within which the bidder expects to receive such regulatory and third-party approvals; (i) discloses: (i) the identity of the Potential Bidder and each entity participating in the Transaction in connection with the Potential Bidder and the complete terms of such participation, and (ii) any other term sheets and other written or oral understandings between the Potential Bidder and its affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other; (j) is received by the Bid Deadline; and (k) contemplates payment in cash, in full, upon the closing of the Transaction, unless the Debtors agree otherwise in their sole discretion, after consultation with the Consultation Parties.	
Modification of Bidding and Auction Procedures. Complex Case Procedures ¶ 19(d)	<u>Reservation of Rights.</u> The Debtors, in consultation with the Consultation Parties, reserve the right to: (i) modify the Bidding Procedures at any time in the exercise of their fiduciary duty and in furtherance of maximizing value; (ii) determine which Qualified Bid, if any, is the highest or otherwise best offer; (iii) reject at any time, any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA; or (c) contrary to the best interests of the Debtors, their estates, and their creditors as determined by the Debtors in their sole discretion; and (iv) pursue a sale or other transaction through a chapter 11 plan. The Debtors may, in the exercise of their business judgment and in furtherance of their fiduciary duties, employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (<i>e.g.</i>, the amount of time allotted to make Subsequent Bids) for conducting the Auction; <i>provided</i> that such rules are not inconsistent with the Bidding	Bidding Procedures Order ¶ 1 Bidding Procedures §§ X, XV

Relevant Complex Case Procedure	Summary	References
	Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and after consulting with the Consultation Parties regarding the same.	
Closing with Alternative Back-Up Bidders. Complex Case Procedures ¶ 19(e)	<u>Back-Up Bidder.</u> If there is an Auction, the Qualified Bidder that submits the second highest bid at the Auction shall be required to serve as the back-up bidder (the “<u>Back-Up Bidder</u>”) and keep such Back-Up Bidder’s last bid (the “<u>Back-Up Bid</u>”) open and irrevocable until the earlier of (i)(A) if a Sale Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the sale to the Successful Bidder becomes final and non-appealable or (B) if a Plan Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the Plan Transaction becomes final and non-appealable, and (ii) the closing of the Transaction with the Successful Bidder (the “<u>Outside Back-Up Date</u>”). If (x) after the Sale Hearing but prior to the Outside Back-Up Date for a Sale Transaction or (y) after the conclusion of the Auction but prior to the Outside Back-up Date for a Plan Transaction, the Successful Bidder fails to consummate or proceed with the relevant Transaction because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Transaction with the Back-Up Bidder. The Debtors will provide notice to the Court, the U.S. Trustee, and the Consultation Parties of any failure by the Successful Bidder to close the Transaction and the election to proceed to close a Transaction with the Back-Up Bidder.	Bidding Procedures Order ¶ 1 Bidding Procedures §§ XII, XIV
Provisions Governing the Auction. Complex Case Procedures ¶ 19(f)	<u>Auction.</u> If the Debtors receive more than one Qualified Bid, an Auction will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 9:00 a.m. (prevailing Central Time) on March 14, 2024, at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, in accordance with the terms of the Bidding Procedures. The Debtors shall maintain a transcript of the proceedings at the Auction. If the Debtors choose to move forward with a Plan Transaction, the Auction and Sale Hearing may be cancelled. <u>Closing of Auction and Selection of Successful Bid:</u> The Auction will continue until there is only one bid that the Debtors determine, in their business judgment and in consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid for each asset or group of assets (each such bid being the “<u>Successful Bid</u>” and the bidder making such bid, the “<u>Successful Bidder</u>”). The Debtors shall file a notice of the Auction results (the “<u>Notice of Successful Bidder</u>”) within 24 hours of the conclusion of the Auction, or March 15, 2024, whichever is later. The Notice of Successful Bidder shall include, at a minimum: (i) the identity of the Successful Bidder; (ii) the final form of APA to be	Bidding Procedures Order ¶¶ 1, 6, 7 Bidding Procedures §§ VIII, X, XI

Relevant Complex Case Procedure	Summary	References
	consummated between the Debtors and the Successful Bidder; and (iii) the proposed form of Sale Order, with a comparison showing changes to the original form filed with the Court a notice of proposed sale order. <u>No Collusion.</u> Each Qualified Bidder participating in the Auction shall confirm that it has not engaged, and will not engage, in any collusion in connection with the bidding process or the Proposed Sale at any time.	

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b).

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

5. The bases for the relief requested herein are sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rule 2002-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas, and Section E of the Procedures for Complex Cases in the Northern District of Texas (the “Complex Case Procedures”).

Background

6. The Debtors provide pioneering software specifically geared towards ophthalmology and optometry practices. The Debtors’ software, including iMedicWare (ophthalmology) and My Vision Express (optometry), provides practice management, point of sale, electronic health records, surgical scheduling, revenue cycle management, and reporting solutions. With over 5,000 physician and 2,000 practice clients representing an aggregate of over 25 million individual patients, the Debtors are one of the leading technology solutions providers for eye care practices.

7. On January 16, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committee has been appointed.

8. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in the *Declaration of Sophia Turrell, Chief Executive Officer, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 14] (the “First Day Declaration”).

9. As detailed in the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 38] (the “DIP Motion”), the Debtors have negotiated debtor in possession financing with Create Capital, LLC (the “DIP Lender”). As a key component of the debtor in possession financing, and as set forth in paragraph 19 of the Court’s *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 71] (the “Interim DIP Order”), the Debtors and the DIP Lender have agreed to certain case milestones (“Milestones”) to preserve and maximize the value of the Debtors’ Assets and operations.

Proposed Bidding and Sale Procedures and Timing

10. The Debtors are double tracking, seeking a transaction (“Transaction”) incorporating both or either of: (A)(i) a sale of all or a portion of the Debtors’ assets, or (ii) a going concern sale (together, a “Sale” or “Sale Transaction”), or (B) a restructuring transaction under a confirmed chapter 11 plan of reorganization (a “Plan Transaction”).

11. This Motion seeks relief in two stages. *First*, the Debtors seek entry of the Bidding Procedures Order, approving the Bidding Procedures for the sale of all or a portion of the Debtors’ Assets, approving certain bid protections, approving a general form of APA, scheduling the Auction, scheduling the Sale Hearing, and approving the form and notice related to the Sale Hearing.⁴

12. *Second*, the Debtors seek, following the Auction and a duly noticed Sale Hearing, entry of an order to be filed by the Debtors (a) approving the sale of all or a portion of the Debtors’ assets, free and clear of liens, claims, interests, and encumbrances, (b) approving the assumption and assignment of Assumed Contracts as may be requested by the Stalking Horse (if any) or the Successful Bidder and the proposed cure amounts with respect thereto, (c) approving the assumption of certain liabilities, and (d) granting related relief.

13. The Debtors believe the process of which this the Motion seeks approval is appropriately designed to generate the greatest value for their estates and constituents, whether through one or more of, or a combination of, a going concern sale of the business to potential strategic or financial buyers, the sale of a portion of the Debtors’ assets to one or more buyers, or a Plan Transaction. The Debtors are working with their stakeholders to continue operating their businesses until their Assets are sold.

⁴ As set forth below and in the Bidding Procedures, the Debtors reserve the right to cancel the Sale Hearing if at, or prior to, the Auction, a Plan Transaction is accepted and will be pursued.

A. Proposed Sale Timeline

14. The Debtors propose to solicit bids, conduct the Auction, and have a Sale Transaction approved on the following timeline:

February 23, 2024, at 10:30 a.m. (CT)	Hearing to approve Bidding Procedures
February 26, 2024	Deadline to file list of Potential Assumed Contracts and Cure Notice
By February 28, 2024	Deadline to serve Bid Packages
March 11, 2024, at 4:00 p.m. (CT)	Deadline to submit Qualified Bids
March 13, 2024	Notifications to Qualified Bidders
March 14, 2024 at 9:30 a.m. (CT)	Auction (if one or more Qualified Bids is received)
By March 15, 2024	Return of Deposits to non-Qualified Bidders
March 15, 2024	Deadline to file Notice of Successful Bidder ⁵
March 15, 2024	Deadline to file Notice of Proposed Sale Order
March 18, 2024	Deadline to object to Sale
March 18, 2024	Deadline to file an Adequate Assurance Objection or Cure Objection
March 24, 2024	Deadline to file the Assumed Contract Schedule
March [25], 2024 at __: __ [a/p].m. (CT)	Sale Hearing, to approve the results of the Auction

15. The Debtors believe that the above timeline is reasonable and otherwise complies with the Milestones and requirements for the sale process set forth in the Interim DIP Order.

16. The Debtors intend to seek the retention of B. Riley Advisory Services (“B. Riley”) as their financial advisor in these chapter 11 cases. The Debtors retained B. Riley’s services on or about December 20, 2023, and the formal asset marketing process has been underway in earnest since that date.⁶ Since that time, the company and B. Riley Advisory have identified (and continue to work to identify) and contacted (and continue to contact) potential

⁵ The Bidding Procedures provide that the deadline to file the Notice of Successful Bidder is the later of: (i) March 15, 2024; and (ii) 24 hours after the conclusion of the Auction.

⁶ As discussed more fully on the record at the interim DIP hearing on January 25, 2024, there was a “soft” marketing process that commenced several months prior to the Petition Date, in October 2023.

buyers, have provided (and continue to provide) nondisclosure agreements to numerous interested parties who have been or will be granted access to a virtual data room containing information regarding the Debtors' business and assets and have responded to many due diligence requests from multiple parties. Furthermore, because the Debtors' leadership team began "softly" marketing the Debtors' assets in October 2023, by the time the Bid Deadline arrives, marketing will have been under way for approximately five months, and the proposed auction date will be almost three months after B. Riley's prepetition retention. As set forth in the uncontroverted testimony at the interim DIP hearing, although slightly tight, these deadlines and Milestones are consistent with other deadlines and milestones established for asset sales in other chapter 11 cases.

B. Bidding Procedures

17. The Debtors request that the Court approve the Bidding Procedures, attached to the Bidding Procedures Order as Exhibit 1. The Bidding Procedures are designed to maximize value for the Debtors' estates while ensuring an orderly process. The Bidding Procedures describe, among other things, the way bidders and bids become "qualified," the conduct of any Auction, the ultimate selection of the Successful Bidder, and the Court's approval thereof. The Bidding Procedures also address the various combinations and permutations that may occur during the process, *to wit*, an all-asset going concern sale, a piecemeal sale of various assets to multiple bidders, and a restructuring pursuant to a chapter 11 plan. To the extent the Debtors decide to pursue a Plan Transaction, the Sale Hearing, and/or the Auction will be cancelled with an appropriate notice filed on the Docket of these chapter 11 cases .

18. In addition to the matters highlighted in the summary chart above, the proposed Bidding Procedures contain the following additional provisions:⁷

- a. Sale of Assets or Going Concern Transaction: The Debtors are entertaining bids for a proposed (i)(A) sale of substantially all or a smaller portion of their Assets or (B) going concern sale, or (ii) restructuring transaction under a confirmed chapter 11 plan of reorganization. The Debtors may enter into one Transaction or several Transactions with multiple parties, depending upon the bids received. Any Successful Bidder(s) will be obligated to assume the assumed liabilities as may be set forth in any purchase agreement and the Debtors will assume and assign the assumed contracts to the Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.
- b. “As Is, Where Is”: Any Transaction(s) entered into by the Debtors shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents, or estates, except as may be set forth in a purchase agreement(s) with a Successful Bidder(s) or chapter 11 plan approved by the Bankruptcy Court.
- c. Free of Any and All Claims and Interests: Any Transaction entered into with the Debtors will be free and clear of all liens, claims, interests, and encumbrances (collectively, the “Claims and Interests”), with such Claims and Interests attaching to the net proceeds of the sale in the same order and priority as existed prior to the Petition Date.
- d. Participation and Bid Requirements: Any person or entity who wishes to participate in the bidding process (a “Potential Bidder”) must become a Qualified Bidder as indicated within the Bidding Procedures.
- e. Due Diligence: Following execution of a confidentiality agreement in a form acceptable to the Debtors in their sole discretion, each Potential Bidder shall have an opportunity to perform due diligence with respect to the Debtors’ businesses and Assets. The Debtors have designated B. Riley to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders about the businesses or the Assets. After the Bid Deadline, the Debtors and B. Riley are not required to furnish any information of any kind related to the businesses or the Assets to any person that is not a Qualified Bidder.

⁷ This summary is qualified in its entirety by reference to the provisions of the Bidding Procedures themselves. In the event of any inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern. Unless otherwise defined, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures.

- f. Right to Credit Bid. Any creditor that has a valid, perfected, unavoidable, and enforceable security interest in the Debtors' Assets (any such creditor, a "Secured Party") is deemed to be a Qualified Bidder and may make one or more credit bids of all or any portion of the secured claim(s) held by such Secured Party at the Auction, pursuant to the requirements of section 363(k) of the Bankruptcy Code (a "Credit Bid"). The DIP Lender is deemed to be a Qualified Bidder and shall be permitted to Credit Bid in an amount up to the amounts then-outstanding under the terms of the Interim DIP Order and/or any final DIP financing order, including any accrued interest and fees. A Credit Bid by a Secured Party that does not include a cash component shall be deemed a Qualified Bid and considered by the Debtors only if the Credit Bid (i) clearly identifies the particular Assets with respect to which a Credit Bid may be made and (ii) is received by the Bid Deadline.
- g. Jurisdiction: All bidders will be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court, consented to the Bankruptcy Court entering final orders and judgments, and waived any right to a jury trial in connection with any and all disputes relating to, arising from, or connected with the Bid Procedures, the Auction, the marketing process, the Sale, the Transaction, and the construction and enforcement of any purchase agreement.

C. The Sale Notice, Auction, and APA

19. Within three business days after entry of the Bidding Procedures Order, the Debtors will serve a package (the "Bid Package") containing the Bidding Procedures Order, the Bidding Procedures attached thereto as Exhibit 1, the APA, and the notice of Bid Deadline, Auction, and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "Sale Notice"). The Debtors will provide for service of the Bid Package via electronic mail or by first class U.S. mail, postage prepaid, upon the following (collectively, the "Bid Notice Parties"): (a) all potential buyers previously identified or solicited by the Debtors or B. Riley and any additional parties who have previously expressed an interest to the Debtors or B. Riley in potentially acquiring the Assets; (b) other potentially interested parties identified by the Debtors or their advisors; (c) the U.S. Trustee; (d) counsel any statutory committee appointed in these chapter 11 cases; (e) counsel to the DIP Lender; (f) counterparties to the Debtors' executory contracts and unexpired leases; (g) any parties that have asserted a lien

or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors' assets; (h) any taxing authorities related to the Debtors' assets; and (i) all parties who have requested notice in this case.

20. To qualify and gain entry to the Auction, to the extent a Stalking Horse Bidder has been named, the initial overbid must exceed the purchase price of the Stalking Horse Bid by at least the amount of the Break-Up Fee plus \$250,000. The DIP Lender will not be entitled to a Break-Up Fee unless its Qualified Bid includes a cash component over any Cure Amounts. Thereafter, or in the event no Stalking Horse Bidder has been named, the minimum bidding increment (each, a "Subsequent Bid") shall be \$250,000. The amount of the minimum bidding increment may be increased or decreased by the Debtors, in their discretion, in consultation with any official committee appointed in these cases and the DIP Lender (collectively, the "Consultation Parties").⁸ As described more fully in the Bidding Procedures, the Debtors presently intend to conduct the Auction in a traditional "round robin" "open outcry" fashion, allowing each Qualified Bidder an opportunity to submit one Subsequent Bid each round, with the requirement that a Qualified Bidder must submit a Subsequent Bid in order to qualify for the next round of bidding.

21. Prior to the hearing on this Motion, the Debtors will file an APA for use and modification by potential bidders. The Debtors seek approval of the APA, subject to such modifications as may be submitted by potential bidders and accepted by the Debtors, after consultation with the Consultation Parties in connection with the Proposed Sale and in the exercise of the Debtors' business judgment. On or before **March 15, 2024**, the Debtors will file

⁸ In the event the DIP Lender submits a Qualified Bid, the DIP Lender shall not serve as a Consultation Party.

a form of the proposed Sale Order (the “Notice of Proposed Sale Order”) with the Court and make the proposed form of Sale Order available to all Potential Bidders.

D. Potential Assumed Contracts and Cure Notice

22. The Debtors may seek to assume and assign to the Successful Bidder certain executory contracts and unexpired leases to be designated by the Successful Bidder. On or before **February 26, 2024**, the Debtors propose to file with the Court an initial schedule of executory contracts and unexpired leases that may be assumed and assigned as part of the Proposed Sale (collectively, the “Potential Assumed Contracts”). Concurrently therewith, the Debtors will serve a cure notice substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Cure Notice”) upon each counterparty to the Potential Assumed Contracts (each, a “Counterparty”). The Cure Notice shall identify the amounts, if any, that the Debtors believe are owed to each Counterparty to a Potential Assumed Contract to cure any defaults that may exist under such contract (each, a “Cure Amount”). The Cure Notice shall also state the applicable date, time, and place of the Auction and Sale Hearing, and provide the date and time by which any objection to: (i) the assumption and assignment of the applicable Potential Assumed Contract on the basis of lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”); or (ii) the Cure Amount must be filed and served by the Counterparty (a “Cure Objection”). For purposes of the Bidding Procedures, the Debtors propose **March 18, 2024**, as the deadline for Cure Objections and Adequate Assurance Objections with respect to any Successful Bidder.

23. If a contract or lease is designated to be assumed and assigned under the Proposed Sale, then the Debtors propose that unless a Counterparty properly and timely files and serves a Cure Objection pursuant to the Cure Notice, the Counterparty will receive payment from the

Successful Bidder of the Cure Amount (if any) as set forth in the Cure Notice consistent with any applicable terms and procedures set forth in the APA.

24. As set forth above, after the Auction concludes, the Debtors will file a Notice of Successful Bidder identifying the Successful Bidder and the terms of the Successful Bid. Prior to the commencement of the Sale Hearing, but no later than **March 24, 2024**, the Debtors shall file with the Court a final schedule (the “Assumed Contract Schedule”) of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the “Assumed Contracts”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts to the Successful Bidder effective as of the closing of the Proposed Sale; *provided, however*, that the Successful Bidder may remove or add any executory contract or unexpired lease to or from the Assumed Contract Schedule at any time up to the closing of the Proposed Sale. The Counterparty to any such addition or removal will be notified electronically or by written notice via first class U.S. mail by no later than two business days from such determination.

25. If at any time after service of the Cure Notice and before closing of the proposed Sale the Debtors identify additional Potential Assumed Contracts not included in the initial Cure Notice, the Debtors will serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and the Debtors propose that such counterparties will have until the later of (a) March 18, 2024; or (b) fourteen (14) days from service of the supplemental Cure Notice to object to inclusion of the additional Potential Assumed Contract on the Assumed Contract Schedule.

Basis for Requested Relief

I. The Bidding Procedures Are Appropriate and Ensure That the Bidding Process Is Fair, Reasonable, and Will Yield the Maximum Value to the Debtors and Their Estates, Creditors, Stakeholders, and Other Parties in Interest.

26. Bankruptcy Code section 363 and Bankruptcy Rule 6004(f)(1) allow debtors to sell some or all of their property outside the ordinary course of business, “after notice and a hearing.” 11 U.S.C. § 363(b)(1).

27. This Court’s power under Bankruptcy Code section 363 is supplemented by section 105(a), which provides in relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). As set forth below, the Debtors submit that they have satisfied the requirements of sections 105 and 363 as those sections have been construed by courts in the Fifth Circuit.

28. To approve a sale under section 363(b)(1) of the Bankruptcy Code, the Fifth Circuit requires a debtor to show that the decision to sell the property outside of the ordinary course of business was based on the debtor’s business judgment. *See Inst’l Creditors of Cont’l Airlines, Inc. v Cont’l Airlines, Inc. (In re Cont’l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986); *see also In re ASARCO LLC*, 441 B.R. 813, 824 (S.D. Tex. 2010), *aff’d* 650 F.3d 593 (5th Cir. 2011); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988). A bankruptcy court is to give deference to the business judgment of the trustee or debtor in possession when it deems the sale to be appropriate. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987); *see also In re Rodriguez*, 353 B.R. 144, 149 (Bankr. N.D. Tex. 2006).

29. Once the Debtors articulate a valid business justification, a bankruptcy court has considerable discretion to approve the sale. *In re Crutcher Resources Corp.*, 72 B.R. 628, 631

(Bankr. N.D. Tex. 1987). That is because such a decision, supported by a valid business justification, enjoys a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Therefore, any party objecting to the Debtors’ proposed asset sale must make a showing of “bad faith, self-interest, or gross negligence.” *See id.* at 656; *see also 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).

30. The paramount goal in any proposed sale of property of a debtor’s estate is to maximize the proceeds received by the estate. *See Cadle Co. v. Moore (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010) (debtor in possession “has the duty to maximize the value of the estate”); *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 352 (1985) (same); *In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010) (noting the primary goals for a sale of estate property are “maximizing value for the estate and preserving the integrity of the judicial process”). Thus, it is appropriate to approve bidding procedures that benefit a debtor’s estate by maximizing the value of the debtor’s assets. *See In re Moore*, 608 F.3d at 263; *Weintraub*, 741 U.S. at 352; *In re Bigler, LP*, 443 B.R. at 115; *see also In re TM Vill., Ltd.*, No. 18-32770, 2019 WL 1004571, at *10 (Bankr. N.D. Tex. Feb. 28, 2019) (“As long as the sale appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision to sell should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the

provisions of the Bankruptcy Code”) (quoting *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)).

31. The Debtors have sound business justifications for pursuing the Proposed Sale and seeking approval of the Bidding Procedures. The Bidding Procedures will set the parameters by which the value of the Debtors’ assets and the overall transaction value may be established and tested. The Bidding Procedures will thus create a competitive and fair bidding process and increase the likelihood that the Debtors will receive the greatest possible consideration for their Assets.

32. The Debtors also believe that the Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the highest and best offer reasonably available for the Debtors’ Assets and related businesses. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate an ability to close a Transaction. The Debtors believe that the Bidding Procedures will encourage bidding, are consistent with other procedures previously approved by courts in this and other districts, and are appropriate under the relevant legal standards.

II. The Form and Manner of Notice of the Bidding Procedures, the Auction, and the Sale Hearing Are Reasonable, Adequate, and Appropriate.

33. The Debtors request that the Court schedule two hearings in connection with this Motion: (a) first, a hearing to consider and approve the Bidding Procedures and schedule the Auction, Sale Hearing, and related deadlines; and (b) second, the Sale Hearing itself.

34. As set forth above, the Debtors will serve the Bid Package on the Bid Notice Parties within three (3) days of entry of the Bidding Procedures Order. The date proposed for the Sale Hearing—**March 25, 2024**—complies with Bankruptcy Rules 2002(a)(2), 6004, and

6006(c), as such date will be more than twenty-one (21) days after service of the Bid Package. Further, the materials in the Bid Package will comply with Bankruptcy Rules 2002(c)(1) and 6004(f)(1), as the same will contain the information required by such Bankruptcy Rules. As a result, the Debtors respectfully submit that the Bid Package and the Sale Notice satisfy the notice and information requirements of Bankruptcy Rules 2002, 6004, and 6006(c), and section 363 of the Bankruptcy Code, and that such notice is good and sufficient in that no other or further notice is required.

III. The APA Is Typical, Customary, and Reasonable and Entering into the APA Is an Exercise of the Debtors' Reasonable Business Judgment.

35. The APA is a basic form of asset purchase agreement for a sale of the Debtors' assets. It provides a base from which interested parties may work when formulating the terms of their respective bids and is a form with which the Debtors are comfortable and which the Debtors believe is fair to both the Debtors and prospective bidders.

36. The Debtors further believe, and respectfully submit, that the terms of the APA are typical, customary, and reasonable under the circumstances, in the exercise of their business judgment. Given that there is no current Stalking Horse Bidder, however, the Debtors presume that modifications will be submitted not only by potential Stalking Horse Bidders, but also by other Qualified Bidders. The Debtors thus request authorization to accept such modifications and edits to the form of APA as may be submitted by potential bidders and as the Debtors may agree to in their discretion and business judgment, after consultation with the Consultation Parties.

IV. The Break-Up Fee is reasonable and necessary to ensure maximum value for the Debtors' assets.

37. As has been demonstrated repeatedly over the years, obtaining a stalking horse bidder is often key to a successful, efficient, and value-maximizing sale process. The presence

of a stalking horse sets a floor for the auction and encourages bidding, thereby maximizing the seller's return. To receive this benefit, however, the Debtors need to be able to compensate a Stalking Horse Bidder for the risk it takes by (a) entering into an agreement that is subject to higher and better offers without any assurances that its transaction will ultimately be consummated, (b) exposing its bid to the market, and (c) standing by its bid commitment while the marketing and process plays itself out. The Debtors, therefore, request that the Court approve the Break-Up Fee, to the extent that the Debtors declare one or more Stalking Horse Bidders.

38. Break-up fees and other bid protections are a normal and customary—and often necessary—component of sales outside the ordinary course. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659–60 (S.D.N.Y. 1992) (“[B]ecause the directors of a corporation have a duty to encourage bidding, break-up fees can be *necessary* to discharge the directors’ duties to maximize value.”) (emphasis in original); *see, e.g., In re Ebix, Inc.*, No. 23-80004 (SWE) (Bankr. N.D. Tex. Jan. 18, 2024) [Docket No. 199] (approving a break-up fee to a stalking horse bidder); *In re Impel Pharmaceuticals Inc.*, No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 11, 2024) [Docket No. 137] (same); *In re Stone Energy Corp.*, No. 16-26390 (MI) (Bankr. S.D. Tex. Jan. 18, 2017) [Docket No. 316] (same); *In re Outboard Marine Corp.*, No. 00-37405-EIK-11 (Bankr. N.D. Ill. Jan. 10, 2001) [Docket No. 217] (authorizing payment of a 3% break-up fee to potential bidders); *In re Fin. News Network, Inc.*, 126 B.R. 152, 157 (S.D.N.Y. 1991), *appeal dismissed*, 931 F.2d 217 (2d Cir. 1991) (refusing to impose strict comparability where the original bidding party had the benefit of a break-up fee); *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 879 (Bankr. S.D.N.Y. 1990) (approving break-up fees in merger agreement); *In re 995 Fifth Ave. Assoc., L.P.*,

96 B.R. 24, 28-29 (Bankr. S.D.N.Y. 1989) (finding that \$500,000 break-up fee was not unreasonable absent evidence that it chilled the bidding).

39. To warrant approval of break-up fees and expenses, the Fifth Circuit in *Asarco* required a showing that the requested fees and expenses are supported by a sound business justification. *Asarco, Inc., v. Elliot Mgmt. (In re Asarco, LLC)*, 650 F.3d 593, 597–98, 602–03 n. 9 (5th Cir. 2011) (favoring business judgment standard governing use of assets outside of ordinary course of business, rather than the standard for administrative expenses, in assessing propriety of fees and expenses incurred by bidders).

40. Here, the proposed Break-Up Fee of up to 3.0% is well within the range of reasonableness and supported by a sound business justification. Generally, courts have found break-up fees to be reasonable, and approved the same, ranging up to approximately five percent (5%) of the consideration to be received. *See Integrated Res.*, 147 B.R. at 662 (noting expert testimony that 3.3% is industry average for break-up fees); *see also, e.g., In re Ebix, Inc.*, No. 23-80004 (SWE) (Bankr. N.D. Tex. Jan. 18, 2024) [Docket No. 199] (approving a break-up fee of 3% of the total purchase price proposed by a stalking horse bidder); *In re Impel Pharmaceuticals Inc.*, No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 11, 2024) [Docket No. 137] (approving a break-up fee of \$450,000, or just over 2.5% of the purchase price proposed a stalking horse bidder); *In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. Jan. 18, 2017) (approving a break-up fee in the amount of \$10,800,00, or 3% of the purchase price); *In re UGHS Senior Living, Inc.*, No. 15-80399 (DRJ) (Bankr. S.D. Tex. Nov. 24, 2015) (approving 3% break-up fee and 1% expense reimbursement); *In re Enron Corp.*, No. 01-16034 (AJG) (Bankr. S.D.N.Y., Apr. 8, 2004) (approving break-up fee equal to 5% of the purchase price); *In re TransCom USA Mgmt.*

Co., L.P., No. 01-35158 (KKB) (Bankr. S.D. Tex., Feb. 12, 2002) (approving a break-up fee of more than 3.6% of the purchase price for the assets).

41. If one or more Stalking Horse Bids is submitted and accepted by the Debtors, the Break-Up Fee will be beneficial to the Debtors' estates and creditors, as such Stalking Horse Bid(s) will set a floor for further bidding and establish a metric against which all other bids may be measured. The Debtors, in their business judgment, believe it is reasonable and appropriate to provide the requested 3.0% Break-Up Fee, which is consistent with other break-up fees approved in this District and others, as set forth above.

V. Any Proposed Sale Should Be Approved Free and Clear of Liens, Claims, Interests, and Encumbrances.

42. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, interest, or encumbrance in such property if, among other things:

- 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 sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide 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).

43. Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice for approval of the proposed sale. *See, e.g., In re Partners Oil Co.*, 216 B.R. 399, 401 (Bankr. S.D. Tex. 1998) (allowing a sale free and clear of liens when just one of the subsections of 363(f) were met); *In re Collins*, 180 B.R. 447, 449-50 (Bankr. E.D. Va.

1995) (“Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale”); *Scherer v. Fed. Nat’l Mortg. Ass’n (In re Terrace Chalet Apts., Ltd.)*, 159 B.R. 821, 827 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

44. Section 363(f) permits the Proposed Sale to proceed free and clear of all liens, claims, interests, and encumbrances, except for any liabilities specifically assumed by the Successful Bidder. Each lien, claim, interest, or encumbrance that is not the result of an assumed liability satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code. As discussed in the DIP Motion, the Debtors’ Prepetition Lenders (as defined in the Interim DIP Order) are likely unperfected and there appear to be valid bases to recharacterize and/or subordinate any such alleged liens and claims.

45. All allegedly secured parties will receive the Sale Notice and will have an opportunity to object. Further, to the extent any entity with an alleged lien on any assets to be sold has an objection to the Proposed Sale, but the Debtors nonetheless decide to proceed with the Proposed Sale over such objection, the Debtors will present appropriate evidence and lay the necessary foundation at the Sale Hearing to support approval of the Proposed Sale.

46. The Debtors further submit that any lien, claim, interest, or encumbrance will be adequately protected by attachment to the net proceeds of the Proposed Sale, in the same order of priority as existed prior to the Petition Date, and all parties’ rights to object to such Proposed Sale are preserved. Accordingly, the Debtors request that the Proposed Sale to the Successful Bidder be free and clear of all liens, claims, interests, and encumbrances, with such liens, claims, and encumbrances to attach to the proceeds of the Proposed Sale.

VI. The Stalking Horse, or Any Other Successful Bidder, Is a Good Faith Purchaser Pursuant to Section 363(m) of the Bankruptcy Code, and the Proposed Sale Should Be Deemed Unavoidable Pursuant to Section 363(n) of the Bankruptcy Code.

47. 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).

48. While the Bankruptcy Code does not define “good faith,” the Fifth Circuit has held that a good faith purchaser is one who “purchases the assets for value, in good faith, and without notice of adverse claims.” *Hardage v. Herring Nat’l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988) (quoting *Willemain v. Kivitz (In re Willemain)*, 764 F.2d 1019, 1023 (4th Cir. 1985)). Furthermore, the good faith status of a purchaser can be destroyed with evidence of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014).

49. The Debtors submit, and will present evidence at the Sale Hearing that, the Proposed Sale is an arms’ length transaction for value, in which the Successful Bidder and the Debtors at all times acted in good faith. In connection with approval of the Proposed Sale, the Debtors request that the Court make a finding that the Successful Bidder is a good faith purchaser and entitled to the protections of section 363(m) of the Bankruptcy Code.

VII. The Assumption, Assignment, and Cure Procedures Relating to the Assumed Contracts Are Appropriate and Should Be Approved.

50. In connection with the Proposed Sale, the Debtors seek authority to assume and assign the Assumed Contracts (if any) to the Successful Bidder. Section 365(a) of the

Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject executory contracts or unexpired leases of nonresidential real property is whether the debtor’s reasonable business judgment supports assumption or rejection. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *see also Tex. Health Enters. Inc. v. Lytle Nursing Home (In re Tex. Health Enters. Inc.)*, 72 F. App’x 122, 127 (5th Cir. 2003) (“[T]he bankruptcy code makes it clear that it is the choice of the debtor-in-possession, and not the bankruptcy court, to assume or reject an executory contract”); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (Bankr. D. Del. 2006).

51. Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

52. Further, section 365(f)(2) of the Bankruptcy Code provides that:

[t]he trustee may assign an executory contract or unexpired lease of the debtors only if –

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

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

11 U.S.C. § 365(f)(2).

53. Courts give the phrase “adequate assurance of future performance” in section 365(b)(1) a “practical, pragmatic construction.” *See, e.g., Appeal of Ill. Inv. Tr. v. Allied Waste Indus., Inc. (In re Res. Tech. Corp.)*, 624 F.3d 376, 383-84 (7th Cir. 2010) (adequate assurance required showing that performance was more likely to occur than not); *EBG Midtown S. Corp. v. McLaren/Hart Env'tl Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (the presence of adequate assurance should be “determined under the facts of each particular case”); *In re Fifth Ave. Originals*, 32 B.R. 648, 652 (Bankr. S.D.N.Y. 1983) (holding that adequate assurance was furnished on two separate grounds). The phrase “adequate” assurance is not synonymous with “total” assurances. *See, e.g., In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1988) (“the required assurance will fall considerably short of an absolute guarantee of performance”); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (“[I]t does not mean absolute insurance that the debtor will thrive and make a profit”).

54. To the extent the Successful Bidder desires the Debtors to assume and assign some or all of the Debtors’ executory contracts or unexpired leases, the Debtors have determined that such assumption and assignment is an exercise of sound business judgment and is in the best interests of the Debtors, their estates, and their creditors. To the extent that any defaults exist under any Assumed Contract, the Debtors will cure, or make provisions for the cure of, any such default, as set forth in the Cure Notice.

55. As outlined above, in the event the Debtors seek to assume and assign any contracts or leases, the Debtors will file and serve the Cure Notice no later than **February 26, 2024**, subject to amendment and supplementation prior to the Sale Hearing. The Debtors request that objections, if any, to (a) the Cure Amount or (b) the adequacy of future performance be filed by **March 18, 2024**. If a Cure Objection or Adequate Assurance Objection filed by a Counterparty cannot be resolved consensually among the parties, then the Debtors request that the Court set a hearing to determine such matters as soon thereafter as is practicable, with notice only to the objecting party and those parties who have filed a notice of appearance.

56. The Debtors propose that the Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. They further propose that the failure to timely file and serve an objection be deemed consent to the assumption and assignment of the Assumed Contracts and to the Cure Amount, and any and all objections thereto shall be deemed forever released and waived as of the date of the Sale Hearing.

Waiver of Bankruptcy Rule 6004 and 6006

57. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rules 6004(a) and 6006(c) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

Reservation of Rights

58. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any

grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (f) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, 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 particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

59. The Debtors will provide notice of this Motion to the following parties or their counsel: (a) the U.S. Trustee for the Northern District of Texas; (b) counsel to any official committee that is appointed; (c) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (d) the agent to the lenders under the Debtors' prepetition term loan facilities; (e) all parties with asserted security interests in any of the Debtors' assets; (f) counsel to the DIP Lender; (g) the United States Attorney's Office for the Northern District of Texas; (h) the Internal Revenue Service; (i) the state attorneys general for states in which the Debtors conduct business; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is needed.

WHEREFORE, the Debtors respectfully request that the Court: (a) enter the Bidding Procedures Order, substantially in the form attached as **Exhibit A**; (b) following the duly noticed Sale Hearing, enter a Sale Order; and (c) grant such other and further relief as may be just and proper.

Respectfully submitted this 30th day of January, 2024.

GRAY REED

By: /s/ Jason S. Brookner
Jason S. Brookner
Texas Bar No. 24033684
Amber M. Carson
Texas Bar No. 24075610
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acarson@grayreed.com
eshanks@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Consent

I certify that on January 30, 2024, I conferred with counsel to the DIP Lender, who expressly agreed to the extension of the Milestones (as defined in the Interim DIP Order) for entry of the Bid Procedures Order from 21 days to 24 days after the date this Motion is filed, and for entry of the Sale Order from 30 days to 31 days after entry of the Bid Procedures Order.

/s/ Jason S. Brookner
Jason S. Brookner

Certificate of Service

I certify that on January 30, 2024, 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 Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Proposed Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EYE CARE LEADERS PORTFOLIO
HOLDINGS, LLC, *et al.*,¹

Debtors.

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Chapter 11

Case No. 24-80001 (MVL)

(Jointly Administered)

**ORDER (A) APPROVING BIDDING PROCEDURES AND CERTAIN
BID PROTECTIONS, (B) SCHEDULING A BID DEADLINE,
AUCTION, AND SALE HEARING AND APPROVING THE
FORM AND MANNER OF NOTICE THEREOF, AND (C) APPROVING
CURE PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF**

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors' principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

Upon the motion (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order: (a) approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”) and certain bid protections; (b) scheduling the bid deadline, auction date, and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof; and (c) approving procedures to cure any default pursuant to section 365(b)(1) of the Bankruptcy Code and the form and manner of notice thereof; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion, and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion and the record of the hearing on such motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, the Court finds as follows:

- a. The Debtors have articulated good and sufficient reasons for (i) approving the Bidding Procedures, (ii) the grant of certain bid protections in favor of one or more potential Stalking Horse Bidders, (iii) approving the manner of notice of the Bid Deadline, the Auction, the Sale Hearing, and the assumption and assignment of the Assumed Contracts and proposed cure amounts relating thereto, and (iv) scheduling the Sale Hearing;

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

- b. The Debtors' payment to a Stalking Horse Bidder (if any) of the Break-Up Fee on the terms set forth in this Order (i) is an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, (ii) is of substantial benefit to the Debtors' estates, (iii) is reasonable and appropriate, in light of the size and nature of the Proposed Sale and the efforts that have been and will be expended by a potential Stalking Horse Bidder notwithstanding that the Proposed Sale is subject to higher or better offers, (iv) was negotiated by the parties at arms' length and in good faith, and (v) is necessary to ensure that a potential Stalking Horse Bidder will continue to pursue its proposed acquisition of the Debtors' assets;
- c. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the realizable value of the Debtors' assets in part, in total, or as a going concern transaction; and
- d. Any objections that have not been previously resolved or withdrawn are overruled on the merits.

IT IS HEREBY ORDERED THAT:

1. The Bidding Procedures attached hereto as Exhibit 1 and incorporated herein by reference as if fully set forth herein are approved as set forth herein and shall govern the bidding and Auction proceedings.

2. Within three (3) business days after entry of this Order, the Debtors shall serve a package (the "Bid Package") containing (a) a copy of this Order, (b) the Bidding Procedures, (c) the form APA, and (d) the notice of Bid Deadline, Auction, and Sale Hearing (the "Sale Notice"), electronically or via first class U.S. mail, postage prepaid, upon the following (collectively, the "Bid Notice Parties"):

- a. all potential buyers previously identified or solicited by the Debtors or B. Riley and any additional parties who have previously expressed an interest to the Debtors or B. Riley in potentially acquiring the Assets;
- b. other potentially interested parties identified by the Debtors or their advisors;
- c. the U.S. Trustee;
- d. counsel to any statutory committee appointed in these chapter 11 cases (any such committee, the "Committee");

- e. counsel to the DIP Lender;
- f. counterparties to the Debtors' executory contracts and unexpired leases;
- g. any parties that have asserted a lien or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors' assets;
- h. any taxing authorities related to the Debtors' assets; and
- i. all parties who have requested notice in this case.

3. The Bid Deadline shall be March 11, 2024, at 4:00 p.m. (prevailing Central Time); Qualified Bidders shall be notified by March 13, 2024; Deposits shall be returned to non-Qualified Bidders by March 15, 2024, and a Notice of Proposed Sale Order shall be filed by March 15, 2024.

4. The Sale Notice attached hereto as **Exhibit 2** and the Cure Notice attached hereto as **Exhibit 3** are hereby approved.

5. The general form APA is hereby approved and may be modified by the Debtors subject to consultation with the Committee and the DIP Lender (collectively, the "Consultation Parties").³

Auction and Sale Hearing

6. An Auction is scheduled to take place on **March 14, 2024**, commencing at **9:30 a.m. (prevailing Central Time)** at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201. The Debtors are authorized to terminate the bidding process or the Auction at any time if they determine, in their business judgment, that the bidding process will not maximize value for the Debtors' estates. The Debtors shall file a Notice of Successful Bidder within the later of (a) March 15, 2024, and (b) 24 hours after the conclusion of the Auction.

³ In the event the DIP Lender submits a Qualified Bid, the DIP Lender shall not serve as a Consultation Party.

7. Each Qualified Bidder participating in the Auction shall confirm that it has not engaged and will not engage in any collusion in connection with the bidding process or the Proposed Sale at any time

8. The hearing to approve the results of the Auction (the “Sale Hearing”) shall take place on _____, 2024, at __:__ [a/p].m. (prevailing Central Time) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 2, Dallas, Texas 75242, at which time the Court shall consider the Motion, the Proposed Sale, and confirm the results of the Auction, if any. To the extent the Debtors decide to pursue a Plan Transaction, the Sale Hearing and the Auction shall be cancelled.

9. Objections to the Proposed Sale shall be filed with the Bankruptcy Court and served on the following parties so as to be actually received no later than **March 18, 2024** (the “Objection Deadline”): (a) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), Amber M. Carson (acarson@grayreed.com), and Emily F. Shanks (eshanks@grayreed.com)); (b) counsel to the Debtors’ DIP Lender, Create Capital, LLC, Akerman LLP, 2001 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: Eduardo Espinosa (eduardo.espinosa@akerman.com) and John Thompson (john.thompson@akerman.com)); (c) counsel to any statutory committee appointed in these chapter 11 cases; and (d) the Office of the U.S. Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Meredyth Kippes (meredyth.kippes@usdoj.gov)) (collectively, the “Notice Parties”). The failure to timely file and serve an objection by the Objection Deadline shall be a bar to the assertion, prior to, at the Sale Hearing, or thereafter, of any such objection to the Proposed Sale or the Debtors’ consummation

of the Proposed Sale. Notwithstanding the foregoing, the Objection Deadline shall not apply to any objection based upon any event occurring at the Auction.

10. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment made in open court.

Bid Protections

11. The Break-Up Fee to be paid to a Stalking Horse Bidder, if any, as more fully described in the Motion and the Bidding Procedures, is hereby approved pursuant to the terms and conditions set forth in the Motion and Bidding Procedures, and shall be paid pursuant to the terms of an order approving a Sale Transaction or a confirmation order approving a Plan Transaction, as applicable; *provided, however*, that notwithstanding any term to the contrary set forth in the APA, the Bidding Procedures, or this Order, any potential Stalking Horse Bidder shall only be entitled to receive the Break-Up Fee if (a) a Stalking Horse Bidder, being ready, willing and able to close its transaction, is not the Successful Bidder at the Auction, (b) the Court authorizes the Debtors to enter into an alternative transaction, and (c)(i) if such alternative Transaction is a Sale Transaction, such Sale Transaction actually closes or (ii) if such alternative Transaction is a Plan Transaction, a disclosure statement is approved by the Court. Payment of the Break-Up Fee as set forth herein, if a Stalking Horse Bidder is declared, shall survive termination of the APA and shall constitute an administrative expense of the Debtors' estates.

Assumption of Contracts and Cure Notice

12. In the event the Debtors seek to assume and assign any contracts or leases, no later than **February 26, 2024**, the Debtors shall file with the Court an initial schedule of executory contracts and unexpired leases that may be assumed and assigned as part of the

Proposed Sale (collectively, the “Potential Assumed Contracts”). Concurrently therewith, the Debtors shall serve upon affected counterparties to the Potential Assumed Contracts (if any) the Cure Notice, subject to amendment and supplementation prior to the Sale Hearing.

13. Objections, if any, to the assumption and assignment of Potential Assumed Contracts on the basis of (a) lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”); or (b) the amount, if any, that the Debtors believe is owed to each Counterparty to a Potential Assumed Contract in order to cure any defaults that may exist under such contract (a “Cure Objection”), shall be filed and served on the Notice Parties so as to be actually received by **March 18, 2024**. If an Adequate Assurance Objection or Cure Objection cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors are permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and to the Cure Amounts, and any and all objections thereto shall be deemed forever released and waived.

14. Prior to the commencement of the Sale Hearing, but no later than **March 24, 2024**, the Debtors shall file with the Court a final schedule (the “Assumed Contract Schedule”) of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the “Assumed Contracts”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts to the Successful Bidder effective as of the closing of the Proposed Sale; *provided, however*, that the Successful Bidder may remove or add any executory

contract or unexpired lease to or from the Assumed Contract Schedule at any time up to the closing of the Proposed Sale. The Counterparty to any such addition or removal shall be notified of such change no later than two business days from such determination by (a) written notice via electronic mail to the Counterparty or its counsel, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, and (b) the Debtors filing a notice on the Court's docket advising such Potential Assumed Contract has been added or removed.

15. If at any time after service of the Cure Notice and before closing of the Proposed Sale the Debtors identify additional Potential Assumed Contracts not included in the initial Cure Notice, the Debtors shall serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and such counterparties will have until the later of (i) March 18, 2024; or (ii) 14 days from service of the supplemental Cure Notice to object to inclusion of the additional Potential Assumed Contract on the Assumed Contract Schedule.

Miscellaneous

16. By submitting a bid, each Potential Bidder acknowledges that it will not look to the Debtors or B. Riley for the payment of any fee or commission. In addition, the Potential Bidder shall be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through the Potential Bidder. By submitting a bid, a Potential Bidder shall be deemed to indemnify, defend, and hold harmless the Debtors and B. Riley from and against any and all claims, damages, losses and liabilities, costs, and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder, or similar agent for commissions, fees, or other compensation who allege that they have dealt with the Debtors and/or B. Riley in connection with the Transaction.

17. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

18. To the extent that this Order is inconsistent with the Motion or Bidding Procedures, the terms of this Order shall control.

19. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner (TX Bar No. 24033684)
Amber M. Carson (TX Bar No. 24075610)
Emily F. Shanks (TX Bar No. 24110350)

GRAY REED

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EYE CARE LEADERS PORTFOLIO
HOLDINGS, LLC, *et al.*,¹

Debtors.

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Chapter 11

Case No. 24-80001 (MVL)

(Jointly Administered)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be followed with respect to a proposed transaction (“Transaction”) of: (A)(i) a sale (a “Sale” or “Sale Transaction”) of all or a portion of the assets of Eye Care Leaders Portfolio Holdings, LLC and its affiliates, the above-captioned debtors and debtors in possession (collectively, the “Debtors”), or (B) a restructuring transaction under a confirmed chapter 11 plan of reorganization (a “Plan Transaction”). The Transaction contemplated by these Bidding Procedures is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court (as defined herein) pursuant to either (y) Sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) or (z) a confirmed chapter 11 plan of reorganization.

On January 30, 2024, the Debtors filed the *Debtors’ Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; (II) an Order Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims and Interests; and (III) Granting Related Relief* [Docket No. __] (the “Bidding Procedures Motion”). On _____, 2024, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors’ principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

Procedures and the Form and Manner of Notice Thereof [Docket No. ____] (the “Bidding Procedures Order”) approving these Bidding Procedures.

The Bidding Procedures set forth herein describe, among other things, the manner in which bidders and bids become “Qualified Bidders” and “Qualified Bids,” respectively, the conduct of any Auction (as defined herein), the ultimate selection of the Successful Bidder (as defined herein) and the Bankruptcy Court’s approval of a Transaction (collectively, the “Bidding Process”).

Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Bidding Procedures Motion.

I. Key Dates

The Debtors have already begun the marketing process. Before being provided with any diligence materials, interested parties must sign and return a confidentiality agreement, in a form acceptable to the Debtors in their sole discretion (a “Confidentiality Agreement”). **Requests for a Confidentiality Agreement should be made to Mark Shapiro at B. Riley Advisory Services (“B. Riley”) at 3500 Maple Avenue, Suite 420, Dallas, TX 75219, mshapiro@brileyfin.com.** Once an interested party signs and returns a Confidentiality Agreement, it will receive access to an electronic data room. Further diligence information is set forth in Section VIII, below.

The deadlines and target dates set forth in these Bidding Procedures are as follows:

February 23, 2024, at 10:30 a.m. (CT)	Hearing to approve Bidding Procedures
February 26, 2024	Deadline to file list of Potential Assumed Contracts and Cure Notice
By February 28, 2024	Deadline to serve Bid Packages
March 11, 2024, at 4:00 p.m. (CT)	Deadline to submit Qualified Bids
March 13, 2024	Notifications to Qualified Bidders
March 14, 2024, at 9:30 a.m. (CT)	Auction (if one or more Qualified Bids is received)
By March 15, 2024	Return of Deposits to non-Qualified Bidders
March 15, 2024	Deadline to file Notice of Successful Bidder ²
March 15, 2024	Deadline to file Notice of Proposed Sale Order
March 18, 2024	Deadline to object to Sale
March 18, 2024	Deadline to file an Adequate Assurance Objection or Cure Objection
March 24, 2024	Deadline to file the Assumed Contract Schedule
March [25], 2024 at __: __ [a/p].m. (CT)	Sale Hearing, to approve the results of the Auction

² The deadline to file the Notice of Successful Bidder is the later of: (i) March 15, 2024; and (ii) 24 hours after the conclusion of the Auction.

II.

Sale of Assets or Going Concern Transaction

The Debtors are entertaining bids for (A)(i) a going concern transaction, (ii) a sale of all or substantially all of their assets, and (iii) a sale of such smaller portion of the Debtors' assets as may be subject to a purchase agreement and as may be bid upon at Auction; and (B) a Plan Transaction. The Debtors may enter into one Transaction or several Transactions with multiple parties, depending upon the bids received.

In addition, (i) the Successful Bidder(s) in any Sale Transaction shall assume the assumed liabilities as may be set forth in any purchase agreement and (ii) the Debtors shall assume and assign the assumed contracts to such Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.

III.

"As Is, Where Is"

Any Transaction(s) entered into by the Debtors shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, or their respective agents or estates, except as may be set forth in a purchase agreement(s) with a Successful Bidder(s) or chapter 11 plan, approved by the Bankruptcy Court.

IV.

Free of Any and All Claims and Interests

Any Transaction entered into by the Debtors shall be free and clear of all liens, claims, interests, and encumbrances (collectively, the "Claims and Interests"), with such Claims and Interests to attach to the net proceeds of the sale.

V.

Participation and Bid Requirements

Any person or entity who wishes to participate in the Bidding Process (a "Potential Bidder") must become a Qualified Bidder. As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver the following documents to the Debtors, B. Riley, and the Official Committee of Unsecured Creditors (the "Committee"), at the addresses set forth below, no later than the Bid Deadline (as defined below), in a form and substance acceptable to the Debtors and their advisors:

- (a) Evidence of the Potential Bidder's financial ability to close a Transaction, in a form and substance acceptable to the Debtors in their sole discretion in consultation with the Consultation Parties. Such evidence may take the form of, among other things, current audited financial statements, bank statements, evidence of a non-contingent financing commitment, or such other documentation as the Debtors may accept in their sole discretion;

- (l) A letter stating that the Potential Bidder's offer is irrevocable until immediately following the closing of the Transaction with a different party, and setting forth (i) the nature of the proposed Transaction, and if a Sale Transaction, whether such is a going concern or asset sale, which specifically identifies the assets or groups of assets to be purchased, and which includes the proposed consideration and the liabilities (if any) to be assumed, (ii) any assets expected to be excluded from the Sale, and (iii) the structure and financing of the Transaction (including, but not limited to, the sources of financing);
- (m) If a Sale Transaction, a binding, executed, and definitive copy of the form Asset Purchase Agreement filed with the Bankruptcy Court (the "APA"), together with all schedules thereto, marked to show changes to the APA and schedules that the Potential Bidder proposes (a "Marked APA"), including the purchase price in U.S. dollars for each asset or group of assets subject to the applicable bid, by Debtor, and a specific allocation of consideration among the groups of assets being bid upon (any all-asset bids must also contain an allocation);
- (n) If a Plan Transaction, an executed binding term sheet (the "Term Sheet"), together with such additional information as may be necessary to fully describe the elements of the proposed Plan Transaction, including the consideration to be paid;
- (o) A good faith earnest money cash deposit (the "Deposit") in an amount equal 10% of the total Transaction price; *provided* that no Deposit is required for any credit bid component of a Transaction;
- (p) Evidence of corporate authority to enter into the Transaction;
- (q) An executed Confidentiality Agreement; and
- (r) Any additional information reasonably requested by the Debtors.

VI. Qualified Bidders and Qualified Bids

A Potential Bidder (i) who delivers the documents described in Section V above, (ii) whose financial information and credit-quality support or enhancement demonstrate the financial capability of such Potential Bidder to consummate the Transaction if selected as the Successful Bidder, (iii) who the Debtors determine is likely (based on availability of financing, experience, and other considerations) to be able to consummate the Transaction within the time frame provided by the APA or otherwise applicable in the above-captioned chapter 11 cases (the "Cases"), and (iv) whose bid constitutes a "Qualified Bid" pursuant to these Bidding Procedures, shall be deemed a "Qualified Bidder." The Debtors will determine whether a Potential Bidder is a Qualified Bidder after consultation with the Consultation Parties. By March 13, 2024, the Debtors will notify Potential Bidders if they are Qualified Bidders and will provide copies of all Qualified Bids to counsel to the Consultation Parties. Create Capital, LLC (the "DIP Lender") is deemed to be a Qualified Bidder.

A bid will be deemed a "Qualified Bid" and considered by the Debtors only if the bid:

- (a) is on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the APA;
- (b) clearly identifies (i) the particular Assets to be purchased, (ii) the liabilities and obligations to be assumed, and (iii) whether the bidder intends to operate the Debtors' businesses as a going concern, or to liquidate the businesses;
- (c) contains no contingencies of any type, other than Bankruptcy Court approval of the Transaction and any applicable regulatory conditions;
- (d) other than any Stalking Horse Bid(s) that may be designated by the Debtors, is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment);
- (e) contains an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors 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 Debtors' businesses or assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the APA, the Marked APA or the Term Sheet;
- (f) includes a list of assumed contracts and assumed liabilities (if any) and provides that the bidder will be responsible for any Cure Amounts associated with such assumption;
- (g) includes a commitment to consummate the Transaction and the assumption of the assumed liabilities (if any) within not more than ten (10) days after entry of an order by the Bankruptcy Court approving such Transaction, subject to applicable regulatory approvals;
- (h) identifies any regulatory and third-party approvals required for the bidder to consummate the Transaction, if any, and the time period within which the bidder expects to receive such regulatory and third-party approvals;
- (i) discloses: (i) the identity of the Potential Bidder and each entity participating in the Transaction in connection with the Potential Bidder and the complete terms of such participation, and (ii) any other term sheets and other written or oral understandings between the Potential Bidder and its affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other; and
- (j) is received by the Bid Deadline.

All bids for a Transaction must contemplate payment in cash, in full, upon the closing of the Transaction, unless the Debtors agree otherwise, after consultation with the Consultation Parties. Any bid that is not for cash, and does not otherwise comply with the above requirements, shall not be deemed to be a Qualified Bid.

To the extent any Secured Party (as defined below) submits a bid that includes a cash component, such Secured Party must comply with the above requirements with respect to such cash amounts. Notwithstanding the foregoing, a Credit Bid (as defined below) by a Secured Party that does not include a cash component need not comply with the above requirements and shall be deemed a Qualified Bid and considered by the Debtors only if the Credit Bid (i) clearly identifies the particular Assets with respect to which a Credit Bid may be made and (ii) is received by the Bid Deadline.

Notwithstanding the foregoing, the Debtors shall have the right, in their sole and absolute discretion, after consultation with the Consultation Parties, to entertain bids that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids. A Qualified Bid will be valued, among other things, based upon factors such as the net value provided by such bid, the likelihood and timing of consummating the Transaction in question, and any other factors that the Debtors may deem relevant to the Transaction. The DIP Lender is entitled to participate in any Auction as a Qualified Bidder pursuant and subject to the terms and provisions of these Bidding Procedures.

Between the times the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by the Qualified Bid, or otherwise enhance the terms of the Qualified Bid.

The Debtors reserve the right to cancel, and not conduct, the Auction (as defined below) if the Debtors do not receive any Qualified Bids by the Bid Deadline. In such event, the Debtors will file a Notice of No Auction with the Bankruptcy Court.

By submitting a bid, a Potential Bidder warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder, or agent acting on another's behalf. Such Potential Bidder acknowledges that it will not look to the Debtors or B. Riley for the payment of any fee or commission. In addition, the Potential Bidder agrees to be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through the Potential Bidder. By submitting a bid, a Potential Bidder will be deemed to indemnify, defend, and hold harmless the Debtors and B. Riley from and against any and all claims, damages, losses and liabilities, costs, and expenses (including reasonable attorneys' fees and disbursements) arising out of any claim or claims by any broker, finder, or similar agent for commissions, fees, or other compensation who allege that they have dealt with the Debtors and/or B. Riley in connection with the Transaction.

VII.
Bid Deadline and Bid Recipients

A Qualified Bidder who desires to make a bid shall deliver written copies of its bid to each of the following, no later than 4:00 p.m. (prevailing Central Time) on March 11, 2024 (the “Bid Deadline”):

1. Debtors’ Counsel:

Gray Reed
1601 Elm Street
Suite 4600
Dallas, Texas 75201
Attn.: Jason S. Brookner, Amber M.
Carson, and Emily F. Shanks
Email: jbrookner@grayreed.com
acarson@grayreed.com
eshanks@grayreed.com

2. Debtors’ Financial Advisor:

B. Riley Advisory Services
3500 Maple Avenue
Suite 420
Dallas, Texas 75219
Attn: Mark Shapiro and Tess Wolff
Email: mshapiro@brileyfin.com
twolff@brileyfin.com

3. Counsel to the Official Committee of Unsecured Creditors:

[To be completed as necessary]

VIII.
Due Diligence

Following execution of a Confidentiality Agreement, the Debtors shall afford each interested party an opportunity to perform due diligence with respect to their businesses and assets. Due diligence access may include management presentations as may be scheduled by the Debtors, on-site inspections, and such other matters which an interested party may reasonably request and as to which the Debtors, in their sole discretion, may agree. No due diligence shall continue after the Bid Deadline. The Debtors may, in their discretion, coordinate diligence efforts such that multiple interested parties have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections.

All diligence requests should be made to Mark Shapiro of B. Riley at 3500 Maple Avenue, Suite 420, Dallas, Texas 75219, mshapiro@brileyfin.com.

Each Qualified Bidder shall be deemed to acknowledge and represent that (i) it has had an opportunity to conduct any and all due diligence regarding the Debtors’ businesses and assets prior to making its offer, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the business and assets in making its bid, (iii) it 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 business or assets, or the completeness of any information provided in connection therewith, the Bidding Process or the Auction (as defined herein), except, as to any Stalking Horse, as expressly stated in the APA, and as to a Successful Bidder other than a potential Stalking Horse, as expressly

stated in the definitive agreement with such Successful Bidder approved by the Bankruptcy Court, and (iv) that it has not engaged and will not engage in collusion in connection with the bidding process at any time.

IX.

Stalking Horse Declaration and Break-Up Fee

In the exercise of their business judgment and in their sole discretion, the Debtors may, without further order of the Bankruptcy Court, without any obligation to do so, and after consulting with the Consultation Parties, select one or more bidders to act as a stalking horse (each being a “Stalking Horse Bidder” with the relevant bid being a “Stalking Horse Bid”) for some or all of the Debtors’ assets. The Debtors may, but are not required to, agree to provide a break-up fee in an amount not to exceed 3% of the cash component of the Stalking Horse Bid (the “Break-Up Fee”); *provided* that the Break-Up Fee shall only be paid pursuant to the terms of an order approving a Sale Transaction or a confirmation order approving a Plan Transaction, as applicable. The Break-Up Fee shall only be payable if (i) a Stalking Horse Bidder, being ready, willing, and able to close its Transaction is not the Successful Bidder at the Auction, (ii) the Bankruptcy Court authorizes the Debtors to enter into an alternative Transaction, and (iii)(A) if such alternative Transaction is a Sale Transaction, such Sale Transaction actually closes or (B) if such alternative Transaction is a Plan Transaction, a disclosure statement is approved by the Court.

To the extent a determination is made to provide a Break-Up Fee, the Debtors will file notice of the same with the Bankruptcy Court, and such Break-Up Fee may be paid without further action or order of the Bankruptcy Court.

X.

Auction

If the Debtors receive more than one Qualified Bid, an auction (the “Auction”) will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 9:30 a.m. Central Time on March 14, 2024, at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, in accordance with the following procedures:

- (a) Only the following persons shall be entitled to attend the Auction: (i) professionals and principals or members of the Debtors, (ii) B. Riley, (iii) counsel to, and business persons from, the DIP Lender, (iv) counsel to the Committee and its financial advisor, if any, and a Committee representative, (v) the U.S. Trustee for the Northern District of Texas (the “U.S. Trustee”), and (vi) professionals and principals or members of any Qualified Bidder who has timely submitted a Qualified Bid (collectively, the “Participating Parties”). Only Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction.
- (b) At the commencement of the Auction, Qualified Bidders in attendance will be informed of which Qualified Bid or combination of Qualified Bids the Debtors believe is the highest or otherwise best offer(s), and from which bidding will begin.

(c) All Participating Parties shall be entitled to be present for all Subsequent Bids (as defined below) with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Subsequent Bid shall be fully disclosed to all Participating Parties throughout the entire Auction.

(d) The Debtors may in the exercise of their business judgment and in furtherance of their fiduciary duties, employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make Subsequent Bids) for conducting the Auction; *provided* that such rules are not directly in conflict with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and after consulting with the Consultation Parties regarding the same.

(e) Bidding at the Auction shall begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids as identified by the Debtors at the onset of the Auction (the “Baseline Bid”). To the extent a Stalking Horse Bidder has been named, the initial overbid must exceed the Baseline Bid by the amount of the Break-Up Fee plus an additional \$250,000. Thereafter, or in the event no Stalking Horse Bidder has been named, the minimum bidding increment (the “Subsequent Bids” and each a “Subsequent Bid”) shall be \$250,000 (which increments may be increased or decreased by the Debtors at the Auction, in their sole discretion, in consultation with the Consultation Parties, depending on the nature of the Transactions presented). The Auction shall continue in one or more rounds of bidding and shall conclude after each Participating Party has had the opportunity to submit one or more additional Subsequent Bids with full knowledge and written confirmation of the then-existing highest bid or bids.

The Debtors reserve the right, in the exercise of their business judgment and in furtherance of maximizing value, in consultation with the Consultation Parties, to adjourn the Auction at one or more times to, among other things (i) facilitate discussions among the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) allow Qualified Bidders the opportunity to provide the Debtors with such additional information or evidence, as the Debtors may require in the exercise of their business judgment, that the Qualified Bidder has sufficient resources and sufficient non-contingent debt and/or equity funding commitments to consummate the Transaction at the then-prevailing Subsequent Bid amount.

The Debtors shall maintain a transcript of the proceedings at the Auction, including the Baseline Bid, all Subsequent Bids, and the Successful Bid (as defined below).

XI.

Closing of Auction and Selection of Successful Bid

The Auction shall continue until there is only one bid that the Debtors determine, in their sole and absolute discretion and business judgment, after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid for a Transaction or multiple Transactions, after taking into account factors such as the speed and certainty of consummating the transaction (such bid being the “Successful Bid” and the bidder making such bid, the “Successful Bidder”).

All bidders will be deemed to have consented to the core and exclusive jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any and all disputes relating to, arising from, or connected with the Auction, the marketing process, the Transaction, and the construction and enforcement of any purchase agreement.

XII.

Back-Up Bidder

If there is an Auction, the Qualified Bidder that submits the second highest Bid at the Auction shall be required to serve as the back-up bidder (the “Back-Up Bidder”) and keep such Back-Up Bidder’s last Bid (the “Back-Up Bid”) open and irrevocable until the earlier of (i)(A) if a Sale Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the sale to the Successful Bidder becomes final and non-appealable or (B) if a Plan Transaction, 5:00 p.m. Central Time on the date which is five days after the order approving the Plan Transaction becomes final and non-appealable (the “Plan Transaction Approval Date”), and (ii) the closing of the Transaction with the Successful Bidder (the “Outside Back-Up Date”). If, (x) after the Sale Hearing but prior to the Outside Back-Up Date for a Sale Transaction or (y) after the conclusion of the Auction but prior to the Outside Back-up Date for a Plan Transaction, the Successful Bidder fails to consummate or proceed with the relevant Transaction because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Transaction with the Back-Up Bidder. The Debtors will provide notice to the Committee and the DIP Lender of any failure by the Successful Bidder to close the Transaction and the election to proceed to close a Transaction with the Back-Up Bidder.

XIII.

Right to Credit Bid

Any creditor that has a valid, perfected, unavoidable, and enforceable security interest (a “Security Interest”) in the Debtors’ assets (any such creditor, a “Secured Party”) shall be deemed a Qualified Bidder and may make one or more credit bids for the assets securing all or any portion of the secured claim(s) held by such Secured Party at the Auction, subject to the requirements of section 363(k) of the Bankruptcy Code (a “Credit Bid”). The DIP Lender is deemed to be a Qualified Bidder and shall be permitted to Credit Bid in an amount up to the amount then-outstanding under the terms of that certain *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 71] and any final DIP financing order.

XIV.

The Sale Hearing and Return of Deposits

In the event one or more Sale Transactions are accepted by the Debtors, a hearing to approve the Sale(s) will take place before the Honorable Michelle V. Larson, United States Bankruptcy Judge, on _____, 2024 at __:__ [a/p].m. Central Time, in the United

States Bankruptcy Court for the Northern District of Texas, Dallas Division, at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 2, Dallas, Texas 75242. The Sale Hearing may be adjourned or rescheduled by the Debtors without notice other than by an announcement made at the Sale Hearing.

The Debtors will not be bound by a Successful Bid for a Sale Transaction or a Back-Up Bid for a Sale Transaction unless and until the Bankruptcy Court has approved the same. Following Bankruptcy Court approval of a Sale Transaction with the Successful Bidder, if the Successful Bidder fails to consummate the Sale Transaction for any reason, then the Back-Up Bidder will be deemed to the Successful Bidder and the Debtors will enter into a Sale Transaction with the Back-Up Bidder on the terms of the Back-Up Bid without any further order of the Bankruptcy Court, and the Debtors may pursue any and all available remedies against the Successful Bidder in connection with its failure to consummate the Sale.

If the Debtors choose to move forward with a Plan Transaction, the Sale Hearing will be cancelled and notice of the same will be filed with the Bankruptcy Court.

The Deposit (together with interest, if any, thereon) of the Back-Up Bidder for a Transaction will not be returned until two business days following the closing of the Sale to the Successful Bidder or the Plan Transaction Approval Date, as applicable. The Deposit (together with interest, if any, thereon) of all other Qualified Bidders will be returned within 4 business days of the Auction concluding. The Deposit of the Successful Bidder (together with interest, if any, thereon) shall be applied against the payment of the Transaction consideration upon the closing of the Sale or, in the event of a Plan Transaction, at the time a chapter 11 plan is confirmed. In the event a Bidder fails to close as a result of its own default, its Deposit shall be released to, and retained by, the Debtors.

Deposits made by Potential Bidders who are not determined to be Qualified Bidders will be returned within four (4) business days after the Bid Deadline.

XV.

Reservation of Rights and Fiduciary Obligation

Notwithstanding any term to the contrary herein, the Debtors, in the exercise of their fiduciary duties and in furtherance of maximizing value, in consultation with the Consultation Parties, reserve the right to: (i) modify the Bidding Procedures at any time; (ii) determine which Qualified Bid, if any, is the highest or otherwise best offer; (iii) reject at any time, any bid that is: (a) inadequate or insufficient (in the Debtors' sole and absolute discretion); (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA; or (c) contrary to the best interests of the Debtors, their estates, and creditors as determined by the Debtors in their sole discretion; and (iv) pursue a sale or other transaction through a chapter 11 plan.

Nothing in these Bidding Procedures shall require the Debtors, the board of directors or similar governing body of any of the Debtors, or any individual board member or officer of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures or the Auction, to the extent such persons or entities determine, on the

advice of counsel, that taking or refraining from taking such action, is required to comply with applicable law or its fiduciary obligations.

Exhibit 2

Sale Notice

Jason S. Brookner (TX Bar No. 24033684)
Amber M. Carson (TX Bar No. 24075610)
Emily F. Shanks (TX Bar No. 24110350)

GRAY REED

1601 Elm Street, Suite 4600
Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com
acarson@grayreed.com
eshanks@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
EYE CARE LEADERS PORTFOLIO	§	Case No. 24-80001 (MVL)
HOLDINGS, LLC, <i>et al.</i> , ¹	§	
	§	(Jointly Administered)
Debtors.	§	
	§	

NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that on January 30, 2024, Eye Care Leaders Portfolio Holdings, LLC and its affiliates, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; (II) an Order Approving the Sale of*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors’ principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

Substantially All of the Debtors' Assets Free and Clear of Liens, Claims and Interests; and (III) Granting Related Relief [Docket No. __] (the "Bidding Procedures Motion") with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that on _____, 2024, the Bankruptcy Court entered its *Order Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. __] (the "Bidding Procedures Order"), approving certain bidding procedures attached thereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, unless cancelled, an Auction will take place on **March 14, 2024**, commencing at **9:30 a.m. (CT)** at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201. The Auction will proceed, and be conducted, pursuant to the terms of the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that a hearing on the sale of the Debtors' assets, including the assumption and assignment of any executory contracts (the "Sale Hearing"), will take place on _____, 2024, at __:__ [a/p].m. (prevailing Central Time) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 2, Dallas, Texas 75242. As set forth in the Bidding Procedures, the Auction and the Sale Hearing may be cancelled, with a notice of cancellation to be filed by the Debtors with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that any objection to the assumption and assignment of any executory contract or unexpired lease, or any cure amount related thereto, shall be filed by **March 18, 2024**, and served upon the Notice Parties designated below. To the extent any such objection is filed and cannot be resolved consensually among the parties, a subsequent hearing will be scheduled with notice to the objecting party.

PLEASE TAKE FURTHER NOTICE that the deadline for filing objections to the Sale(s) is **March 18, 2024**. Objections, if any, must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with the Court and served on the undersigned counsel for the Debtors, the Debtors' DIP Lender, the United States Trustee for the Northern District of Texas, and any official committee appointed in these chapter 11 cases at the following addresses (the "Notice Parties"): (i) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), Amber M. Carson (acarson@grayreed.com), and Emily F. Shanks (eshanks@grayreed.com)); (ii) counsel to Create Capital, LLC, Akerman LLP, 2001 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: Eduardo Espinosa (eduardo.espinosa@akerman.com) and John Thompson (john.thompson@akerman.com)), (iii) counsel to any statutory committee appointed in these chapter 11 cases; and (iv) the Office of the U.S. Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Meredyth Kippes (meredyth.kippes@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the Debtors' website at <https://cases.stretto.com/EyeCareLeaders/> or on the Bankruptcy Court's website at <https://ecf.txnb.uscourts.gov/>.

Respectfully submitted this ___th day of February, 2024.

GRAY REED

By: _____
Jason S. Brookner
Texas Bar No. 24033684
Amber M. Carson
Texas Bar No. 24075610
Emily F. Shanks
Texas Bar No. 24110350
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
acarson@grayreed.com
eshanks@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on February ___, 2024, 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 Northern District of Texas.

Jason S. Brookner

Exhibit 3

Cure Notice

Jason S. Brookner (TX Bar No. 24033684)
Amber M. Carson (TX Bar No. 24075610)
Emily F. Shanks (TX Bar No. 24110350)

GRAY REED

1601 Elm Street, Suite 4600
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eshanks@grayreed.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EYE CARE LEADERS PORTFOLIO
HOLDINGS, LLC, *et al.*,¹

Debtors.

§
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§

Chapter 11

Case No. 24-80001 (MVL)

(Jointly Administered)

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES SUBJECT TO
POSSIBLE ASSUMPTION AND ASSIGNMENT AND PROPOSED CURE AMOUNTS**

PLEASE TAKE NOTICE that pursuant to the terms of that certain *Order Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling a Bid Deadline, Auction, and Sale Hearing and Approving the Form and Manner of Notice Thereof, and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. __] (the “Bidding Procedures Order”), Eye Care Leaders Portfolio Holdings, LLC and its affiliates, the above-

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); and The Hoehne Group – Software Division, Inc. (7788). The Debtors’ principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

captioned debtors and debtors in possession (collectively, the “Debtors”), may hold an Auction for the sale of substantially all of their assets on **March 14, 2024, at 9:30 a.m.** at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201.

PLEASE TAKE FURTHER NOTICE that pursuant to the terms of the Bidding Procedures Order, the Debtors hereby provide their notice (the “Cure Notice”) of proposed cure amounts (each, a “Cure Amount,” and collectively, the “Cure Amounts”) for all contracts and leases subject to potential assumption and assignment to the successful bidder(s) at Auction.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** are schedules of the executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts and Leases”) that may be included as part of the sale of the Debtors’ assets and the proposed Cure Amount for each such lease or contract.

PLEASE TAKE FURTHER NOTICE that objections to (a) any of the Cure Amounts proposed by the Debtors (a “Cure Objection”) or (b) the assumption and assignment of any Potential Assumed Contract on the basis of lack of adequate assurance of future performance under section 365(b)(1) (an “Adequate Assurance Objection”) must be filed and served on the Notice Parties (as defined below) so as to be actually received by **March 18, 2024**.

PLEASE TAKE FURTHER NOTICE that any Cure Objection or Adequate Assurance Objection (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with the Court and served on the undersigned counsel for the Debtors, the Debtors’ DIP Lender, the United States Trustee for the Northern District of Texas, and any official committee appointed in these chapter 11 cases at the following addresses (the “Notice Parties”): (i) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), Amber M. Carson (acarson@grayreed.com), and Emily F. Shanks (eshanks@grayreed.com)); (ii) counsel to Create Capital, LLC, Akerman LLP, 2001 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: Eduardo Espinosa (eduardo.espinosa@akerman.com) and John Thompson (john.thompson@akerman.com)), (iii) counsel to any statutory committee appointed in these chapter 11 cases; and (iv) the Office of the U.S. Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Meredyth Kippes (meredyth.kippes@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, the Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. If an objection to the assumption and assignment of the Potential Assumed Contracts and Leases or to the Cure Notice and any Cure Amount cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors are permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and to the Cure Amounts, and any and all objections thereto shall be deemed forever released and waived.

PLEASE TAKE FURTHER NOTICE that the inclusion of any contracts or leases on **Exhibit A** hereto shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order approved by the Bankruptcy Court, are available on the Debtors' website at <https://cases.stretto.com/EyeCareLeaders/> or on the Bankruptcy Court's website at <https://ecf.txnb.uscourts.gov/>.

Respectfully submitted this __th day of February, 2024.

GRAY REED

By: _____
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*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on February __, 2024, 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 Northern District of Texas.

Jason S. Brookner

Exhibit A

Potential Assumed Contracts and Leases

[Forthcoming]

Counterparty	Address	Description of Contract/Lease	Proposed Cure Amount