

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a FRIENDSHIP	§	
VILLAGE OF SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**NOTICE OF DEBTOR’S EMERGENCY MOTION FOR ENTRY OF (I) AN ORDER
(A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, (B) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (C) SCHEDULING AN AUCTION AND SALE
HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND
ASSIGNMENT OF CONTRACTS, AND (E) GRANTING RELATED RELIEF; AND
(II) AN ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN
THE DEBTOR AND THE SUCCESSFUL BIDDER, (B) AUTHORIZING THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF CONTRACTS, AND
(D) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on **Wednesday, July 5, 2023 at 11:00 a.m. (CT)**, we will appear before the Honorable Timothy A. Barnes, or any judge sitting in that judge’s place, either in courtroom of the 744 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604, or electronically as described below, and present the *Debtor’s Emergency Motion for Entry of (I) an Order (A) Approving Bid Procedures in Connection With the Sale of Substantially All of the Debtor’s Assets, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief; and (II) an Order (A) Approving the Asset Purchase Agreement Between the Debtor and the Successful Bidder, (B) Authorizing the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief* filed by Evangelical Retirement Homes of Greater Chicago, Incorporated, d/b/a Friendship Village of Schaumburg, debtor and debtor in possession herein, a copy of which is attached.

All parties in interest, including the movant, may appear for the presentment of the motion either in person or electronically using Zoom for Government.

You may appear electronically by video or by telephone.

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and passcode.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and Passcode. The meeting ID for this hearing is 1604286771, and the passcode is 533262. The meeting ID and passcode can also be found on the judge's page on the court's website.

In addition to other grounds for opposing the Motion, you may oppose the motion on the basis that emergency treatment is appropriate.

Dated: June 14, 2023

Chicago, Illinois

/s/ Trinitee G. Green

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DEBTOR’S MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE DEBTOR AND THE SUCCESSFUL BIDDER, (B) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, AND (D) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby moves (the “**Motion**”),¹ for entry of (i) an order approving the bid procedures, substantially in the form of **Exhibit A** attached hereto (the “**Bid Procedures Order**”), including (a) approving the proposed auction and bid procedures, attached as **Exhibit 1** thereto (the “**Bid Procedures**”) for the proposed sale of substantially all the Debtor’s assets (the “**Sale**”); (b) authorizing the Debtor to grant the Bid Protections to a Stalking Horse Bidder, if any, and the Diligence Incentive to potential Stalking Horse Bidders, as set forth in the Bid Procedures Order; (c) scheduling an auction (the “**Auction**”) if the Debtor receives more than one Qualified Bid (as defined below); (d) scheduling a hearing to

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures.

consider approval of the Sale (the “**Sale Hearing**”); (e) approving the form and manner of notice thereof; and (f) establishing procedures (the “**Assumption Procedures**”) for the assumption and assignment of executory contracts and unexpired leases (collectively, the “**Contracts**”, and any such Contracts to be assigned, the “**Assigned Contracts**”), including notice of proposed cure amounts; and, (ii) an order approving the sale of substantially all of the Debtor’s assets (the “**Sale Order**”), including (a) approving the transaction documents between the Debtor and the Successful Bidder (as defined below); (b) authorizing the Sale to the Successful Bidder (after the Auction, if necessary) free and clear of liens, claims, interests and encumbrances; (c) authorizing the assumption and assignment of the Contracts; and (d) granting related relief, pursuant to sections 105(a), 363, 364, 365, and 503 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). In support of the Motion, the Debtor relies upon the *Declaration of Mike Flynn, Chief Executive Officer of the Debtor in Support of the Debtor’s First Day Pleadings* [Dkt. No. 16] (the “**First Day Declaration**”). In further support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363, 364, 365, and 503, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014.

BACKGROUND

4. On June 9, 2023 (the “**Petition Date**”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”).

5. The factual background regarding the Debtor, including its business operations, capital and debt structure, and the events leading to the filing of the Chapter 11 Case is set forth in the First Day Declaration and incorporated herein by reference.

6. The Debtor continues to operate and manage its business as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108.

7. No trustee, examiner, or creditors’ committee has been appointed in the Chapter 11 Case.

8. The Debtor owns and operates a continuing care retirement community (a “**CCRC**”) located in Schaumburg, Illinois known as Friendship Village of Schaumburg (the “**Property**” or the “**Campus**”). The Campus is improved with buildings which include (i) 537 independent living apartments, (ii) 84 assisted living apartments, (iii) 25 memory care apartments, (iv) 169 nursing beds, and (v) related common areas and parking. Approximately 635 senior citizens reside at the Campus (the “**Residents**”).

9. On March 9, 2022, the Debtor engaged B.C. Ziegler and Company (“**Ziegler**”) “to act as an advisor” in a process designed to find an organization that would purchase the membership interest in the Debtor. In August 2022, Ziegler received “letters of interest” from a handful of entities who expressed interest in acquiring the Debtor or its assets. The highest bid received was unacceptable to the Debtor and the Bond Trustee.

10. Between August 2022 and October 2022, the Debtor, the Bond Trustee and Ziegler negotiated with the highest bidder to raise its bid. On October 18, 2022, such bidder informed those parties that it would consider having its bid be a “stalking horse” bid in a final public auction

(with no mention of bankruptcy). Early on in these negotiations, the highest bidder changed its bid to an asset purchase transaction (as opposed to an affiliation). In light of this change to the form of the acquisition, Grandbridge Real Estate Capital LLC (“**Grandbridge**”), which has significant experience in the sale of CCRCs and other senior living developments including distressed situation, later substituted in as broker for the sale process.

11. On January 24, 2023, Grandbridge and the Debtor signed an exclusive brokerage agreement for the Property. By March 1, 2023, Grandbridge substantially completed its due diligence relative to the Debtor. In anticipation of a second round of bidding, Grandbridge populated its own data room (using new and updated documents provided by the Debtor as well as relevant documentation from Zeigler’s data room) and prepared a buyer list which included approximately 77 prospects which had previously submitted NDAs, plus over 2,700 additional new prospects including 55 additional “higher tier prospects” which Grandbridge had identified.

12. On March 3, 2023, Grandbridge circulated its proposed form of a marketing “teaser” to be sent to the prospective buyers. But soon after that was done, in early March 2023, the highest bidder (and potential purchaser) informed the Debtor and the Bond Trustee that it wanted to make its purchase through a sale conducted in a bankruptcy proceeding under Bankruptcy Code section 365. This required additional rounds of negotiation which further delayed both the commencement of the Chapter 11 Case and the commencement of the marketing plan prepared by Grandbridge.

RELIEF REQUESTED

13. By this Motion, the Debtor seeks entry of the Bid Procedures Order, substantially in the form attached hereto as **Exhibit A**:

- (a) authorizing and approving the Bid Procedures, in substantially the form attached to the Bid Procedures Order as **Exhibit 1**, in connection with the Sale of substantially all of the Debtor's Assets;
- (b) authorizing the Debtor to grant the Bid Protections to a Stalking Horse Bidder, if any, and the Diligence Incentive to potential Stalking Horse Bidders, as set forth in the Bid Procedures Order;
- (c) approving the form and manner of notice, in substantially the form attached to the Bid Procedures Order as **Exhibit 2** (the "**Sale Notice**"), of the Auction and Sale Hearing for the Sale;
- (d) scheduling the Auction and Sale Hearing;
- (e) approving the Assumption Procedures in connection with the Contracts in relation to the Sale and approving the form and manner of notices with respect thereto; and
- (f) granting related relief.

14. The Debtor and its professionals will market the Assets prior to the Auction in the manner set forth in the Bid Procedures Order. During this marketing process, the Debtor reserves the right to enter into a stalking horse agreement (the "**Stalking Horse Agreement**") with a bidder if the Debtor believes that such an agreement will further the purposes of the Auction by, among other things, attracting value-maximizing bids. If the Debtor determines that entering into a Stalking Horse Agreement would be appropriate, any such Stalking Horse Agreement shall be executed no later than **August 24, 2023 at 4:00 p.m.**²

15. At the Sale Hearing, the Debtor will seek entry of the Sale Order:

- (a) authorizing and approving the Sale of all or substantially all of the Assets to the Successful Bidder;
- (b) authorizing and approving the Sale of all or substantially all of the Assets free and clear of liens, claims, encumbrances, and other interests;

² All times listed below are in Central Standard Time, unless otherwise noted.

- (c) authorizing the assumption and assignment of any designated Contracts; and
- (d) granting any related relief.³

16. As part of the proposed sale process, the Debtor and Grandbridge will engage in a robust marketing effort for the Debtor's Assets, contacting both financial and strategic investors regarding a potential sale process. Grandbridge will not place any conditions on potentially interested parties regarding bid levels, structure, financing, or management in connection with the solicitation of indications of interest. All interested contact parties will be given an opportunity to execute a confidentiality agreement. Those parties that execute a confidentiality agreement will be provided with the opportunity to access, through a data room, substantial due diligence information concerning the Debtor, including access to financial, operational, and other detailed information.⁴

The Proposed Sale

17. Given the Debtor's liquidity challenges, the Debtor believes a robust marketing process combined with a prompt sale of the Debtor's business and/or its Assets represents the best option available for all stakeholders in the Chapter 11 Case. Specifically, the Debtor has agreed to comply with certain conditions, in exchange for consent to use cash collateral pursuant to the Debtor's *Motion for Entry of Interim and Final Orders (I) Granting (A) Replacement Liens and Superpriority Claims and (B) Adequate Protection; (II) Authorizing Use of Cash Collateral; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Dkt. No. 9] (the "**Cash Collateral Motion**").

³ The Debtor reserves the right to file and serve any supplemental pleading or declaration that the Debtor deems appropriate or necessary in its reasonable business judgment, including any pleading summarizing the competitive bid and sale process and the results thereof, in support of its request for entry of the Sale Order.

⁴ To receive such due diligence information, including full access to the data room and additional non-public information regarding the Debtor, potential bidders must deliver the Preliminary Bid Documents to the Notice Parties.

18. By this Motion, the Debtor requests that the Court approve the following general timeline:

- (a) ***Stalking Horse LOI Deadline:*** Bidders interested in serving as a stalking horse bidder must deliver letters of interest (“**LOI**”) to the Notice Parties on or before **July 11, 2023 at 4:00 p.m.**
- (b) ***Stalking Horse Agreement Deadline:*** On or before **August 24, 2023 at 4:00 p.m.**, the Debtor, if appropriate, shall have entered into a Stalking Horse Agreement with any Potential Stalking Horse Bidder.
- (c) ***Deadline to Designate Stalking Horse:*** On or before **August 28, 2023 at 4:00 p.m.**, the Debtor shall file a notice with the Court of the Debtor’s selection of the Stalking Horse Bidder, if any, and such notice shall include a copy of an executed and binding Stalking Horse Agreement.
- (d) ***Overbid Deadline:*** Bids, other than the Stalking Horse Bid, if applicable, must be submitted no later than **September 29, 2023 at 4:00 p.m.** (the “**Overbid Deadline**”).
- (e) ***Auction:*** The Auction, if necessary, will be held at the offices of Polsinelli PC, 150 North Riverside Plaza, Suite 3000, Chicago, IL 60606 on **October 3, 2023, at 10:00 a.m.**, or such other location as identified by the Debtor pursuant to notice of any change of location to all Qualified Bidders.
- (f) ***Sale Objection Deadline:*** Any objections to the Sale will be filed and served no later than **October 5, 2023, at 4:00 p.m.**
- (g) ***Adequate Assurance Objection Deadline:*** Any objections to the Successful Bidder’s offer of adequate assurance to perform with respect to Assigned Contracts identified in the Assumption Notice must be filed and served no later than **October 9, 2023, at 4:00 p.m.**
- (h) ***Sale Hearing:*** The Sale Hearing will commence on **October 10, 2023**, or as soon thereafter as the Court’s calendar permits.

19. The Debtor believes that this timeline maximizes the prospect of receiving the highest and best offer while taking into consideration the Debtor’s liquidity constraints. To further ensure that the Debtor’s proposed Auction and Sale process maximizes value for the benefit of the Debtor’s estate, the Debtor and its professionals will use the time following entry of the Bid

Procedures Order to actively market the Assets with the aim of soliciting the highest or otherwise best bids possible. The Debtor believes the relief requested by this Motion is in the best interests of its creditors, other stakeholders, and all other parties in interest, and should be approved.

The Bid Procedures Order

I. The Bid Procedures

20. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtor has developed and proposed the Bid Procedures, attached as **Exhibit 1** to the Bid Procedures Order. The Bid Procedures were designed to permit a relatively expedited sale process, promote participation and active bidding, and ensure that the Debtor receives the highest or otherwise best offer for the Assets. The Debtor believes that the timeline for consummating the sale process established pursuant to the Bid Procedures is in the best interest of its estate and all parties in interest.

21. The Bid Procedures describe, among other things, the requirements for prospective purchasers to participate in the bid process, the availability and conduct of due diligence, the deadline for submitting a competing bid, the method and factors for determining Qualified Bids, and the criteria for selecting a Successful Bidder.

22. The following summary describes the salient points of the Bid Procedures:⁵

(a) **Participation Requirements and Initial Diligence.** To receive due diligence information, including full access to the Debtor's electronic data room and to additional non-public information regarding the Debtor, a Potential Bidder must deliver the following documents (collectively, the "**Preliminary Bid Documents**") by email to each of the Notice Parties (as defined below):

1. An executed Confidentiality Agreement on terms reasonably acceptable to the Debtor, to the extent not already executed;

⁵ This summary of the Bid Procedures is qualified in its entirety by the Bid Procedures. To the extent there is any inconsistency between this Motion and the Bid Procedures, the Bid Procedures shall control.

2. The identity of the Potential Bidder and a list of contacts for the Potential Bidder;
3. A description of the diligence the Potential Bidder seeks to conduct; and
4. Evidence by the Potential Bidder of its financial capacity to close a proposed Transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of consummating a Transaction, the party that will bear liability for a breach).

(b) **Bid Requirements.** To be eligible to participate in the Auction (as such term is defined below), each bid and each Bidder submitting such a bid must conform to the following requirements (collectively, the “**Participation Requirements**”):⁶

1. If a Stalking Horse Bidder is designated, a bid shall propose a cash purchase price that is greater than or equal to (a) the cash purchase price under the Stalking Horse Agreement, plus at least (b) (i) the amount of the Bid Protections, if applicable and (ii) \$100,000 (the “**Initial Overbid**,” and together with the Bid Protections, the “**Minimum Qualified Bid**”);
2. Include a marked copy of the Stalking Horse Agreement or, if no Stalking Horse Bidder is designated, the form purchase agreement, to show any proposed amendments thereto (the “**Modified Agreement**”);
3. Include a statement that there are no conditions precedent to the Bidder’s ability to enter into the Modified Agreement or other definitive documentation, including that there are no financing or diligence contingencies to the bid, and that all necessary internal approvals have been obtained prior to the bid;
4. State that such offer is binding and irrevocable until the approval of the Successful Bid by the Court unless designated as the Back-Up Bid (as such terms are defined below), provided that if such offer is selected as a Successful Bid or a Back-Up Bid, then the offer shall remain binding and irrevocable for a period of forty-five (45) days following entry of an order approving the Successful Bid (and any interest on funds while in escrow will follow the deposit, so that the

⁶ The Debtor, following consultation with the Consultation Parties, shall determine whether bids submitted by Bidders meet the Participation Requirements. The Debtor reserves the right to request additional information from a Bidder in connection with its bid.

party with the Back-Up Bid shall receive interest on any funds that are returned to it);

5. Disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
6. Disclose the Bidder's affiliations;
7. Include the names and contact information of members of the Bidder who will be available to answer questions regarding the offer, including advisors and related parties;
8. State the Bidder's intentions with respect to: (i) the residency agreements, including the life care provision contained therein; and (ii) past, present and future obligations to former and current residents including, but not limited to, those obligations arising under the residency agreements;
9. Include a good-faith deposit in immediately available funds of at least two percent (2%) of the cash purchase price set forth in the bid (the "**Good Faith Deposit**");
10. Provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Transaction;
11. Provide information on the Bidder's prior experience owning / operating comparable facilities or such other applicable experience;
12. Identify each regulatory and third-party approval 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;
13. State how the post-closing capital needs of the community will be satisfied;
14. Represent and warrant that the Bidder has had an opportunity to conduct any and all due diligence regarding the Debtor's business and the Assets prior to submitting its bid and a statement that the Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtor's business or the Assets or the completeness of any information provided in connection therewith,

except as expressly stated in the representations and warranties contained in the Bidder's Modified Agreement, ultimately accepted and executed by the Debtor;

15. Submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtor, the Bid Procedures, and the Auction; and
16. Disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation (other than any Diligence Incentive agreed to in writing as set forth below). For the avoidance of doubt, no Qualified Bidder (other than a Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation (other than any Diligence Incentive agreed to in writing). By submitting its Bid, each Bidder (other than a Stalking Horse Bidder) agrees to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code.

(c) **Designation of Stalking Horse Bidder.** The Debtor, in consultation with the Consultation Parties, is authorized, but not obligated, to designate a bid from a Qualified Bidder that desires to serve as a stalking horse as a potential Stalking Horse Bidder (a "**Potential Stalking Horse Bidder**") and to grant Bid Protections (as defined below), subject to execution of a Stalking Horse Agreement on or before the Stalking Horse Agreement Deadline:

- As a component of the Stalking Horse Agreement, the Debtor may, in an exercise of its business judgment, in consultation with the Consultation Parties, provide a break-up fee of up to 3% of the proposed cash purchase price (the "**Break-Up Fee**"), and reimbursement of actual expenses in an amount not to exceed 1% of the proposed cash purchase price (the "**Expense Reimbursement**", and, together with the Break-Up Fee, the "**Bid Protections**").
- The Debtor may also, in its discretion, negotiate a purchase agreement with one or more of the Potential Stalking Horse Bidders in anticipation of agreeing to an acceptable Stalking Horse Agreement by the Stalking Horse Agreement Deadline; *provided that* nothing in the Bid Procedures shall prohibit the Debtor from negotiating Stalking Horse Agreements between the Stalking Horse Agreement Deadline and the date for designating the Stalking Horse, in consultation with the Consultation Parties. Further, in the Debtor's discretion, the Debtor may reimburse up to \$100,000 in

actual expenses to a Potential Stalking Horse Bidder (and no more in the aggregate than \$300,000 for all Potential Stalking Horse Bidders, collectively, the “**Diligence Incentive**”), with whom the Debtor is negotiating a purchase agreement, in order to incentivize such parties to complete due diligence and submit fully negotiated Stalking Horse Agreements by the Stalking Horse Deadline; *provided, however*, that the Bond Trustee shall have consent rights with respect to any Diligence Incentive if the Bond Trustee’s cash collateral is used to fund such Diligence Incentive. Any party that is actually designated as the Stalking Horse Bidder will receive the Bid Protections in lieu of any Diligence Incentive, and any Diligence Incentives must be in writing to be enforceable.⁷

- (d) **Qualified Bids.** Bidders who have satisfied the Participation Requirements, as determined by the Debtor, in consultation with the Consultation Parties, will be deemed “**Qualified Bidders**.” Bids that contain all bid requirements, as determined by the Debtor, in consultation with the Consultation Parties, will be deemed “**Qualified Bids**.” If applicable, the Stalking Horse Bidder, in its sole discretion, shall be entitled to credit bid the aggregate value of the Bid Protections to the extent granted. The Bond Trustee reserves its right to submit a credit bid for the Debtor’s Assets pursuant to section 363(k) of the Bankruptcy Code at any time prior to the commencement of the Auction. If the Bond Trustee submits a credit bid, the Bond Trustee shall be deemed a Qualified Bidder and its bid will be deemed a Qualified Bid in all respects. In the event the Bond Trustee submits a Credit Bid, it shall immediately no longer have any consultation or related information rights otherwise set forth herein and shall no longer be a “Consultation Party” as defined in the Bid Procedures.
- (e) **Bidding Increments and Overbid.** Before the Auction, the Debtor will determine, in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best offer (the “**Starting Bid**”). The Debtor will provide copies of all Qualified Bids, including the Starting Bid, to Qualified Bidders who are eligible to attend and participate in the Auction. Bidding at the Auction shall begin with the Starting Bid. At the Auction, only Qualified Bidders, including the Stalking Horse Bidder, if applicable, will be permitted to increase and/or improve their bids. The bidding shall be in minimum increments of at least \$100,000 higher than the previous bid or bids (after giving effect to the minimum required for each bid to be determined to be a Minimum Qualified Bid).
- (f) **Closing the Auction.** Any Auction shall continue until there is only one offer that the Debtor determines, following consultation with the Consultation Parties, subject to Court approval, is the highest or otherwise

⁷ The Debtor must file a notice with the Court of any selection of the Stalking Horse Bidder with a copy of the executed and binding Stalking Horse Agreement no later than August 28, 2023.

best offer from among the Qualified Bidders (including the Stalking Horse Bidder) submitted at the Auction (the “**Successful Bid**”). The Debtor shall also, following consultation with the Consultation Parties, select a back-up bid (the “**Back-Up Bid**”), which shall remain binding and irrevocable for a period of forty-five (45) days following entry of an order approving the Successful Bid (and any interest on funds while in escrow will follow the deposit, so that the party with the Back-Up Bid shall receive interest on any funds that are returned to it). In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Debtor may elect to regard the Back-Up Bid as the highest or otherwise best bid, and the Debtor will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Court.

- (g) **Assumption of Executory Contracts and Unexpired Leases.** If applicable, the Stalking Horse Agreement and Modified Agreement must designate which executory contracts and unexpired leases are to be assumed or assumed and assigned.
- (h) **Return of Good Faith Deposits.** The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest bearing escrow accounts and shall not become property of the Debtor’s estate absent further order of the Court. The Good Faith Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Back-Up Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Court enters an order approving the designation of the Successful Bidder and, if applicable, the Back-Up Bidder. Upon the return of the Good Faith Deposits, the respective Qualified Bidder shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes the winning Transaction, its Good Faith Deposit shall be credited towards its purchase price. The Good Faith Deposit of the Back-Up Bidder shall be returned not later than two (2) business days after the closing of the Successful Bid.
- (i) **Reservation of Rights.** The Debtor, in consultation with the Consultation Parties, reserves its right to (i) modify the Bid Procedures in any manner that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional or different customary terms and conditions, including, without limitation, modifying the requirements for a Qualified Bid (except as to matters relating to the Bid Protections) (ii) extend the deadlines set forth in the Bid Procedures, (iii) adjourn the Auction at or prior to the Auction and/or adjourning any hearing prior to such hearing or in open court without further notice, and (iv) reject any or all Qualified Bids if the Debtor determines, in its reasonable, good-faith business judgment, that such Qualified Bid is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or any related rules or the terms set forth in the Bid Procedures, or (c) contrary to the best interests of the Debtor. The Debtor reserves the right, at any time, for any

reason and in its reasonable, good-faith business judgment, in consultation with the Consultation Parties, to decline to pursue the transaction and to withdraw any motion filed in the court seeking to approve the transaction. Notwithstanding its agreement to consult with the Consultation Parties, the Debtor reserves all rights with respect to these Bid Procedures and the Transaction.

23. Importantly, the Bid Procedures recognize the Debtor's fiduciary obligations to the estate and, as such, do not impair the Debtor's ability to consider all Qualified Bid proposals. Additionally, as noted above, the Bid Procedures preserve the Debtor's right to modify the Bid Procedures as necessary or appropriate to maximize value of the Debtor's estate.

II. The Auction and Sale.

24. If more than one Qualified Bid, including any Stalking Horse Bid, are received by the Overbid Deadline, the Debtor will conduct an Auction to determine the highest and otherwise best Qualified Bid. This determination shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid to the Debtor's estate in furtherance of the Debtor's fiduciary obligations to the estate, after consultation with the Consultation Parties, including, without limitation, the following: (a) the amount and nature of the consideration; (b) the proposed assumption of any liabilities and/or executory contracts or unexpired leases; (c) the ability of the Qualified Bidder to close the proposed transaction; (d) the proposed closing date and the likelihood, extent and impact of any potential delays in closing, including delays owing to regulatory uncertainty; (e) any purchase price adjustments; (f) the impact of the transaction on any actual or potential litigation; and (g) the net after-tax consideration to be received by the Debtor's estate (the "**Bid Assessment Criteria**"). If no more than one Qualified Bid is received by the Overbid Deadline and the Bond Trustee has not indicated its intention to credit bid, the Debtor, in consultation with the Consultation Parties, may determine not to conduct the Auction and deem the Qualified Bid to be the Successful Bid without conducting the Auction. The Debtor seeks

authority from the Court to schedule the Auction on the date proposed herein and as described in the Bid Procedures.

III. Form and Manner of Sale Notice

25. Within five (5) business days after entry of the Bid Procedures Order, or as soon as practicable thereafter, the Debtor will cause the Sale Notice to be served on the following parties or their respective counsel, if known: (a) the United States Trustee for the Northern District of Illinois (the “**U.S. Trustee**”); (b) counsel to the Bond Trustee; (c) counsel to any Committee, if and when appointed; (d) counterparties to the Contracts (the “**Contract Counterparties**”); (e) all parties who have expressed a written interest in the Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (g) all applicable state and local taxing authorities; (h) all of the Debtor’s other creditors; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

IV. Summary of the Assumption Procedures.

26. Within five (5) business days of the entry of the Bid Procedures Order, or as soon as practicable thereafter, the Debtor will file with this Court and serve each counterparty to an executory contract or unexpired lease that may potentially be assumed and assigned in connection with the proposed Sale a notice in substantially the form attached hereto as **Exhibit 3** (the “**Cure and Possible Assumption and Assignment Notice**”), which shall: (i) state the amount necessary to cure defaults, if any, that the Debtor believes are necessary to assume in accordance with Bankruptcy Code section 365 (the “**Cure Amount(s)**”); (ii) notify the non-Debtor counterparty that such party’s contract or lease may be assumed and assigned to the Successful Bidder at the conclusion of the Auction and/or Sale Hearing; (iii) state the date of the Sale Hearing and that any

objections to any of the Cure Amounts or to assumption and assignment will be heard at the Sale Hearing, or at a later date, as determined by the Debtor; and (iv) state the deadline by which the non-Debtor counterparty must file an objection, if any, to the Cure Amounts or to the potential assumption and assignment of applicable contracts and/or leases.

27. Debtor proposes that any objection to the Cure Amounts or the potential designation of a contract or lease for assumption and assignment must be filed with the Court and served so as to be received on or before the first business day that is 21 days after service of the Cure and Possible Assumption and Assignment Notice by each of the following: (a) proposed counsel for the Debtor, (i) Polsinelli PC, 600 3rd Ave., 42nd Fl., New York, NY 10016, Attn: Jeremy R. Johnson, jeremy.johnson@polsinelli.com; (ii) Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 Attn: Trinitee G. Green, tggreen@polsinelli.com; (iii) Dopkelaw LLC, 1535 W. Schaumburg Road, Schaumburg, IL 60194, Attn: Bruce Dopke, bd@dopkelaw.com; (b) counsel for the Bond Trustee, Mintz Levin Cohn Ferris Glovsky and Popeo PC, Attn: Daniel Bleck, dsbleck@mintz.com, and Tim McKeon, tjmckeon@mintz.com; (c) the Office of the United States Trustee for the Northern District of Illinois, Attn: Jeffrey L. Gansberg, jeffrey.l.gansberg@usdoj.gov; and (d) counsel to any committee appointed in this Chapter 11 Case (collectively, the “**Cure and Assumption Notice Parties**”).

28. If no objection to the Cure Amounts is timely received by the Cure and Assumption Notice Parties, the Cure Amounts set forth on the Cure and Potential Assumption and Assignment Notice shall control notwithstanding anything to the contrary in any Contract or other document(s).

29. On or before October 3, 2023, the Successful Bidder shall provide the Debtor with a list of the executory contracts and/or unexpired leases that the Successful Bidder desires to have assumed and assigned to the Successful Bidder at the closing of the Sale.

30. On or before October 4, 2023, the Debtor will file a list of the designated Assigned Contracts substantially in the form of the notice attached hereto as **Exhibit 4** (the “**Assumption Notice**”), which shall, without limitation: (i) identify the designated Assigned Contracts; and (ii) provide a description of the Successful Bidder’s ability to perform the Debtor’s obligations under the Assigned Contracts identified in the Assumption Notice.

31. Objections of counterparties, if any, to the proposed adequate assurance of future performance shall be filed and served to the Cure and Assumption Notice Parties no later than October 9, 2023 at 4:00 p.m.

BASIS FOR RELIEF

I. The Relief Sought in the Bid Procedures Order Is in the Best Interests of the Debtor’s Estate and Should Be Approved.

A. The Proposed Notice of the Bid Procedures and the Sale Process Is Appropriate.

32. The Debtor seeks to sell its business and/or Assets through a marketing and auction process in this Chapter 11 Case. Thus, the Debtor and its advisors will conduct an extensive marketing process. The Debtor, in consultation with its advisors, has developed a list of “Contact Parties” who will receive a copy of the “Information Package” (both as defined in the Bid Procedures). The list of Contact Parties will encompass those parties whom the Debtor, in consultation with the Consultation Parties, believes may potentially be interested in pursuing a Sale and whom the Debtor reasonably believes may have the financial resources to consummate such a transaction. The Bid Procedures are designed to elicit bids from one or more parties and to encourage a robust auction of the Assets, thus maximizing the value of the Debtor’s estate for the benefit of its creditors.

33. Under Bankruptcy Rule 2002(a) and (c), the Debtor is required to notify creditors of the proposed sale of the Assets, including a disclosure of the time and place of any auction, the

terms and conditions of a sale, and the deadline for filing any objections. The Debtor respectfully submits that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (a) the date, time, and place of the Auction (if one will be held); (b) the Bid Procedures; (c) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a reasonably specific identification of the Assets; (e) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale proceeds; and (f) notice of the proposed assumption and assignment of the Contracts to the Successful Bidder.

34. The Debtor further submits that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtor further submits that the proposed notice procedures are designed to maximize the chance of obtaining the broadest possible participation in the Debtor's marketing process, while minimizing costs to the estate. Accordingly, the Debtor respectfully requests that the Court find that the proposed notice procedures set forth in this Motion are sufficient, and that no other or further notice of the Bid Procedures, Auction, Sale, or Sale Hearing is required.

B. *The Bid Procedures Are Appropriate and Will Maximize Value.*

35. Bid procedures should be approved when they provide a benefit to the debtor's estate by maximizing the value of the debtor's assets. *See In re Edwards*, 228 B.R. 552, 361 (Bankr. E.D. Pa. 1998) ("The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate."). Courts have made clear that a debtor's

business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (“Under Section 363, the debtor in possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (same); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (same); *see also In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that Bid Procedures that have been negotiated by a trustee are to be reviewed in accordance with the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”).

36. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004); *Official Comm. of Unsecured Creditors of Cybergenics, Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *see also In re Food Barn Stores, Inc.*, 101 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”); *Edwards*, 228 B.R. at 561.

37. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore appropriate in the context of bankruptcy transactions. *See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *Integrated Resources*, 147 B.R. at 659 (Bid Procedures “are important tools to encourage bidding and to maximize the value of the Debtors’ assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-

imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

38. The Debtor believes that the Bid Procedures will establish the parameters under which the value of the Assets may be tested at the Auction. The Bid Procedures will increase the likelihood that the Debtor will receive the greatest possible consideration because they will ensure a competitive and fair bidding process.

39. The Debtor believes that the proposed Bid Procedures will promote active bidding from seriously interested parties and will elicit the highest or otherwise best offers available for the Assets. The proposed Bid Procedures will enable the Debtor to conduct the Sale in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Assets and who can demonstrate the ability to close the transaction.

40. Specifically, the Bid Procedures contemplate an auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed Bid. At the same time, the Bid Procedures provide the Debtor with a robust opportunity to consider competing Bids and select the highest or otherwise best offer for the completion of the Sale. Additionally, if the Debtor selects a Stalking Horse Bid, the Debtor’s entry into the Stalking Horse Agreement with the Stalking Horse Bidder will ensure that the Debtor obtains fair market value for the Assets by setting a minimum purchase price that will be tested in the marketplace. As such, creditors of the Debtor’s estate can be assured that the consideration obtained will be fair and reasonable and at or above the market value.

41. The Bid Protections and the Diligence Incentive contained within the Bid Procedures will also assist the Debtor in fostering a competitive bidding environment. The Bid

Protections and the Diligence Incentive are an essential part of the Bid Procedures because they enable the Debtor to negotiate efficiently and effectively with prospective stalking horses. The prospect of Bid Protections and the Diligence Incentive should encourage parties to serve as the Stalking Horse Bidder by providing reimbursement for expenditures during the due diligence process. In turn, the Stalking Horse Bidder sets the minimum price and provides a basis for comparison to potential bidders.

42. Bankruptcy courts in the Seventh Circuit consistently recognize the benefits of bid protections as an important tool for obtaining a stalking horse, which in turn ensures that the debtor's estate is paid, at a minimum, the reasonable value of the assets. *See, e.g., In re Friendship Village of Mill Creek, d/b/a Greenfields of Geneva*, Case No. 17-12470 [Dkt. No. 66] (Bankr. N.D. Ill. May 9, 2017) – (Order Approving (A) Bid Procedures and Overbid Protections; and (B) Approving the Form and Manner of Notice). The proposed Bid Protections—a “break-up” fee of up to 3% of the proposed cash purchase price plus reimbursement of actual expenses in an amount not to exceed 1% of the proposed cash purchase price—are comparable to the terms of other bid protections routinely approved by bankruptcy courts. *See id.* (approving expense reimbursement).

43. Bid protections, such as those included in the Bid Procedures, are “an incentive payment to a prospective purchaser with which a company fails to consummate a transaction.” *In re S.N.A. Nut Company*, 186 B.R. 98, 101 (Bankr. N.D. Ill. 1995). “Agreements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers.” *Id.*; *see also In re 995 Fifth Ave. Associates, L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives may “be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”). Similarly, the Diligence

Incentive is intended to incentivize parties to become early participants in the sale process for the purpose of encouraging such parties to potentially serve as a Stalking Horse Bidder.

44. The Debtor submits that the proposed Bid Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved in this District. *See, e.g., Greenfields of Geneva*, No. 17-12470; *In re The Clare at Water Tower*, No. 11-46151 [Dkt. No. 264] (SPS) (Bankr. N.D. Ill. March 21, 2012) (bid procedures order approving break-up fee and expense reimbursement).

45. Thus, the Bid Procedures are reasonable, appropriate and within the Debtor's sound business judgment under the circumstances because the Bid Procedures are designed to maximize the value to be received by the Debtor's estate.

C. *The Proposed Notice Procedures for the Assigned Contracts and the Identification of Related Cure Amounts Are Appropriate.*

46. As set forth above, the Sale contemplates the potential assumption and assignment of the Contracts to the Successful Bidder arising from the Auction, if any. In connection with this process, the Debtor believes it is necessary to establish a process by which: (a) the Debtor and the Contract Counterparties can reconcile cure obligations, if any, in accordance with Bankruptcy Code sections 105(a) and 365; and (b) such counterparties can object to the potential Assumption Procedures.

47. Except as may otherwise be agreed to in the Successful Bid or by the parties to an Assigned Contract, at the closing of the Sale, the Successful Bidder shall cure those defaults under the Assigned Contracts that need to be cured in accordance with Bankruptcy Code section 365(b) by (a) payment of the undisputed Cure Amounts and/or (b) reserving amounts with respect to any disputed Cure Amounts.

48. As set forth in the Bid Procedures Order, the Debtor also requests that any party that fails to object to the proposed assumption and assignment of any Contract be deemed to consent to the assumption and assignment of the applicable Contract pursuant to Bankruptcy Code section 365 on the terms set forth in the Sale Order, along with the Cure Amounts identified in the Cure and Possible Assumption and Assignment Notice. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to the Motion, a creditor is deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

49. The Debtor believes that the Assumption Procedures are fair and reasonable, provide sufficient notice to the Contract Counterparties of the potential assumption and assignment of their Contracts, and provide certainty to all parties in interest regarding their obligations and rights with respect thereof. Accordingly, the Debtor requests that the Court approve the Assumption Procedures set forth in the Bid Procedures Order.

II. Approval of the Proposed Sale Is Appropriate and in the Best Interests of the Estate.

A. The Asset Sale Should Be Authorized Pursuant to Bankruptcy Code Section 363 as a Sound Exercise of the Debtor's Business Judgment.

50. Bankruptcy Code section 363(b)(1) provides that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A sale of the debtor’s assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for the proposed transaction. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (“Under Section 363, the debtor-in-possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 174 (Bankr. D. Del. 1991); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (same); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*,

722 F.2d 1063, 1070 (2d Cir. 1983); *In re Telesphere Commc'ns, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999). A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See, e.g., In re Abbotts Dairies of Pa, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

51. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See Del. & Hudson*, 124 B.R. at 176; *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987).

52. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Res.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (“The business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.’”); *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (“If a valid business justification exists,

then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under Bankruptcy Code section 363(b)(1). Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3 (N.D. Ill. 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

53. As set forth above, the Debtor has a sound business justification for selling the Debtor’s business and/or Assets. First, the Debtor believes that the Sale will maximize going-concern value by allowing a party to bid on business assets that would have substantially less value on a stand-alone basis.

54. Second, the sale of the Assets will be subject to competing bids, enhancing the Debtor’s ability to receive the highest or otherwise best value for the Assets. The value of the Assets will be tested through the Auction conducted pursuant to and according to the Bid Procedures. Ultimately, the Successful Bid, after being subject to a “market check” in the form of the Auction and accepted by the Debtor in the exercise of its reasonable business judgment, will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for its estate than any known or practically available alternative. *See, e.g., In re Trans World Airlines, Inc.*, No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a “section 363(b) sale transaction does not require an auction procedure . . . the auction procedure has developed over the years as an effective means for producing an arm’s-length fair value transaction”). Consequently, the fairness and reasonableness of the consideration to be paid by the Successful

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

55. Thus, the Debtor submits that the Successful Bidder’s purchase agreement will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtor’s estate than would be provided by any other available alternative. As such, the Debtor’s determination to sell the Assets through an Auction process and subsequently to enter into the purchase agreement with the Successful Bidder will be a valid and sound exercise of the Debtor’s business judgment. The Debtor will submit evidence at the Sale Hearing to support these conclusions. Therefore, the Debtor requests that the Court make a finding that the proposed sale of the Assets is a proper exercise of the Debtor’s business judgment and is rightly authorized.

B. Adequate and Reasonable Notice of the Sale Will Be Provided.

56. As described above, the Sale Notice: (a) will be served in a manner that provides at least 21-days’ notice of the date, time, and location of the Sale Hearing; (b) informs parties in interest of the deadlines for objecting to the Sale or the potential assumption and assignment of the Contract; and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bid Procedures Order, after notice and a hearing, before it is served on parties in interest.

C. The Sale and Purchase Price Will Reflect a Fair-Value Transaction.

57. Where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. *See Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 457 (1999). The Debtor will continue to market the Assets and solicit offers consistent with the Bid

Procedures, including, without limitation, by providing acceptable Bidders with access to Due Diligence and requested information. In this way, the number of Bidders that are eligible to participate in the competitive Auction process will be maximized. On the other hand, if the Debtor enters into a Stalking Horse Agreement and no Auction is held because no Auction is necessary, the Stalking Horse Agreement's purchase price conclusively will have been demonstrated to be fair value.

D. *The Sale of the Assets Should Be Free and Clear of Interests Pursuant to Bankruptcy Code Section 363(f).*

58. The Debtor further submits that it is appropriate to sell the Assets free and clear of all liens, claims, encumbrances, and interests (collectively, the “**Interests**”) pursuant to Bankruptcy Code section 363(f), with any such Claims and Interests attaching to the net sale proceeds of the Assets, as and to the extent applicable.

59. Section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a *bona fide* dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f).

60. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to permit the Debtor's sale of the Assets free and clear of all interests (*i.e.*, all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the applicable purchase agreement. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“[I]f any of five conditions are met, the Debtors have the authority to conduct the sale free and clear of all liens.”);

see also *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *Citicorp Homeowners Servs., Inc. v. Eliot (In re Eliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that the court may approve the sale “free and clear” provided that at least one of the subsections of section 363(f) has been satisfied).

61. The Debtor submits that the Assets may be sold free and clear of liens, claims, encumbrances, and other interests—all in accordance with at least one of the five conditions of section 363(f). Consistent with section 363(f)(2), each of the parties holding liens on the Assets, if any, will consent, or absent any objection to this Motion, will be deemed to have consented to, the Sale and transfer of the Assets. Furthermore, any party holding a valid lien against the Assets will be adequately protected by having its liens, if any, attach to the sale proceeds received by the Debtor from the Sale of the Assets to the Successful Bidder, in the same order of priority, with the same validity, force, and effect that such creditor had prior to such sale, subject to any claims and defenses the Debtor and its estate may possess. Accordingly, section 363(f) authorizes the sale and transfer of the Assets free and clear of any such Interests.

E. The Assets and the Assigned Contracts Should Be Sold Free and Clear of Successor Liability.

62. The Sale Order will provide that the Successful Bidder shall not have any successor liability related to Seller or the Assets to the maximum extent permitted by law. Extensive case law establishes that claims against a winning bidder may be directed to the proceeds of a free and clear sale of property, and may not subsequently be asserted against that buyer.

63. Although Bankruptcy Code section 363(f) provides for the sale of assets “free and clear of any interests,” the term “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). In the case of *In re Trans World Airlines. Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” the trend in modern cases is towards “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’” *Id.* at 289 (citing 3 Collier on Bankruptcy 363.06[1]). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-82 (4th Cir. 1996), the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in *Folger* cited *Leckie* for the proposition that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at 258.

64. Courts have consistently held that a buyer of a debtor’s assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. *See In re Ormet*, 2014 WL 3542133 at *4 (Bankr. D. Del. July 17, 2014); *The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale was free and clear of Title VII employment discrimination and civil rights claims of Debtors’

employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded from being asserted against his successor in a sale of assets free and clear); *WBQ P'ship v. Virginia Dept. of Medical Assistance Services (In re WBQ P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).

65. The purpose and value of an order authorizing the transfer of the Assets would be frustrated if claimants thereafter could use the transfer as a basis to assert claims against the Successful Bidder. Under Bankruptcy Code section 363(f), the Successful Bidder is entitled to know that the Assets are not tainted by latent claims that could be asserted against the Successful Bidder after the proposed transaction is completed. Absent that ruling, the value of the Assets could be severely compromised.

66. Accordingly, there is substantial authority for any order approving the Sale of the Assets to include a finding that the Successful Bidder is not liable as a successor under any theory of successor liability, for Interests that encumber or relate to the Assets.

F. *The Sale Has Been Proposed in Good Faith and Without Collusion, and the Successful Bidder Will Be a "Good-Faith Purchaser" Entitled to the Full Protection of Bankruptcy Code Section 363(m); and the Sale of the Assets Does Not Violate Bankruptcy Code Section 363(n).*

67. The Debtor requests that the Court find that the Successful Bidder is entitled to the benefits and protections provided by Bankruptcy Code section 363(m) in connection with the sale of the Assets. Section 363(m) provides, in pertinent part:

[t]he 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).

68. Section 363(m) thus protects the purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser purchased the assets in “good faith.” *See id.*; *see also MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S. Ct. 927 (2023) (recognizing that section 363(m) “cloak[s] certain good-faith purchasers or lessees with a targeted protection of their newly acquired property interest, applicable even when an appellate court properly exercises jurisdiction”). While the Bankruptcy Code does not define “good faith,” courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that, where there is a lack of such integrity, a good-faith finding may not be made. *See, e.g., Abbotts Dairies of Pa.*, 788 F.2d at 147 (“Typically, the misconduct that would destroy a [buyer’s] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”); *In the Matter of Andy Frain Servs., Inc.*, 798 F.2d 1113 (7th Cir. 1986) (same); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

69. The Debtor submits that the Stalking Horse Bidder, if any, or any other Successful Bidder arising from the Auction would be a “good faith purchaser” within the meaning of section 363(m), and the resulting purchase agreement would be a good-faith agreement on arm’s-length terms entitled to the protections of section 363(m).⁸ First, as set forth in more detail above, the

⁸ The Debtor believes that a finding of good faith within the meaning of Bankruptcy Code section 363(m) will be appropriate for any Successful Bidder arising from the Auction, if any, and the Bid Procedures. Pursuant to the Bid Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bid Procedures. In addition, the Debtor will not choose as the Successful Bidder or the Back-Up Bidder (as defined in the Bid Procedures)

consideration to be received by the Debtor pursuant to the Sale will be subject to a market process by virtue of the Debtor's marketing efforts, with the assistance of its professionals, and the Auction will be substantial, fair, and reasonable. Second, the purchase agreement entered into by the Debtor and the Successful Bidder will be the result of extensive arm's-length negotiations, during which all parties will have the opportunity to be, and the Debtor will be, represented by competent counsel, and any purchase agreement with a Successful Bidder will be the culmination of the Debtor's competitive market process and, if necessary, the Auction, in which all negotiations will be conducted on an arm's-length, good-faith basis. Third, where—as the Debtor anticipates will be the case here—there is no indication of any “fraud or collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” or similar conduct, there is no cause that would permit the Sale to be avoided pursuant to Bankruptcy Code section 363(n). Moreover, with respect to potential Bidders, the Bid Procedures are designed to ensure that no party is able to exert undue influence over the process. Finally, the Successful Bidder's offer will be evaluated and approved by the Debtor in consultation with its advisors and the Consultation Parties. Accordingly, the Debtor believes that the Successful Bidder and the resulting purchase agreement should be entitled to the full protections of Bankruptcy Code section 363(m).

70. Moreover, because there will be no fraud or improper insider dealing of any kind, the Sale will not constitute an avoidable transaction pursuant to Bankruptcy Code section 363(n), and, as a result, the Successful Bidder should receive the protections afforded good faith purchasers by Bankruptcy Code section 363(m). Accordingly, the Debtor requests that the Court

any entity whose good faith under section 363(m) can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the “good faith” standard of section 363(m) has been satisfied.

make a finding at the Sale Hearing that the agreement reached with the Successful Bidder was at arm's length and is entitled to the full protections of Bankruptcy Code section 363(m). The Debtor will submit evidence at the Sale Hearing to support these conclusions.

III. The Assumption and Assignment of the Contracts Should Be Approved.

A. *The Assumption and Assignment of the Contracts Reflects the Debtor's Reasonable Business Judgment.*

71. To facilitate and effectuate the sale of the Assets, the Debtor is seeking authority to assume and assign the Assigned Contracts to the Successful Bidder to the extent required by such Successful Bidder. Bankruptcy Code section 365 authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. *See* 11 U.S.C. § 365(b)(1). The standard in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”) (superseded in part by 11 U.S.C. § 1113).

72. Courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *8 (D. Del. 2002); *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Solutions, Corp)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”); *see also Phar Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) (“Courts should generally defer to a Debtors' decision whether to reject an

executory contract.”). A debtor’s decision to assume or reject an executory contract or unexpired lease will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 318 U.S. 523 (1943) (applying Bankruptcy Act section 77(b), predecessor to section 365, and rejecting a test of whether an executory contract was burdensome in favor of determining whether rejection is within the debtor’s business judgment); *see also Sharon Steel*, 872 F.2d at 40 (describing deference to a debtor’s business judgment as “breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the Code”); *Network Access Solutions*, 330 B.R. at 75; *Exide Techs.*, 340 B.R. at 239.

73. The Court here should approve the decision to assume and assign any Assigned Contracts in connection with the Sale as a sound exercise of the Debtor’s business judgment. First, the Assigned Contracts are necessary to operate the Assets and, as such, they are essential to inducing the best offer for the Assets. Second, it is unlikely that any purchaser would want to acquire the Assets unless a significant number of the Contracts needed to manage the day-to-day operations were included in the transaction. Third, the Assigned Contracts will be assumed and assigned as part of a process approved by the Court pursuant to the Bid Procedures Order and, thus, will be reviewed by key constituents in the Chapter 11 Case. Accordingly, the Debtor submits that the assumption and assignment of the Assigned Contracts, if required by the Successful Bidder, should be approved as a sound exercise of the Debtor’s business judgment.

74. A debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with Bankruptcy Code section 365(a), and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(f)(2). Significantly, among other things,

adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtors has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

75. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *EBG Midtown South Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

76. Contract Counterparties to the Assigned Contracts will have the opportunity to request additional adequate assurance information by objecting to the Assumption Notice. Accordingly, the Debtor submits that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

77. To assist in the assumption, assignment, and sale of the Assigned Contracts, the Debtor also requests that the Sale Order approving the Sale of the Assets provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f). Section 365(f)(1) permits a debtor to assign unexpired leases and executory contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the

assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection

11 U.S.C. § 365(f)(1).

78. Section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365”), *cert. denied*, 522 U.S. 1148 (1998). Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

79. Other courts have recognized that provisions that have the effect of restricting assignments cannot be enforced. *See In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting Section 365(f) [*sic*], courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”). Similarly, in *In re Mr. Grocer., Inc.*, the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which

enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, the Debtor requests that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts, and be deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

IV. Relief Pursuant to Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.

80. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtor requests that the Sale Order be effective immediately upon its entry by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

81. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay periods, the leading treatise on bankruptcy suggests that the 14-day stay periods should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 *Collier on Bankruptcy* ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

82. To maximize the value received from the Assets, the Debtor seeks to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtor requests that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

83. Notice of this Application shall be provided to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) counsel to the Bond Trustee; (c) the Debtor's twenty (20) largest unsecured creditors; and (d) any party filing a notice of appearance in this Chapter 11 Case.

84. The Debtor respectfully submits that such notice is sufficient and that no further notice of this Application is required.

NO PRIOR REQUEST

85. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the proposed order substantially in the form attached hereto as **Exhibit A** granting the relief requested in the Motion and such other and further relief as may be just and proper.

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Dated: June 14, 2023
Chicago, Illinois

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*Proposed Co-Counsel to the Debtor
and Debtor in Possession*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:	)	Case Number: 23-07541
EVANGELICAL RETIREMENT	)	
HOMES OF GREATER CHICAGO,	)	Chapter: 11
INCORPORATED d/b/a FRIENDSHIP	)	
VILLAGE OF SCHAUMBURG,	)	Honorable Timothy A. Barnes
	)	
Debtor(s)	)	

**ORDER (A) APPROVING BID PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS,
(B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(C) SCHEDULING AN AUCTION AND A SALE HEARING, (D) APPROVING PROCEDURES
FOR THE ASSUMPTION AND ASSIGNMENT OF
CONTRACTS, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") of the above-captioned debtor and debtor in possession (the "Debtor") for entry of an order (this "Order") (a) authorizing and approving the Bid Procedures attached hereto as Exhibit 1 (the "Bid Procedures") in connection with the sale of substantially all of the Debtor's assets (the "Assets"), (b) approving the form and manner of notice in substantially the form attached hereto as Exhibit 2 (the "Sale Notice") of an auction (the "Auction") if the Debtor receives more than one Qualified Bid, and sale hearing (the "Sale Hearing") with respect to the sale of the Assets free and clear of liens, claims, encumbrances, and other interests (the "Sale"), (c) scheduling the Sale Hearing, and (d) approving procedures for the possible assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (collectively, the "Contracts"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 this Court having found that the relief requested in the Motion is in the best interest of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that 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 having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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 HEREBY FINDS AND DETERMINES THAT:

- A. Notice of the Motion complies with applicable Bankruptcy Rules, including Rule 2002.
- B. Objections to the Sale Notice, including the proposed Sale, shall be filed and served on the appropriate parties no later than October 5, 2023 at 4:00 p.m. (prevailing Central Time).
- C. Objections to the Assumption Notice shall be filed and served on the appropriate parties no later than October 9, 2023 at 4:00 p.m. (prevailing Central Time).

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

E. The Debtor has articulated good and sufficient reasons for this Court to (a) approve the Bid Procedures; (b) approve and authorize payment of the Bid Protections and the Diligence Incentive; (c) approve the form and manner of the notice of the Bid Procedures; (d) schedule the Auction, if necessary, and the Sale Hearing and approve the manner of notice with respect thereto; and (e) approve the Assumption Procedures, including the forms of notice of the Cure and Possible Assumption and Assignment Notice and the Assumption Notice.

F. The Bid Procedures, incorporated herein by reference, as if fully set forth in this Order, are fair, reasonable and appropriate and represent the best method for maximizing the value the Debtor's estate. The Break Up Fee and Expense Reimbursement (i) if triggered and applicable, shall be deemed actual and necessary costs and expenses of preserving the Debtor's estate, within the meaning of Bankruptcy Code sections 503(b) and 507(a)(2), and treated as an allowed superpriority administrative expense claim pursuant to Bankruptcy Code sections 105, 503(b) and 507(a)(2); (ii) are commensurate to the real and substantial benefit conferred upon the Debtor's estate by any Stalking Horse Bidder; (iii) are reasonable and appropriate, including in light of the size and nature of the proposed sale transaction and comparable transactions, and the efforts that will be expended by any Stalking Horse Bidder, notwithstanding that the proposed transaction may be subject to better and higher offers, and are necessary to induce a Stalking Horse Bidder to pursue the transaction, and (iv) were designed to ensure the highest and best offers are attained.

G. Assumption and Assignment Procedures. The Motion, this Order, and the assumption and assignment procedures (the "Assumption Procedures") are reasonably calculated to provide counterparties to any Contracts that may potentially be assumed by the Debtor and assigned to the Successful Bidder with proper notice of the possible and/or intended assumption and assignment of such Contracts, the procedures in connection therewith, including the deadlines for filing objections, and any cure amounts with respect thereto.

H. Sale Notice. The Sale Notice is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (a) the date, time, and place of the Auction (if one is held); (b) the Bid Procedures; (c) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (collectively, "Interests"), with all such Interests attaching with the same validity and priority to the Sale proceeds; and (e) notice of the proposed assumption and assignment of Contracts to the Successful Bidder. No other or further notice of the Sale shall be required.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth below.
2. All objections to the relief requested in the Motion with respect to the Bid Procedures that have not been withdrawn, waived, or settled as announced to the Court at the Hearing or by stipulation filed with the Court, are overruled.

3. The Bid Procedures, substantially in the form attached hereto as Exhibit 1, are approved in their entirety, and the Bid Procedures shall govern the submission and receipt of all Bids relating to the proposed sale of the Assets. Any party desiring to bid on the Assets shall comply with the Bid Procedures and this Order. The Debtor is authorized to take any and all actions necessary to implement the Bid Procedures.

I. The Auction

4. As further described in the Bid Procedures, if more than one Qualified Bid, including the Stalking Horse Bid, if any, is received by the Overbid Deadline, the Debtor will conduct the Auction at 10:00 a.m. (prevailing Central Time) on October 3, 2023, at the offices of Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606, or such other location as the Debtor shall identify via notice to be provided to all Qualified Bidders.

5. The Stalking Horse Bidder, if any, in its sole discretion, shall be entitled to credit bid the aggregate value of the Bid Protections to the extent granted pursuant to Bankruptcy Code section 363 (k).

6. The Debtor, in consultation with the Consultation Parties, may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before the entry of the Sale Order any Bid that, in the discretion of the Debtor, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interest of the Debtor's estate and its creditors; (c) at or before the conclusion of the Auction, impose such other terms and conditions upon Qualified Bidders as the Debtor determines to be in the best interest of the Debtor's estate; and (d) prior to the entry of the Sale Order, re-open the Auction, on notice to all participants, to consider further Bids in its reasonable business judgment.

7. No person or entity, other than the Stalking Horse Bidder, if any, shall be entitled to any expense reimbursement, break-up fee, topping or termination fee, or other similar fee or payment, and by submitting a Bid, such person or entity is deemed to have waived its right to request or file with this Court any request for expense reimbursement or any other fee of any nature in connection with the Auction and the Sale, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

II. Assumption and Assignment Notices & Procedures

8. Within five (5) business days of the entry of this Order, or as soon as practicable thereafter, the Debtor shall serve on all non-Debtor counterparties (the "Contract Counterparties") to any Contract that may be assumed by the Debtor and assigned to the Successful Bidder, which notice shall be substantially in the form attached hereto as Exhibit 3 (a "Cure and Possible Assumption and Assignment Notice"), setting forth the Debtor's proposed cure amount, if any, that would be due and owing to such Contract Counterparty if the Debtor decided to assume, or assume and assign, such executory contract or unexpired lease, and alerting such Contract Counterparty that its contract may potentially be assumed and assigned to the Successful Bidder.

9. The presence of a Contract on the Cure and Possible Assumption and Assignment Notice does not constitute an admission that such Contract is an executory contract or unexpired lease, and the presence of a Contract on any notice shall not prevent the Debtor from subsequently withdrawing such request for assuming or rejecting such Contract any time before such Contract is actually assumed and

assigned pursuant to the Sale Order.

10. Any Contract Counterparty that objects to the cure amount set forth on the Cure and Possible Assumption and Assignment Notice must file an objection with the Bankruptcy Court (a “Cure Objection”) on or before the first business day that is 21 days after service of the Cure and Possible Assumption and Assignment Notice, which Cure Objection must also be served on (a) Proposed counsel for the Debtor, (i) Polsinelli PC, 600 3rd Ave., 42nd Fl., New York, NY 10016, Attn: Jeremy R. Johnson, jeremy.johnson@polsinelli.com; (ii) Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 Attn: Trinitee G. Green, tggreen@polsinelli.com; (iii) Dopkelaw LLC, 1535 W. Schaumburg Road, Schaumburg, IL 60194, Attn: Bruce Dopke, bd@dopkelaw.com; (b) counsel for the Bond Trustee, Mintz Levin Cohn Ferris Glovsky and Popeo PC, Attn: Daniel Bleck, dsbleck@mintz.com, and Tim McKeon, tjmckeon@mintz.com; (c) the Office of the United States Trustee for the Northern District of Illinois, Attn: Jeffrey L. Gansberg, jeffrey.l.gansberg@usdoj.gov; and (d) counsel to any committee appointed in this Chapter 11 Case (collectively, the “Cure and Assumption Notice Parties”).

11. If a Contract Counterparty does not timely file and serve a Cure Objection, that party will be forever barred from objecting to (a) the Debtor’s proposed cure amount, or (b) the Debtor’s ability to assume and assign that party’s Contract to the Successful Bidder. Where a Contract Counterparty to an Assigned Contract files a timely Cure Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or objecting to the possible assignment of that Contract Counterparty’s Contract, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtor’s ability to assign the Contract to the Successful Bidder will be determined at the Sale Hearing.

12. By 5:00 p.m. (prevailing Central Time) on October 3, 2023, the Debtor shall file with the Court and serve on the Counterparties to Assigned Contracts designated to be assumed and assigned a further notice substantially in the form attached hereto as Exhibit 4 (the “Assumption Notice”) identifying the Successful Bidder, stating which Contracts will be assumed and assigned to the Successful Bidder, and providing such Counterparties with the Successful Bidder’s assurance of future performance.

13. Any Contract Counterparty that objects to the adequacy of the assurance set forth in the Assumption Notice must file an objection (an “Adequate Assurance Objection”) with the Bankruptcy Court no later than October 9, 2023 at 4:00 p.m. (prevailing Central Time) (the “Adequate Assurance Objection Deadline”).

14. If a Contract Counterparty does not make an Adequate Assurance Objection prior to the Adequate Assurance Objection Deadline, such party will be forever barred from objecting to the adequacy of the assurance to be provided by the Successful Bidder. If a Contract Counterparty makes an Adequate Assurance Objection prior to such objection deadline, and the parties are unable to consensually resolve the dispute, the adequacy of the assurance provided by the Successful Bidder will be determined at the Sale Hearing.

III. Notice of the Sale Process

15. The Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, in substantially the forms attached to this Order as Exhibit 2, Exhibit 3, and Exhibit

4 are approved.

16. Within five (5) business days after the entry of this Order, or as soon as practicable thereafter, the Debtor (or its agents) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) counsel to the Bond Trustee; (c) counsel to any Committee, if and when appointed; (d) the Contract Counterparties; (e) all parties who have expressed a written interest in the Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (g) all applicable state and local taxing authorities; (h) all of the Debtor's other creditors; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

IV. The Sale Hearing

17. The Sale Hearing will be conducted on October 10, 2023 at _:_0 a/p.m. (prevailing Central Time). The Debtor will seek entry of an order of the Court at the Sale Hearing approving and authorizing the Sale of the Assets to the Successful Bidder. Upon entry of this Order, the Debtor is authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be continued from time to time without further notice other than such announcement being made in open court or a notice of adjournment being filed with the Court and served on the Notice Parties.

V. Objections to the Sale

18. Objections, if any, to the relief requested in the Motion relating to the Sale must be in writing, filed with the Court, and be served so that it is actually received no later than October 5, 2023 at 4:00 p.m. (prevailing Central time). Objections shall be served on (a) Proposed counsel for the Debtor, (i) Polsinelli PC, 600 3rd Ave., 42nd Fl., New York, NY 10016, Attn: Jeremy R. Johnson, jeremy.johnson@polsinelli.com; (ii) Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 Attn: Trinitee G. Green, tggreen@polsinelli.com; (iii) Dopkelaw LLC, 1535 W. Schaumburg Road, Schaumburg, IL 60194, Attn: Bruce Dopke, bd@dopkelaw.com; (b) counsel for the Bond Trustee, Mintz Levin Cohn Ferris Glovsky and Popeo PC, Attn: Daniel Bleck, dsbleck@mintz.com, and Tim McKeon, tjmckeon@mintz.com; (c) the Office of the United States Trustee for the Northern District of Illinois, Attn: Jeffrey L. Gansberg, jeffrey.l.gansberg@usdoj.gov; and (d) counsel to any committee appointed in this case.

19. A party's failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Sale, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder pursuant to the applicable purchase agreement, including, without limitation, the assumption and assignment of the Contracts to the Successful Bidder pursuant to the applicable purchase agreement, and shall be deemed to constitute such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation such assumption and assignment.

VI. Other Relief Granted

20. Nothing in this Order, the Stalking Horse Agreement (if any), or the Motion shall be deemed to or constitute the assumption or assignment of a Contract.

21. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtor may, in its discretion and without further delay, take any action and perform any act authorized by this Order.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

Trinitee G. Green (ARDC # 6323508)
POLSINELLI PC
150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
Telephone: (312) 819-1900
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tggreen@polsinelli.com

-and-

Jeremy R. Johnson (Admitted Pro Hac Vice)
Michael V. DiPietro (Admitted Pro Hac Vice)
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600 3rd Avenue, 42nd Floor
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Exhibit 1 to Bid Procedures Order

Bid Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§ Chapter 11
	§
EVANGELICAL RETIREMENT	§ Case No. 23-07541
HOMES OF GREATER CHICAGO,	§
INCORPORATED d/b/a FRIENDSHIP	§
VILLAGE OF SCHAUMBURG,	§
	§
FEIN: 36-2815382,	§
	§
Debtor.	§ Hon. Timothy A. Barnes

BID PROCEDURES

On June 9, 2023 (the “Petition Date”), Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”).

On June [___], 2023, the Bankruptcy Court entered an order [Dkt. No. ___] (the “Bid Procedures Order”)¹ approving these Bid Procedures (the “Bid Procedures”). The Bid Procedures set forth the process by which the Debtor, in consultation with UMB Bank, N.A., as bond trustee (the “Bond Trustee”), and any Committee of General Unsecured Creditors duly formed by the Office of the United States Trustee (the “Committee” and together with the Bond Trustee, the “Consultation Parties”) will solicit and evaluate bids for the affiliation with the Debtor or acquisition of the Debtor’s business and/or its assets (the “Assets”).

In an effort to obtain the highest and best offer, the Debtor has designed a process by which (i) Bidders (as defined below) may submit bids for consideration as the Stalking Horse Bidder (as defined below); and (ii) after the Stalking Horse Bid Deadline (as defined below), (x) if a Stalking Horse Bidder is designated, then Bidders may submit bids that are higher and better than the Stalking Horse Bid (as defined below) or (y) if no Stalking Horse Bidder is designated, then Bidders may submit bids and thereafter participate at an Auction (as defined below).

Pursuant to these Bid Procedures, the Debtor is offering interested parties the opportunity to pursue an acquisition of some or all of the Assets pursuant to a section 363 sale process (a “Transaction”). Prepetition, the Debtor’s proposed real estate broker, Grandbridge Real Estate Capital (“Grandbridge”) distributed a teaser and other materials to potentially interested parties advising them of the opportunity to acquire the Assets pursuant to a Transaction. The Debtor’s representatives shall oversee the marketing, bidding and Transaction process in consultation with the Consultation Parties.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order.

Important Dates

Event or Deadline	Date and Time
Marketing Teaser Previously Launched to Contact Parties	June 1, 2023
Data Room is Made Available to Potential Bidders (as defined below)	June 9, 2023
Stalking Horse LOI Deadline	July 11, 2023
Stalking Horse Agreement Deadline	August 24, 2023 at 4:00 p.m. (prevailing Central Time)
Deadline to Designate Stalking Horse	August 28, 2023 at 4:00 p.m. (prevailing Central Time)
Overbid Deadline	September 29, 2023, at 4:00 p.m. (prevailing Central Time)
Auction (if applicable)	October 3, 2023, at 10:00 a.m. (prevailing Central Time)
Sale Objection Deadline	October 5, 2023, at 4:00 p.m. (prevailing Central Time)
Adequate Assurance Objection Deadline	October 9, 2023, at 4:00 p.m. (prevailing Central Time)
Sale Hearing	October 10, 2023, at __ [a./p.]m. (prevailing Central Time) or as soon thereafter as the Court's calendar permits

Marketing Process

Contact Parties. The Debtor, in consultation with its advisors, has developed a list of parties (collectively, the "**Contact Parties**") whom it believes may be interested in consummating, and whom the Debtor reasonably believes would have the financial resources to consummate, a Transaction. A copy of the Contact Parties has been provided to the Consultation Parties. The Debtor shall supplement the list of Contact Parties throughout the marketing process, as appropriate, and as reasonably requested by the Consultation Parties.

The Debtor shall distribute (to the extent not already distributed) to each Contact Party and any other interested party or potential bidder (each, a "**Potential Bidder**") an "**Information Package**" consisting of: (i) a copy of these Bid Procedures, the Bid Procedures Order, and the Motion; (ii) a form confidentiality agreement acceptable to the Debtor (a "**Confidentiality Agreement**"); and (iii) such other materials as may be appropriate under the circumstances.

Participation Requirements and Initial Diligence. To receive due diligence information, including full access to the Debtor's electronic data room and to additional non-public information regarding the Debtor, a Potential Bidder must deliver the following documents (collectively, the "Preliminary Bid Documents") by email to each of the Notice Parties (as defined below):

1. An executed Confidentiality Agreement on terms reasonably acceptable to the Debtor, to the extent not already executed;
2. The identity of the Potential Bidder and a list of contacts for the Potential Bidder;
3. A description of the diligence the Potential Bidder seeks to conduct; and
4. Evidence by the Potential Bidder of its financial capacity to close a proposed Transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of consummating a Transaction, the party that will bear liability for a breach).

Promptly after a Potential Bidder delivers Preliminary Bid Documents to the Notice Parties, the Debtor, in consultation with the Consultation Parties, will assess the adequacy of the evidence of its financial capacity and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a bid and participate in the Auction (as defined below), as applicable. Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents (each, a "Bidder") may submit bids or other offers; *provided, however*, that the Debtor, in its reasonable discretion, after consultation with the Consultation Parties, may agree to waive some or all of the Potential Bidder requirements set forth herein. The Debtor reserves the right to work with any Potential Bidder to cure any deficiencies in the Preliminary Bid Documents.

As soon as reasonably practicable after the Debtor, in consultation with the Consultation Parties, determines that a Potential Bidder is a Bidder, the Debtor will provide such Bidder with access to an electronic data room and due diligence information as reasonably requested by such Bidder and as made available to any other Bidder (to the extent such Bidder has not already been provided such access and information). All substantive direct communications, including any due diligence requests, with Bidders and Qualified Bidders (as defined below) shall be through and directed to Grandbridge (*via* email is sufficient) (see contact information below). Grandbridge will work to facilitate meetings between any interested Bidder and the Debtor's management team. For Potential Stalking Horse Bidders, the due diligence period will end on the Stalking Horse Agreement Deadline (as such terms are defined below). For all other Bidders, including those that previously expressed a desire to be the Stalking Horse Bidder, the due diligence period will end on the Overbid Deadline (as defined below), and after the Overbid Deadline, the Debtor will have no obligation to furnish any due diligence information.

The Debtor and its advisors will coordinate all reasonable requests from Bidders for additional information and due diligence access. The Debtor, in consultation with the Consultation Parties, may decline to provide such information to Bidders who, in the Debtor's business

judgment, have not established, or who have raised doubt, that such Bidder intends to act in good faith or has the capacity to consummate a Transaction.

For any Bidder who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold, in consultation with the Consultation Parties, any diligence materials that the Debtor determines are business-sensitive or otherwise inappropriate for disclosure to such Bidder at such time.

Each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Bidder and its contemplated Transaction.

Designation of Stalking Horse Bidder

Stalking Horse LOIs. No later than July 11, 2023 at 4:00 p.m. (prevailing Central Time) (the “Stalking Horse LOI Deadline”), each Bidder that is interested in serving as a stalking horse bidder (each, a “Potential Stalking Horse Bidder”) must submit to the Notice Parties a non-binding letter of intent (a “Stalking Horse LOI”). The Stalking Horse LOI must include:

- (i) The identity of the Potential Stalking Horse Bidder;
- (ii) A statement of the contemplated purchase price;
- (iii) A statement of proposed break-up fee and expense reimbursement to the extent different than the Bid Protections (as defined below);
- (iv) Identify the contemplated structure of the Transaction;
- (v) Identify each regulatory and third-party approval required for the Potential Stalking Horse Bidder to consummate the Transaction, and the time period within which the Potential Stalking Horse Bidder expects to receive such regulatory and third-party approvals;
- (vi) State the Potential Stalking Horse Bidder’s intentions with respect to: (a) the agreements with the residents living at the community (the “Residency Agreements”), including the life care provision contained therein; and (b) past, present and future obligations to former and current residents including, but not limited to, those obligations arising under the Residency Agreements; and
- (vii) State how the post-closing capital needs of the Facility will be satisfied.

Following submission of the Stalking Horse LOI(s), the Debtor, in consultation with the Consultation Parties, will coordinate and negotiate with each Potential Stalking Horse Bidder regarding any potential issues regarding the Stalking Horse LOI or the terms set forth therein. By submitting a Stalking Horse LOI, each Potential Stalking Horse Bidder agrees to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code, except as expressly set forth in their Stalking Horse LOI. The

Debtor may, in its discretion, negotiate a purchase agreement with one or more of the Potential Stalking Horse Bidders in anticipation of agreeing to an acceptable Stalking Horse Agreement (as defined below) by the Stalking Horse Agreement Deadline (as defined below); provided that nothing herein shall prohibit Debtor from negotiating Stalking Horse Agreements between the Stalking Horse Agreement Deadline and the date for designating the Stalking Horse, in consultation with the Consultation Parties. Further, in the Debtor's discretion, subject to consultation with the Consultation Parties, the Debtor may reimburse up to \$100,000 in actual expenses to a Potential Stalking Horse Bidder (and no more in the aggregate than \$300,000 for all Potential Stalking Horse Bidders, collectively, the "Diligence Incentive"), with whom the Debtor is negotiating a purchase agreement, in order to incentivize such parties to complete due diligence and submit fully negotiated Stalking Horse Agreements by the Stalking Horse Deadline; *provided, however*, that the Bond Trustee shall have consent rights with respect to any Diligence Incentive if the Bond Trustee is funding such Diligence Incentive through cash collateral. Any party that is actually designated as the Stalking Horse Bidder will receive the Break-Up Fee and Expense Reimbursement (each as defined below) in lieu of any Diligence Incentive. Any Diligence Incentives must be in writing to be enforceable.

Stalking Horse Agreements. No later than **August 24, 2023 at 4:00 p.m.** (prevailing Central Time) (the "Stalking Horse Agreement Deadline"), a Potential Stalking Horse Bidder interested in serving as a Stalking Horse Bidder (as defined below) must (i) submit to the Notice Parties a fully executed purchase agreement evidencing a Transaction (each, a "Stalking Horse Agreement") together with a redline marked against the form purchase agreement, which shall be included in the Debtor's data room; and (ii) complete all of the Bid Requirements in paragraphs 3 through 15, unless waived by the Debtor, in consultation with the Consultation Parties.

Designation of a Stalking Horse. Subject to the procedures set forth herein and in the Bid Procedures Order, the Debtor is authorized, but not obligated, in an exercise of its business judgment, in consultation with the Consultation Parties, to: (i) select a bidder to act as a stalking horse bidder in connection with the Transaction (a "Stalking Horse Bidder"), and enter into the applicable Stalking Horse Agreement; and (ii) in connection with any Stalking Horse Agreement with a Stalking Horse Bidder provide (a) a breakup fee of no more than three percent (3%) of the proposed cash purchase price (the "Break-Up Fee") and (b) an expense reimbursement of no more than one percent (1%) of the proposed cash purchase price (the "Expense Reimbursement" and, together with the Break-Up Fee, the "Bid Protections").

No later than **August 28, 2023**, the Debtor shall file a notice with the Bankruptcy Court of the Debtor's selection of a Stalking Horse Bidder that includes a copy of an executed and binding Stalking Horse Agreement pursuant to the Bid Procedures Order.

Overbid Deadline

The deadline for any Bidders to submit bids, other than the Stalking Horse Bid, if applicable, shall be **September 29, 2023 at 4:00 p.m. (prevailing Central Time)** (the "Overbid Deadline"). Bids must be received on or before the Overbid Deadline by the following parties (collectively, the "Notice Parties");

1. Debtor, Friendship Village of Schaumburg, 350 W. Schaumburg Road, Schaumburg, Illinois 60194 (Attn: Mike.Flynn@myFSO.org);
2. Proposed counsel to the Debtor: Jeremy R. Johnson and Trinitee Green, Polsinelli P.C., 150 North Riverside Plaza, Suite 3000, Chicago, Illinois 60606 (Attn: jeremy.johnson@polsinelli.com and tggreen@polsinelli.com); and Bruce Dopke, Dopkelaw LLC, 1535 W. Schaumburg Road, Suite 204, Schaumburg, Illinois 60194 (Attn: bd@dopkelaw.com);
3. Debtor's real estate broker, Grandbridge Real Estate Capital, 401 East Jackson Street, Floor 19, Tampa, Florida 33602 (Attn: david.kliewer@grandbridge.com).

Within one day of receipt, the Debtor will provide copies of any bids received to counsel to each of the Consultation Parties.

Bid Requirements

To be eligible to participate in the Auction (as such term is defined below), each bid and each Bidder submitting such a bid must conform to the following requirements (collectively, the "Participation Requirements"):

1. If a Stalking Horse Bidder is designated, a bid shall propose a cash purchase price that is greater than or equal to (a) the cash purchase price under the Stalking Horse Agreement, plus at least (b) (i) the amount of the Bid Protections, if applicable and (ii) \$100,000 (the "Initial Overbid," and together with the Bid Protections, the "Minimum Qualified Bid");
2. Include a marked copy of the Stalking Horse Agreement or, if no Stalking Horse Bidder is designated, the form purchase agreement, to show any proposed amendments thereto (the "Modified Agreement");
3. Include a statement that there are no conditions precedent to the Bidder's ability to enter into the Modified Agreement or other definitive documentation, including that there are no financing or diligence contingencies to the bid, and that all necessary internal approvals have been obtained prior to the bid;
4. State that such offer is binding and irrevocable until the approval of the Successful Bid by the Court unless designated as the Back-Up Bid (as such terms are defined below), *provided that* if such offer is selected as a Successful Bid (as defined below) or a Back-Up Bid, then the offer shall remain binding and irrevocable for a period of forty-five (45) days following entry of an order approving the Successful Bid (and any interest on funds while in escrow will follow the deposit, so that the party with the Back-Up Bid shall receive interest on any funds that are returned to it);
5. Disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
6. Disclose the Bidder's affiliations;

7. Include the names and contact information of members of the Bidder who will be available to answer questions regarding the offer, including advisors and related parties;
8. State the Bidder's intentions with respect to: (i) the Residency Agreements, including the life care provision contained therein; and (ii) past, present and future obligations to former and current residents including, but not limited to, those obligations arising under the Residency Agreements;
9. Include a good-faith deposit in immediately available funds of at least two percent (2%) of the cash purchase price set forth in the bid (the "Good Faith Deposit");
10. Provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Transaction;
11. Provide information on the Bidder's prior experience owning / operating comparable facilities or such other applicable experience;
12. Identify each regulatory and third-party approval 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;
13. State how the post-closing capital needs of the community will be satisfied;
14. Represent and warrant that the Bidder has had an opportunity to conduct any and all due diligence regarding the Debtor's business and the Assets prior to submitting its bid and a statement that the Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtor's business or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Bidder's Modified Agreement, ultimately accepted and executed by the Debtor;
15. Submit to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtor, the Bid Procedures, and the Auction; and
16. Disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation (other than any Diligence Incentive agreed to in writing). For the avoidance of doubt, no Qualified Bidder (other than a Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation (other than any Diligence Incentive agreed to in writing). By submitting its Bid, each Bidder (other than a Stalking Horse Bidder)

agrees to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code.

The Debtor, following consultation with the Consultation Parties, shall determine whether bids submitted by Bidders meet the Participation Requirements. The Debtor reserves the right to request additional information from a Bidder in connection with its bid.

Qualified Bidders and Bids

Bidders who have satisfied the Participation Requirements, as determined by the Debtor, in consultation with the Consultation Parties, will be deemed “Qualified Bidders.” Bids that contain all bid requirements, as determined by the Debtor, in consultation with the Consultation Parties, will be deemed “Qualified Bids.” If applicable, the Stalking Horse Bidder, in its sole discretion, shall be entitled to credit bid the aggregate value of the Bid Protections to the extent granted.

The Debtor will advise each Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Stalking Horse Bidder, if any, will be deemed a Qualified Bidder and its bid will be deemed a Qualified Bid in all respects. The Debtor will provide copies of the Qualified Bids to the Consultation Parties.

The Debtor, after consulting with the Consultation Parties, reserves the right to waive noncompliance with any one or more of the Participation Requirements to be a Qualified Bid and deem an otherwise not Qualified Bid to be a Qualified Bid if it reasonably determines, in its business judgment, that such waiver is consistent with its fiduciary duties.

The Bond Trustee reserves its right to submit a credit bid for the Debtor’s Assets pursuant to section 363(k) of the Bankruptcy Code at any time prior to the commencement of the Auction. If the Bond Trustee submits a credit bid, the Bond Trustee shall be deemed a Qualified Bidder and its bid will be deemed a Qualified Bid in all respects. In the event the Bond Trustee submits a Credit Bid, it shall immediately no longer have any consultation or related information rights otherwise set forth herein and shall no longer be a “Consultation Party” as defined herein.

All Qualified Bidders, other than the Stalking Horse Bidder, shall be deemed to have waived any right to assert, pursue or receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, including a substantial contribution claim under section 503 of the Bankruptcy Code, related in any way to due diligence, the submission of its bid, the Bid Procedures, the Auction and the Transaction (with the exception of a Diligence Incentive agreed to in writing).

Auction Participation

Unless otherwise agreed to by the Debtor, in consultation with the Consultation Parties, only Qualified Bidders, members of the Committee, the Bond Trustee, those bondholders who are restricted, and their respective legal or financial professionals are eligible to attend or, with respect to Qualified Bidders, participate at the Auction. Subject to the other provisions of these Bid Procedures, if the Debtor does not receive any Qualified Bids other than the Stalking Horse Bid, if applicable, or if no Qualified Bidder has indicated its intent to participate in the Auction, the

Debtor will not hold an Auction and the Stalking Horse Bidder, if applicable, will be named the Successful Bidder (as defined below).

Auction

If more than one Qualified Bid, including the Stalking Horse Bid, has been received and any Qualified Bidder, including the Stalking Horse Bidder, has indicated its intent to participate in the Auction, the Debtor will conduct an auction (the “Auction”). Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transaction.

The Auction shall take place at **10:00 a.m. (prevailing Central Time) on October 3, 2023** at Polsinelli P.C., 150 North Riverside Plaza, Suite 3000, Chicago, Illinois 60606. As soon as practical prior to the Auction, the Debtor will provide notice of any change to the Auction location to all Qualified Bidders.

Before the Auction, the Debtor will determine, in consultation with the Consultation Parties, which Qualified Bid constitutes the highest or otherwise best offer (the “Starting Bid”). The Debtor will provide copies of all Qualified Bids, including the Starting Bid, to Qualified Bidders who are eligible to attend and participate in the Auction.

Bidding at the Auction shall begin with the Starting Bid. At the Auction, only Qualified Bidders, including the Stalking Horse Bidder, if applicable, will be permitted to increase and/or improve their bids. The bidding shall be in minimum increments of at least \$100,000 higher than the previous bid or bids (after giving effect to the minimum required for each bid to be determined to be a Minimum Qualified Bid). Subject to modification of the Bid Procedures as set forth herein, the Auction shall continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit one or more additional subsequent bids with full knowledge and written confirmation of the then-existing highest or otherwise best bid or bids. Otherwise, the Debtor may conduct the Auction in any manner it reasonably determines, in its business judgment, after consultation with the Consultation Parties, will achieve the highest or otherwise best offer.

Closing the Auction

The Auction shall continue until there is only one offer that the Debtor determines, following consultation with the Consultation Parties, subject to Bankruptcy Court approval, is the highest or otherwise best offer from among the Qualified Bidders (including the Stalking Horse Bidder) submitted at the Auction (the “Successful Bid”). The Qualified Bidder submitting such Successful Bid shall become the “Successful Bidder,” and shall have such rights and responsibilities of a purchaser, as set forth in the respective agreement as such may have been modified during the Auction, as applicable Prior to the conclusion of the Auction, after consultation with the Consultation Parties, the Debtor shall (1) review each bid made at the Auction; (2) identify the Successful Bid; and (3) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name or names of the Successful Bidder and the amount and other material terms of the Successful Bid.

The Debtor shall also, following consultation with the Consultation Parties, select a back-up bid (the “Back-Up Bid” and such Bidder, the “Back-Up Bidder”), which shall remain binding and irrevocable for a period of forty-five (45) days following entry of an order approving the Successful Bid. If, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Debtor may elect to regard the Back-Up Bid as the highest or otherwise best bid, and the Debtor will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

Once selected, the Successful Bidder and the Back-Up Bidder shall increase the amount of its Deposit to two percent (2%) of the cash purchase price of the Successful Bid and the Back-Up Bid, respectively.

Assumption of Executory Contracts and Unexpired Leases

If applicable, the Stalking Horse Agreement and Modified Agreement must designate which executory contracts and unexpired leases are to be assumed or assumed and assigned.

Return of Good Faith Deposits

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest bearing escrow accounts and shall not become property of the Debtor’s estate absent further order of the Court. The Good Faith Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Back-Up Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Bankruptcy Court enters an order approving the designation of the Successful Bidder and, if applicable, the Back-Up Bidder. Upon the return of the Good Faith Deposits, the respective Qualified Bidder shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes the winning Transaction, its Good Faith Deposit shall be credited towards its purchase price. The Good Faith Deposit of the Back-Up Bidder shall be returned not later than two (2) business days after the closing of the Successful Bid.

Reservation of Rights

THE DEBTOR, IN CONSULTATION WITH THE CONSULTATION PARTIES, RESERVES ITS RIGHT TO (I) MODIFY THESE BID PROCEDURES IN ANY MANNER THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS AND TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL OR DIFFERENT CUSTOMARY TERMS AND CONDITIONS, INCLUDING, WITHOUT LIMITATION, MODIFYING THE REQUIREMENTS FOR A QUALIFIED BID (EXCEPT AS TO MATTERS RELATING TO THE BID PROTECTIONS AS SET FORTH HEREIN) (II) EXTEND THE DEADLINES SET FORTH IN THESE BID PROCEDURES, (III) ADJOURN THE AUCTION AT OR PRIOR TO THE AUCTION AND/OR ADJOURNING ANY HEARING PRIOR TO SUCH HEARING OR IN OPEN COURT WITHOUT FURTHER NOTICE, AND (IV) REJECT ANY OR ALL QUALIFIED BIDS IF THE DEBTOR DETERMINES, IN ITS REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, THAT SUCH QUALIFIED BID IS (A) INADEQUATE OR INSUFFICIENT, (B) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (C) CONTRARY TO THE BEST INTERESTS OF THE DEBTOR. THE DEBTOR RESERVES THE RIGHT, AT ANY TIME, FOR ANY REASON AND IN ITS REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, IN CONSULTATION WITH THE CONSULTATION PARTIES, TO DECLINE TO PURSUE THE TRANSACTION AND TO WITHDRAW ANY MOTION FILED IN THE COURT SEEKING TO APPROVE THE TRANSACTION. NOTWITHSTANDING ITS AGREEMENT TO CONSULT WITH THE CONSULTATION PARTIES, THE DEBTOR RESERVES ALL RIGHTS WITH RESPECT TO THESE BID PROCEDURES AND THE TRANSACTION.

Attachment A to Bid Procedures

Form of Confidentiality Agreement

**CONFIDENTIALITY AGREEMENT FOR
SIGNATURE BY PROSPECTIVE PURCHASER**

Grandbridge Real Estate Capital
401 East Jackson Street, Floor 19
Tampa, Florida 33602

**RE: Friendship Village of Schaumburg, 350 West Schaumburg Road, Schaumburg, IL 60194
 (Hereinafter referred to as the "Property")**

Ladies and Gentlemen:

This will serve to confirm our Agreement (the "Agreement") concerning certain material, data and information (herein "Evaluation Material") which you will make available to us for study in connection with a possible purchase by us of the Property (the "Potential Transaction").

You are prepared to furnish us with the Evaluation Material in connection with discussions and negotiations concerning a possible transaction involving the Property only on the conditions that we treat such Evaluation Material confidentially and confirm certain representations to you. Therefore, as a prerequisite to your furnishing to us the Evaluation Material, we hereby represent and agree as follows:

1. The Evaluation Material furnished to us will be used by us solely for evaluating the Potential Transaction exclusively for our own account, as principal in the Potential Transaction, and not as a broker or agent for any other person. Therefore, we agree to keep all Evaluation Material strictly confidential; provided, however, that any such Evaluation Material may be disclosed to our directors, officers or employees, as well as our counsel, affiliates, advisors, accounting firms and financial institutions ("Representatives") who reasonably need to know such information for the purpose of assisting us with the Potential Transaction. Such Representatives shall be informed by us of the confidential nature of such information and shall be directed by us to treat such information with strict confidence as if they were subject to this Agreement, and we will be liable for any breach of the terms of this Agreement by any of our Representatives to whom we disclose Evaluation Material. This information shall not be distributed to employees at the facility level without prior permission from the owners of the Property ("Owner") or Grandbridge Real Estate Capital LLC ("GREC"). The Evaluation Material shall not include any information we can demonstrate: (a) was publicly available prior to the date hereof or becomes publicly available after the execution hereof through no action on our part in breach of the terms of this Agreement; (b) is previously known to us prior to such Evaluation Material being furnished to us, by or on behalf of Owner and/or GREC, provided that the source of such information was after reasonable inquiry not known to be bound by a contractual, legal or fiduciary obligation of confidentiality to Owner, GREC, or another person in respect thereof; and (c) was or becomes available to us on a non-confidential basis from a source other than Owner, GREC, or their Representatives, provided that such source is not known by us, after reasonable inquiry, to be bound by a contractual, legal or fiduciary obligation of confidentiality to Owner, GREC, or another person with respect to such information.
2. If we or our Representatives are required to disclose any Evaluation Material, by law or regulation or pursuant to any requirement, request or process of any legal or regulatory, governmental or supervisory authority, we shall: (a) take all reasonable steps to preserve the privileged nature and confidentiality of the Evaluation Material, including requesting that the Evaluation Material not be

disclosed to non-parties or the public; (b) to the extent legally permitted, give Owner and GREC prompt prior written notice of such request or requirement so that Owner or GREC may seek, at Owner's sole cost and expense, an appropriate protective order or other remedy; and (c) cooperate with Owner and GREC, at Owner's sole cost and expense, to obtain such protective order or other remedy. We (or our Representatives to whom such request is directed) shall furnish only that portion of the Evaluation Material which, on the advice of our counsel, is legally required to be disclosed.

3. We agree to destroy or, at our option, return the Evaluation Material to you promptly if requested by you in writing (email is sufficient), subject to retention policies required by law or our bona fide internal policies (and in the event of retained materials pursuant to such policies, the confidentiality obligations hereunder shall continue without regard to the termination date). We agree that Owner and GREC would have no adequate remedy at law if we violate any of the terms of this Agreement. In such event, Owner or GREC will have the right, in addition to any other right Owner or GREC may have, to injunctive or other equitable relief to restrain any breach or threatened breach by us or specific enforcement of such terms without the requirement for the securing or posting of any bond or other security. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the Owner and GREC. We agree that we will pay any costs or fees (including attorney's reasonable fees) that Owner or GREC may incur in enforcing this Agreement.
4. In addition, we agree that we will not disclose and we will direct our Representatives who are given access to the Evaluation Material in accordance with the terms hereof, not to disclose to any person, the fact that the Evaluation Material has been made available to us, that discussions or negotiations among us, Owner, and GREC are now taking place or will take place, or any of the terms, conditions or other facts with respect to the possible acquisition of the Property.
5. Although you have endeavored to include in the Evaluation Material information which you believe to be relevant for the purpose of helping us in our evaluation of the Property for possible purchase, we understand and acknowledge that neither Owner nor GREC make any representation or warranty to us as to the accuracy or completeness of the Evaluation Material. We agree that Owner and GREC shall not have any liability to us as a result of our use of the Evaluation Material and it is understood that we are expected to perform and are responsible for such due diligence investigations and inspections of the Property, including investigation of any environmental conditions, as we deem necessary or desirable and as permitted by agreement with Owner.
6. We represent that no brokers or agents represent us, or will represent us, in any possible transaction involving the Property, and we hereby agree to indemnify and hold GREC and Owner harmless from any claims (and any liabilities or expenses associated therewith) relating to the Property by any broker, agent or person acting in a similar capacity with whom we have dealt in connection thereto. We have been advised that GREC is acting on behalf of Owner as exclusive broker in connection with the sale of the Property.
7. We agree not to contact the Property or any of its personnel directly without prior permission from the Chief Executive Officer of the Owner.
8. Notwithstanding any other provision hereof to the contrary, neither you nor Owner is under any obligation to engage in or continue any negotiations relating to the possible implementation of any transaction. Any decision to proceed with negotiations or to consummate an agreement shall be in

each of Owner's and your sole discretion and this Agreement creates no obligation on either you or Owner with respect thereto. Each of you and Owner shall bear its own costs and expenses in connection with the activities contemplated by this Agreement.

9. Additionally, we agree not to solicit for employment any Owner employees to whom we may be introduced or with whom we otherwise had contact as a result of our consideration of a Potential Transaction for a period of one year after the date of this Agreement, provided that we shall not be restricted in any general solicitation for employees (including through the use of employment agencies) not specifically directed at any such persons, and provided further that we shall not be restricted in hiring any such person who responds to any such general solicitation.
10. We hereby acknowledge that we are aware, and further agree that we will advise our Representatives, that Federal and State securities laws limit the circumstances in which any person who has material, non-public information about a company from purchasing or selling securities of such a company and prohibit any such person from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. Moreover, we agree that we shall not use any of the Evaluation Materials to purchase or attempt to purchase or otherwise engage in trading of claims of the Owner (including, without limitation, claims held by trade creditors, bank lenders, other secured and unsecured lenders or any other parties).
11. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to applicable principles of conflicts of law. Venue for any action to enforce the provisions of this Agreement shall be properly laid in any state or federal court sitting in or comprising Cook County, Illinois. This Agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof. No amendments, changes or modifications may be made to this Agreement without the express written consent of each of the parties hereto. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by the Company in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder.
12. The term of this Agreement shall be for one (1) year from the date of execution.

[Signature Page to Follow]

Sincerely,

Company (*please print*)

Name (*please print*)

Title

Signature

Date

Please confirm:

Address: _____

City: _____ State: _____ Zip _____ Phone: (____) _____

Email Address: _____

**PLEASE RETURN ALL PAGES OF THE EXECUTED CONFIDENTIALITY AGREEMENT TO,
DAVID.KLIEWER@GRANDBRIDGE.COM OR JAY.JORDAN@GRANDBRIDGE.COM**

Exhibit 2 to Bid Procedures Order

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§ Chapter 11
	§
EVANGELICAL RETIREMENT	§ Case No. 23-07541
HOMES OF GREATER CHICAGO,	§
INCORPORATED d/b/a FRIENDSHIP	§
VILLAGE OF SCHAUMBURG,	§
	§
FEIN: 36-2815382,	§
	§
Debtor.	§ Hon. Timothy A. Barnes

NOTICE OF SALE

PLEASE TAKE NOTICE that on June 14, 2023, the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned case (the “**Chapter 11 Case**”), filed a *Motion of the Debtor for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (B) Approving the Form and Manner of Notice thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief; and (II) an Order (A) Approving the Asset Purchase Agreement Between the Debtor and the Successful Bidder, and (B) Authorizing the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief* [Dkt. No. ____] (the “**Bid Procedures and Sale Motion**”).¹ The Debtor seeks to complete a sale (the “**Transaction**”) of substantially all of its assets (the “**Assets**”) to a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction (the “**Auction**”) free and clear of all liens, claims, encumbrances, and other interests pursuant to Bankruptcy Code section 363.

PLEASE TAKE FURTHER NOTICE that, on ____ __, 2023 the Bankruptcy Court entered an order [Dkt. No. ____] (the “**Bid Procedures Order**”) approving the Bid Procedures set forth in the Bid Procedures and Sale Motion (the “**Bid Procedures**”), which set the key dates and times related to the sale of the Debtor’s Assets under the asset purchase agreement with the Successful Bidder. **All interested bidders should carefully read the Bid Procedures.** To the extent that there are any inconsistencies between the Bid Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bid Procedures shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures, the Debtor must receive a letter of interest (the “**Stalking Horse LOI**”) from any party interested in serving as a stalking horse bidder in connection with the Transaction on or before **July 11, 2023 at 4:00 p.m. (prevailing Central Time)** or such later date as may be agreed to by the Debtor (in

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bid Procedures and the Bid Procedures and Sale Motion. Additionally, this notice is qualified in its entirety by the Bid Procedures Order.

consultation with the Consultation Parties) (the “**Stalking Horse LOI Deadline**”). The LOI must be sent to the following at or before the Stalking Horse LOI Deadline: (i) the Debtor, Friendship Village of Schaumburg, 350 W. Schaumburg Road, Schaumburg, Illinois 60194 (Attn: Michael Flynn, CFO Mike.Flynn@myFSO.org); (ii) Jeremy R. Johnson and Trinitee Green, Polsinelli P.C., 150 North Riverside Plaza, Suite 3000, Chicago, Illinois 60606 (Attn: jeremy.johnson@polsinelli.com and tggreen@polsinelli.com); and Dopkelaw LLC, 1535 W. Schaumburg Road, Suite 204, Schaumburg, Illinois 60194 (Attn: Bruce Dopke, bd@dopkelaw.com); and (iii) the Debtor’s real estate broker, Grandbridge Real Estate Capital, 401 East Jackson Street, Floor 19, Tampa, Florida 33602 (Attn: david.kliwer@grandbridge.com).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures, the Debtor must receive a Qualified Bid from interested bidders in writing, on or before **September 29, 2023 at 4:00 p.m. (prevailing Central Time)** or such later date as may be agreed to by the Debtor (in consultation with the Consultation Parties) (the “**Overbid Deadline**”). To be considered, Qualified Bids must be sent to the following at or before the Overbid Deadline: (i) the Debtor, Friendship Village of Schaumburg, 350 W. Schaumburg Road, Schaumburg, Illinois 60194 (Attn: Michael Flynn, CFO Mike.Flynn@myFSO.org); (ii) Jeremy R. Johnson and Trinitee Green, Polsinelli P.C., 150 North Riverside Plaza, Suite 3000, Chicago, Illinois 60606 (Attn: jeremy.johnson@polsinelli.com and tggreen@polsinelli.com); and Dopkelaw LLC, 1535 W. Schaumburg Road, Suite 204, Schaumburg, Illinois 60194 (Attn: Bruce Dopke, bd@dopkelaw.com); and (iii) the Debtor’s real estate broker, Grandbridge Real Estate Capital, 401 East Jackson Street, Floor 19, Tampa, Florida 33602 (Attn: david.kliwer@grandbridge.com).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, if the Debtor receives more than one Qualified Bid by the Overbid Deadline, the Auction will be conducted on **October 3, 2023, at 10:00 a.m. (prevailing Central Time)** at the offices of Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606, or at such other location as identified by the Debtor via notice to Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, the Debtor has designated certain Assigned Contracts that may be assumed or assumed and assigned to the Successful Bidder. No later than ____ __, 2023, or as soon as practicable thereafter, the Debtor shall send a notice to each counterparty to an Assigned Contract setting forth the Debtor’s calculation of the cure amount, if any, that would be owing to such counterparty if the Debtor decided to assume or assume and assign such Assigned Contract, and alerting such non-debtor party that its contract may potentially be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, any counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of its Assigned Contract(s) must file with the Bankruptcy Court and serve an objection (a “**Cure Objection**”) so that it is actually received on or before **4:00 p.m. CT on ____ __, 2023** by: (a) Proposed counsel for the Debtor, (i) Polsinelli PC, 600 3rd Ave., 42nd Fl., New York, NY 10016, Attn: Jeremy R. Johnson, jeremy.johnson@polsinelli.com; (ii) Polsinelli PC, 150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 Attn: Trinitee G. Green, tggreen@polsinelli.com; (iii) Dopkelaw LLC, 1535 W.

Schaumburg Road, Schaumburg, IL 60194, Attn: Bruce Dopke, bd@dopkelaw.com; (b) counsel for the Bond Trustee, Mintz Levin Cohn Ferris Glovsky and Popeo PC, Attn: Daniel Bleck, dsbleck@mintz.com, and Tim McKeon, tjmckeon@mintz.com; (c) the Office of the United States Trustee for the Northern District of Illinois, Attn: Jeffrey L. Gansberg, jeffrey.l.gansberg@usdoj.gov; and (d) counsel to any committee appointed in this Chapter 11 Case (collectively, the “**Notice Parties**”). Where a counterparty to an Assigned Contract files a timely objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that counterparty’s Assigned Contract, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtor’s ability to assign the Assigned Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Assets to the Successful Bidder (the “**Sale Hearing**”) before the Honorable Timothy A. Barnes, or any judge sitting in her stead, in Room 744 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604 on **October 10, 2023 at _____ a.m. (prevailing Central Time)**, or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Assets to the Successful Bidder must be filed and served so that they are received no later than **October 5, 2023 at 4:00 p.m. (prevailing Central Time)** by the Notice Parties (as defined above).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bid Procedures, any Contract Counterparty that objects to the adequacy of the assurance set forth in the Assumption Notice must file an objection (an “**Adequate Assurance Objection**”) with the Bankruptcy Court no later than **October 9, 2023 at 4:00 p.m. (prevailing Central Time)**.

PLEASE TAKE FURTHER NOTICE that the Debtor is seeking to waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) in order for the Sale to close immediately upon entry of the Sale Order by this Court.

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bid Procedures and Sale Motion, the Bid Procedures Order, and the Bid Procedures, which shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. A copy of the Bid Procedures and Sale Motion, the Bid Procedures, and the Bid Procedures Order may be obtained (a) upon request to **Stretto** (the notice and claims agent retained in the Chapter 11 Case) by calling **855.886.6266 (toll-free)** or **949.784.0581 (international)**; (b) by visiting the website maintained in the Chapter 11 Case at <https://cases.stretto.com/FVS>, or (c) for a fee via PACER by visiting <https://ecf.ilnb.uscourts.gov/>.

Dated: _____, 2023
Chicago, Illinois

/s/ DRAFT

Trinitee G. Green (ARDC # 6323508)
POLSINELLI PC
150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
Telephone: (312) 819-1900
Facsimile: (312) 819-1910
tggreen@polsinelli.com

-and-

Jeremy R. Johnson (Admitted *Pro Hac Vice*)
Michael V. DiPietro (Admitted *Pro Hac Vice*)
POLSINELLI PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
mdipietro@polsinelli.com

*Proposed Co-Counsel to the Debtor
and Debtor in Possession*

Exhibit 3 to Bid Procedures Order

Cure and Possible Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§ Chapter 11
	§
EVANGELICAL RETIREMENT	§ Case No. 23-07541
HOMES OF GREATER CHICAGO,	§
INCORPORATED d/b/a FRIENDSHIP	§
VILLAGE OF SCHAUMBURG,	§
	§
FEIN: 36-2815382,	§
	§
Debtor.	§ Hon. Timothy A. Barnes

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED
LEASES THAT MAY POTENTIALLY BE ASSUMED AND ASSIGNED AND
REGARDING CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE that on June 9, 2023 (the “**Petition Date**”), the above-captioned debtor and debtor in possession (the “**Debtor**”) filed a petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Illinois (the “**Bankruptcy Court**”). On June 14, 2023, the Debtor filed a motion (the “**Bid Procedures and Sale Motion**”) with the Bankruptcy Court, pursuant to which the Debtor proposes to sell its business or assets (the “**Assets**”).

PLEASE TAKE FURTHER NOTICE that on _____, 2023, the Bankruptcy Court entered an order [Dkt. No. ____] (the “**Bid Procedures Order**”) approving bid procedures (the “**Bid Procedures**”), which set key dates, times and procedures related to the sale of the Debtor’s Assets. Pursuant to the Bid Procedures Order, the Debtor is delivering this notice (the “**Cure and Possible Assumption and Assignment Notice**”) to (i) identify those executory contracts and unexpired leases that may be assumed and assigned to a purchaser of the Assets and (ii) propose the cure amounts with respect to the executory contracts and unexpired leases identified herein. An executory contract and/or unexpired lease with respect to which you have been identified as a counterparty, as well as the proposed cure amount, is set forth on the attached **Schedule 1**.

Pursuant to the Bid Procedures, the Debtor may assume the Executory Contract(s) or Unexpired Lease(s) to which you are a counterparty. Also pursuant to the Bid Procedures, the Debtor may assign the Executory Contract(s) or Unexpired Lease(s) to the successful bidder (the “Successful Bidder”) with respect to the Debtor’s Assets and following an Auction, if an Auction occurs as currently scheduled for October 3, 2023, at 10:00 a.m. (prevailing Central Time).

PLEASE TAKE FURTHER NOTICE that if you disagree with or object to the Debtor’s ability to assume an executory contract or unexpired lease and/or if you disagree with or object to the proposed Cure Amount, **you must file a written objection with the Bankruptcy Court no**

later than _____, 2023 at 4:00 p.m. (prevailing Central Time), (the “Objection Deadline”) and serve such objection on the following notice parties:

Counsel to the Debtor	Counsel to Bond Trustee
Polsinelli PC 150 N. Riverside Plaza Suite 3000 Chicago, IL 60606 Attn: Trinitee G. Green tggreen@polsinelli.com Polsinelli PC 600 Third Avenue 42nd Floor New York, New York 10016 Attn: Jeremy R. Johnson jeremy.johnson@polsinelli.com Dopkelaw LLC 1535 W. Schaumburg Road Schaumburg, IL 60194 Attn: Bruce Dopke bd@dopkelaw.com	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 Attn: Daniel Bleck DSBleck@mintz.com Tim McKeon tjmckeon@mintz.com
Clerk of the Bankruptcy Court	The United States Trustee
United States Bankruptcy Court for the Northern District of Illinois Attn: Clerk of the Court 219 S. Dearborn Street Chicago, IL 60604	United States Department of Justice Office of the United States Trustee 219 South Dearborn Street, Room 873 Chicago, IL 60604 Attn: Jeffrey L. Gansberg jeffrey.l.gansberg@usdoj.gov
Counsel to the Committee	
If appointed	

If no objection to the proposed Cure Amount or potential assumption and assignment of your Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder is filed by the Objection Deadline, **you will be deemed to have stipulated that the Cure Amount as determined by the Debtor and set forth above is correct and you shall be forever barred, estopped, and enjoined from (a) asserting any additional cure amount with respect to the Executory Contract(s) and/or Unexpired Lease(s) or (b) objecting to the assumption and assignment of the Executory Contract(s) and/or Unexpired Lease(s) to the Successful Bidder.**

PLEASE TAKE FURTHER NOTICE THAT the presence of an Executory Contract or Unexpired Lease on Schedule 1 does not constitute an admission that such any listed Executory Contract or Unexpired Lease is an executory contract or unexpired lease within the meaning of Bankruptcy Code section 365, or that such Executory Contract or Unexpired Lease will be assumed by the Debtor and assigned to Successful Bidder or purchaser of the Assets. The Debtor reserves all of its rights to send out additional notices concerning additional or other Executory Contracts and Unexpired Leases subject to the provisions of any order by the Bankruptcy Court.

Dated: _____, 2023
Chicago, Illinois

/s/ DRAFT

Trinitee G. Green (ARDC # 6323508)
POLSINELLI PC
150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
Telephone: (312) 819-1900
Facsimile: (312) 819-1910
tggreen@polsinelli.com

-and-

Jeremy R. Johnson (Admitted *Pro Hac Vice*)
Michael V. DiPietro (Admitted *Pro Hac Vice*)
POLSINELLI PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com
mdipietro@polsinelli.com

*Proposed Co-Counsel to the Debtor
and Debtor in Possession*

Schedule 1 to Cure and Potential Assumption and Assignment Notice

Executory Contracts and Unexpired Leases that May Be Assumed and Assigned¹

Counterparty	Description of Contracts or Leases	Cure Amount

¹ The presence of a contract or lease on this Schedule 1 does not constitute an admission by the Debtor that such contract is an executory contract or such lease is an unexpired lease pursuant to Bankruptcy Code section 365 or any other applicable law, and the Debtor reserves all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court. If no cure amount is listed, Debtor believes that no amount to cure defaults under the respective contracts and/or leases is owed by the Debtor.

Exhibit 4 to Bid Procedures Order

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§ Chapter 11
	§
EVANGELICAL RETIREMENT	§ Case No. 23-07541
HOMES OF GREATER CHICAGO,	§
INCORPORATED d/b/a FRIENDSHIP	§
VILLAGE OF SCHAUMBURG,	§
	§
FEIN: 36-2815382,	§
	§
Debtor.	§ Hon. Timothy A. Barnes

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

PLEASE TAKE NOTICE that on June 9, 2023 (the “**Petition Date**”), the above-captioned debtor and debtor in possession (the “**Debtor**”) filed a petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Illinois (the “**Bankruptcy Court**”). On June 14, 2023, the Debtor filed a motion (the “**Bid Procedures and Sale Motion**”)¹ to sell substantially all of its assets (the “**Assets**”) free and clear of all liens, claims, encumbrances, and other interests (the “**Sale**”) and assume and assign certain of its executory contracts and unexpired leases (collectively, the “**Contracts**”) to the purchaser of the Assets.²

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of its Assets consistent with the bid procedures (the “**Bid Procedures**”) approved by the Court by the entry of an order on ____ __, 2023 (the “**Bid Procedures Order**”).³ The Bid Procedures include, among other things, procedures for the assumption and assignment of the Contracts (the “**Assumption Procedures**”).

¹ *Motion of the Debtor for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (B) Approving the Form and Manner of Notice thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief; and (II) an Order (A) Approving the Asset Purchase Agreement Between the Debtor and the Successful Bidder, and (B) Authorizing the Sale of Substantially All of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief* [Dkt. No. ____]

² Capitalized terms used but not defined herein shall have all the meanings ascribed to them in the Bid Procedures and Sale Motion.

³ *Order (A) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling an Auction and a Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granted Related Relief* [Dkt. No. ____].

PLEASE TAKE FURTHER NOTICE that on ___, 2023, the Debtor filed a notice of executory contracts and unexpired leases that could potentially be assumed and assigned to the Successful Bidder [Dkt. No. --] and, in accordance with the Bid Procedures Order, such notice provided the proposed cure amounts related to such identified executory contracts and unexpired leases. The Deadline for parties to object to the proposed cure amounts or the Debtor's ability to assume and assign the executory contracts and/or unexpired leases was _____, 2023.

PLEASE TAKE FURTHER NOTICE that, accordingly, pursuant to the Bid Procedures Order, the Debtor has selected [] as the Successful Bidder for the Sale of its Assets and, by this notice, the Debtor notifies you that the Debtor and the Successful Bidder have determined, in the exercise of their business judgment, that the Contracts and any modifications thereto set forth on Schedule 1 attached hereto (collectively, the "**Assigned Contracts**") shall be assumed and assigned to the Successful Bidder, subject to the Successful Bidder's payment of the established cure amounts set forth on Schedule 1, or such other cure amounts as may be agreed to by the parties.

PLEASE TAKE FURTHER NOTICE that the Successful Bidder has the right under certain circumstances to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts prior to the consummation of the Sale.

PLEASE TAKE FURTHER NOTICE that copies of the Bid Procedures and Sale Motion, the Bid Procedures, and the Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request to Stretto (the notice and claims agent retained in the Chapter 11 Case) by calling **855.886.6266 (toll-free)** or **949.784.0581 (international)**; (b) by visiting the website maintained in the Chapter 11 Case at <https://cases.stretto.com/FVS>, or (c) for a fee via PACER by visiting <https://ecf.ilnb.uscourts.gov/>.

PLEASE TAKE FURTHER NOTICE that any Contract Counterparty that disagrees with and objects to the adequacy of the Successful Bidder's assurance of continued performance set forth in Schedule 1 hereto must file an objection with the Bankruptcy Court and serve such objection on the following parties no later than **October 9, 2023 at 4:00 p.m. Central Time** (the "**Objection Deadline**"):

Counsel to the Debtor	Counsel to Bond Trustee
Polsinelli PC 150 N. Riverside Plaza Suite 3000 Chicago, IL 60606 Attn: Trinitee G. Green tggreen@polsinelli.com Polsinelli PC 600 Third Avenue 42nd Floor New York, New York 10016 Attn: Jeremy R. Johnson	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, MA 02111 Attn: Daniel Bleck DSBleck@mintz.com Tim McKeon tjmckeon@mintz.com

jeremy.johnson@polsinelli.com Dopkelaw LLC 1535 W. Schaumburg Road Schaumburg, IL 60194 Attn: Bruce Dopke bd@dopkelaw.com	
Clerk of the Bankruptcy Court	The United States Trustee
United States Bankruptcy Court for the Northern District of Illinois Attn: Clerk of the Court 219 S. Dearborn Street Chicago, IL 60604	United States Department of Justice Office of the United States Trustee 219 South Dearborn Street, Room 873 Chicago, IL 60604 Attn: Jeffrey L. Gansberg jeffrey.l.gansberg@usdoj.gov
Counsel to the Committee	
If appointed	

Dated: _____, 2023
Chicago, Illinois

/s/ DRAFT

Trinitee G. Green (ARDC # 6323508)
POLSINELLI PC
150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
Telephone: (312) 819-1900
Facsimile: (312) 819-1910
tggreen@polsinelli.com

-and-

Jeremy R. Johnson (Admitted *Pro Hac Vice*)
Michael V. DiPietro (Admitted *Pro Hac Vice*)
POLSINELLI PC
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
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jeremy.johnson@polsinelli.com
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*Proposed Co-Counsel to the Debtor
and Debtor in Possession*

Schedule 1 to Assumption Notice

Assigned Contracts¹

Counterparty	Description of Assigned Contracts or Leases	Cure Amount

¹ The presence of a contract or lease on this Schedule 1 does not constitute an admission by the Debtor that such contract is an executory contract or such lease is an unexpired lease pursuant to Bankruptcy Code section 365 or any other applicable law, and the Debtor reserves all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

Exhibit B

PROPOSED FORM OF SALE ORDER

[To be filed prior to the Sale Hearing]