IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DERMTECH, INC., *et al.*,[1]	Case No. 24-11378 (JTD)
Debtors.	(Jointly Administered)
	Objection Deadline: **July 5, 2024 at 4:00 p.m. (ET)**
	Hearing Date: **July 16, 2024 at 1:00 p.m. (ET)**

DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF, (B) APPROVING PROCEDURES RELATED TO THE DESIGNATION OF A STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION AND A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (D) ESTABLISHING CERTAIN ASSUMPTION AND ASSIGNMENT PROCEDURES AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) AUTHORIZING AND APPROVING THE DEBTORS' ENTRY INTO AN ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACTS, AND (D) GRANTING RELATED RELIEF

By this motion (this "Motion"), DermTech, Inc. and DermTech Operations, Inc. (each, a "Debtor" and collectively, the "Debtors"), as debtors and debtors in possession in the above-captioned chapter 11 cases, by and through their undersigned proposed counsel, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), rules 2002, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1, 6004-1 and 9006-1 of the Local Rules of

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), respectfully request entry of:

(i) an order (the "Bidding Procedures Order"), substantially in the form attached hereto as **Exhibit A**:

(a) approving proposed auction and bidding procedures (the "Bidding Procedures") in connection with the sale (or series of sales) (collectively, the "Sale") of all or substantially all of the Debtors' assets (the "Assets") in the form attached to the Bidding Procedures Order as Exhibit 1, and approving the form and manner of notice thereof, including the form of notice attached to the Bidding Procedures Order as Exhibit 2,

(b) approving procedures related to the designation of a Stalking Horse Bidder (as defined below),

(c) scheduling an auction (the "Auction") and a sale hearing (the "Sale Hearing") in connection with the Sale,

(d) establishing procedures for the assumption and assignment (the "Assumption and Assignment Procedures") of certain executory contracts and unexpired leases (each, an "Assumed Contract," and collectively, the "Assumed Contracts") and the form and manner of notice thereof, including the form of notice attached to the Bidding Procedures Order as Exhibit 3, and

(e) granting related relief; and

(ii) an order (the "Sale Order"):

(a) authorizing and approving the Debtors' entry into an asset purchase agreement (the "Purchase Agreement") with the Successful Bidder(s) (as defined below) or Next-Highest Bidder(s) (as defined below), as applicable,

(b) authorizing the Sale of the Assets to the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances (the "Encumbrances"), except for certain assumed liabilities,

(c) authorizing and approving the assumption and assignment of the Assumed Contracts in connection with the Sale, including proposed cure amounts (if any), and

(d) granting related relief.

In support of this Motion, the Debtors incorporate by reference the *Declaration of Bret Christensen, President and Chief Executive Officer of the Debtors, in Support of the Debtors'*

Chapter 11 Petitions and First Day Motions [D.I. 12] (the "First Day Declaration"),[2] filed on the Petition Date (as defined below), and the *Declaration of Ann M. Miller, Proposed Investment Banker to the Debtors, in Support of the Debtors' Bidding Procedures Motion* (the "Miller Declaration"), filed contemporaneously herewith, and further respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these chapter 11 cases and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

PRELIMINARY STATEMENT

4. The Debtors commenced these chapter 11 cases to continue their months-long strategic initiatives with the goal of pursuing a value-maximizing sale of the Assets and an orderly wind-down of their business. As described in the First Day Declaration, following approximately six months of restructuring and sale efforts, in consultation with TD Cowen, their proposed

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

investment banker, and the Debtors' other advisors, the Debtors determined that a sale process under chapter 11 of the Bankruptcy Code is the best path forward to ensure that the Debtors have sufficient liquidity to consummate a sale transaction and maximize value for the Debtors' estates and their stakeholders. The Debtors also believe that marketing their assets with the benefits afforded to a buyer under section 363 of the Bankruptcy Code will provide the Debtors with significant advantages that will inure to the benefit of all stakeholders.

5. Accordingly, the Debtors have filed this Motion to approve the Bidding Procedures while simultaneously working to identify a Stalking Horse Bidder for the Assets. This effort is intended to culminate in a competitive Auction, where interested parties will be given the opportunity to bid on the Assets. The proposed Bidding Procedures will ensure that the Debtors' marketing and sale process is conducted openly and in a manner that will encourage bidders to submit bids to best maximize the value of the Assets while simultaneously reserving the Debtors' right to designate a Stalking Horse Bidder.

6. For these reasons, and the reasons more fully articulated below, the Debtors seek entry of the Bidding Procedures Order, approval to conduct the marketing and sale process in accordance with the Bidding Procedures, authorization to designate a Stalking Horse Bidder in accordance with the Bidding Procedures, and, following the completion of the sale process, entry of the Sale Order.

RELEVANT BACKGROUND

A. Overview

7. On June 18, 2024 (the "Petition Date"), each Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to

Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committee of unsecured creditors has been appointed in these chapter 11 cases.

8. The Debtors are a molecular diagnostic company that develops and markets novel non-invasive genomics tests to aid in the evaluation and management of melanoma. The Debtors' flagship product is their DermTech Melanoma Test™ (the "DMT"), a laboratory developed scalable genomics assay to clinically assess pigmented skin lesions for melanoma using non-invasive collection of patient samples using adhesive patches known as the DermTech Smart Sticker™ (together with the DMT and the Debtors' assays, the "Products"). In contrast to the existing standard of care of using a scalpel to biopsy suspicious lesions, the Products provide an objective, non-invasive, higher negative predictive value, and lower cost means of assessing pigmented lesions suspicious of melanoma and guiding the clinician's decision of whether to biopsy. The DMT has been demonstrated to rule out melanoma with a negative predictive value of 99%. The DMT is performed in the Debtors' molecular laboratory in San Diego, California. The Debtors also provide research laboratory services to several pharmaceutical companies which access the Debtors' technology on a contract basis to further clinical trials and studies related to other skin diseases and to measure the response of drugs under development.

9. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these chapter 11 cases, is set forth in detail in the First Day Declaration.

B. The Debtors' Prepetition Sale and Marketing Efforts

10. As discussed in the First Day Declaration, in early November 2023 through the end of December 2023, TD Cowen led confidential fundraising efforts on behalf of the Debtors, which only yielded highly dilutive financing offers. In January of 2024, the Debtors engaged TD Cowen

to serve as their investment banker to assist in canvassing the market for interested buyers of the Debtors' business. Upon its retention, TD Cowen immediately began conducting due diligence with respect to the Assets and the Debtors' operations and began to assist the Debtors in analyzing their financial and operational position and exploring strategic transactions. The Debtors' management worked closely with the Debtors' advisors to explore various restructuring options, including an extensive prepetition search for a strategic partner or acquirer of substantially all of the Debtors' assets led by TD Cowen, and an operational review facilitated by AlixPartners and WSGR. As of the Petition Date, TD Cowen had contacted 49 potential bidders for the Assets. Approximately 16 parties executed non-disclosure agreements and 12 parties received access to the virtual data room. The Debtors received initial indications of interest from various parties, including a commercial collaboration proposal, but none of these proposals were sufficient to facilitate an out-of-court transaction. The Debtors determined that pivoting to an in-court sale process was the best option available to reach a value-maximining transaction and remain in active discussions with several parties regarding a potential transaction.

C. The Debtors' Proposed Sale Process

11. Through these chapter 11 cases, the Debtors intend to continue to build upon their prepetition marketing efforts by marketing the Assets more openly, including by contacting potential purchasers that may be interested in only certain business segments or assets. The Debtors believe that marketing the Assets post-petition pursuant to a section 363 sale under the Bankruptcy Code (or a chapter 11 plan should a buyer prefer a different structure) provides the best path forward to consummating a value-maximizing transaction, particularly in light of the ability to broadly market and sell the Assets free and clear of undesirable liabilities**.**

12. In the months leading up to the commencement of these chapter 11 cases, the Debtors implemented a variety of cost reduction initiatives to reduce overhead and extend their

timeline to consummate a value maximizing transaction. Nonetheless, the Debtors continue to face liquidity constraints, and maximizing the value of the Debtors' estates for the benefit of all their stakeholders will depend in large part on the Debtors proceeding through these chapter 11 cases in a manner that is both efficient and minimizes administrative expenses. Accordingly, and as further described below, the Debtors' proposed sale timeline (the "Sale Timeline") is as follows:

Date	**Deadline/Event**
July 16, 2024	Bidding Procedures Hearing
One (1) business day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to file and serve the Sale Notice
One (1) business day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for Debtors to file and serve the Assumption and Assignment Notice and Cure Schedule
Five (5) business days after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to publish the Sale Notice
July 24, 2024, at 4:00 p.m. (ET)	Stalking Horse Supplement Deadline
Fourteen (14) calendar days after service of the Assumption and Assignment Notice, at 4:00 p.m. (ET)	Deadline to object to the Debtors' proposed assumption and assignment of the Assumed Contracts and related Cure Costs
August 7, 2024, at 4:00 p.m. (ET)	Deadline to object to the Sale[3] of the Assets
August 7, 2024, at 5:00 p.m. (ET)	Bid Deadline
August 9, 2024, starting at 10:00 a.m. (ET)	Auction (if necessary)
As soon as practicable after conclusion of the Auction	Deadline to file and serve Notice of Successful Bidder(s)
At the Sale Hearing	Deadline to object to (i) conduct of the Auction and (ii) ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance

[3] This objection deadline applies to all objections to the Sale of the Assets to a Successful Bidder, with the exception of objections related solely to conduct of the Auction, the identity of the Successful Bidder(s), adequate assurance of future performance by the Successful Bidder(s), and the assumption and assignment of contracts and related cure costs.

Date	Deadline/Event
August 14, 2024 (subject to Court availability)	Sale Hearing
On or prior to August 29, 2024	Closing
TBD	Assumption/Assignment Hearing (if necessary)

13. The Debtors respectfully submit that the Proposed Sale Timeline set forth above is reasonable and necessary under the circumstances of these chapter 11 cases. The Proposed Sale Timeline will allow the Debtors to build off the months' long prepetition marketing process and provide Potential Bidders sufficient time to formulate bids for the Assets. In addition to the Debtors' prepetition marketing efforts, the Debtors will continue to actively market the Assets post-petition, including by contacting Potential Purchasers that may be interested in only certain business segments or assets. Moreover, relevant information regarding the Debtors' business has been made available in the Data Room (as defined in the Bidding Procedures), allowing Potential Bidders (subject to the execution of a Confidentiality Agreement (as defined below)) to immediately conduct due diligence on the Assets.

THE PROPOSED BIDDING PROCEDURES[4]

14. The Debtors are requesting approval of the Bidding Procedures, which describe, among other things, (i) the assets available for sale, (ii) the manner in which bids become "qualified," (iii) the coordination of diligence efforts among the bidders and the Debtors, (iv) the receipt and negotiation of bids received, (v) the conduct of any Auction, (vi) the selection and approval of the Successful Bidder and the selection of the Next-Highest Bidder (as defined below), and (vii) the designation and approval of the Stalking Horse Bidder, Stalking Horse APA, and Bid

[4] Capitalized terms used in this section but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

Protections (as applicable). The Bidding Procedures reflect the Debtors' objective of conducting the sale process in a controlled, fair, and open, manner while ensuring that the highest or best bid is generated for the Assets. The following is a summary of the proposed Bidding Procedures[5] as required by Local Rule 6004-1.

15. Confidentiality Agreement. Unless otherwise ordered by the Court for cause shown, to participate in the Bidding Process, each person or entity must enter into (unless previously entered into) with the Debtors, on or before the Bid Deadline, a confidentiality agreement in form and substance satisfactory to the Debtors (the "Confidentiality Agreement"). Each such person that enters into a Confidentiality Agreement with the Debtors on or before the Bid Deadline is hereinafter referred to as a "Potential Bidder." After a Potential Bidder enters into a Confidentiality Agreement with the Debtors and demonstrates the financial wherewithal to potentially consummate a sale transaction, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information (including, if applicable, financial data) with respect to the Assets.

16. Designation of the Stalking Horse Bidder. The Debtors may, at any time prior to the Auction, in consultation with any statutory committee appointed in these chapter 11 cases and any other parties that the Debtors deem appropriate (collectively, the "Consultation Parties"), designate a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as the stalking horse bid (the "Stalking Horse Bid"), and any asset purchase agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (the "Stalking Horse

[5] Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. To the extent that there is any conflict between the summary contained herein and the actual terms and conditions of the Bidding Procedures reflected in Exhibit 1 to the Bidding Procedures Order, the terms and conditions of the Bidding Procedures shall control in all respects.

APA") will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids, subject to higher or otherwise better offers at the Auction. If the Stalking Horse Bid is not selected as the Successful Bid, the Stalking Horse Bidder may still serve as the Next-Highest Bidder (as defined below). Notwithstanding any of the foregoing, the Debtors are not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one.

17. Timing of the Designation of the Stalking Horse Bidder. In the event that the Debtors designate a Stalking Horse Bidder and enter into the Stalking Horse APA on or prior to **July 24, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Stalking Horse Supplement Deadline"), the Debtors shall file a supplement to the Motion (the "Stalking Horse Supplement") seeking approval of the same, with no less than five (5) business days' notice of the objection deadline (the "Stalking Horse Objection Deadline") to the U.S. Trustee, any statutory committee appointed in these chapter 11 cases, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in these chapter 11 cases (the "Stalking Horse Notice Parties") with no further notice being required; *provided* that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, the Stalking Horse Bidder's parent company or sponsor), (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (d) specifies any proposed bid protections (the "Bid Protections"), (e) attaches the Stalking Horse APA; and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections.

18. In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors may seek Court

approval on an expedited basis of designation of the Stalking Horse Bidder and Stalking Horse APA, including any Bid Protections, and reserve their right to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any such motion, the Debtors will consult with the Consultation Parties with respect to the designation of the Stalking Horse Bidder and the Stalking Horse APA.

19. Objections to the designation of a Stalking Horse Bidder or the Bid Protections (each a "Stalking Horse Objection") shall (a) be in writing, (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties within five (5) business days after the service of the Stalking Horse Supplement.

20. If a timely Stalking Horse Objection is filed, the Debtors will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable. If no timely Stalking Horse Objection is filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the "Stalking Horse Approval Order"), which may be entered without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

21. Upon entry of a Stalking Horse Approval Order and subject to the terms of such order and any Stalking Horse APA, any Bid Protections that are authorized thereby and become due and owing shall constitute administrative expense claims against the Debtors' bankruptcy estates pursuant to section 503(b) of the Bankruptcy Code and shall survive termination of the

Stalking Horse APA. In such case, the Bid Protections shall be payable by the Debtors to the Stalking Horse Bidder on the terms and conditions set forth in the Stalking Horse APA.[6]

22. Determination by the Debtors. Following consultation with the Consultation Parties, the Debtors shall (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence, (b) evaluate Bids from Potential Bidders on any or all of the Assets, (c) negotiate any bid made to acquire any or all of the Assets, and (d) make such other determinations as are provided in the Bidding Procedures.

23. Due Diligence. The Debtors have established the Data Room (as defined in the Bidding Procedures) into which substantial information about the Debtors and their business has been deposited. Except to the extent a Confidentiality Agreement or other agreement provides otherwise, all Potential Bidders will be granted full access to the Data Room. The Debtors, with the assistance of TD Cowen, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. In the event that any such due diligence material is prepared by the Debtors in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide access to such materials to all Potential Bidders.

24. Bid Deadline. On or before **August 7, 2024 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"), a Potential Bidder that desires to make a Bid is required to deliver written copies of its Bid in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to TD Cowen, Attn: Ann M. Miller (email: ann.miller@tdsecurities.com). As soon as reasonably practicable following the Bid Deadline, the Debtors will provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

[6] For the avoidance of doubt, this Motion is not seeking authorization to grant any Bid Protections superpriority administrative expense treatment pursuant to sections 364(c)(1) or 507(b) of the Bankruptcy Code, but the Debtors reserve their rights to do so by filing a separate motion.

25. Bid Requirements.[7] All Bids must comply with the following Bid Requirements:

(a) be accompanied by a letter or email:

(i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtors or their advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder;

(ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;

(iii) stating with specificity the Assets (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale;

(iv) providing, other than as may be exclusively applicable to the Stalking Horse Bidder, if designated, that the Bid is not subject to any break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement, and including an express waiver of any substantial contribution claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets; *provided* that, in the event a Stalking Horse Bidder is designated, all bids must provide consideration to the Debtors of at least the sum of (i) the Stalking Horse Bid, (ii) the Bid Protections (if any), and (iii) a reasonable minimum overbid amount equal to or greater than $250,000, or such other amount determined by the Debtors in consultation with the Consultation Parties ("Incremental Overbid") over the Starting Bid (as defined below) or the Leading Bid (as defined in the Bidding Procedures);

(v) agreeing that the Potential Bidder's offer is binding, unconditional, and irrevocable until two (2) business days after the closing of the Sale;

[7] The Debtors will also consider proposals to acquire any and all of the Assets through a plan of reorganization. Should any such proposal be received prior to the Bid Deadline that the Debtors, in consultation with the Consultation Parties, conclude is in the best interest of the estates and their stakeholders, the Debtors reserve the right to postpone the Auction and proceed toward confirmation of a plan.

(vi) containing a commitment to close the contemplated transaction(s) by a Closing Date (as defined below) of no later than August 29, 2024;

(vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;

(viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Assets, has relied solely upon its own independent review and investigation and/or inspection of any documents and any other information in making the Bid; and

(ix) providing that the Potential Bidder agrees to serve as a backup bidder (the "Next-Highest Bidder") if the Potential Bidder's Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as defined below) (the "Next-Highest Bid") with respect to the relevant Assets through the Closing Date;

(b) be accompanied by (i) an executed purchase agreement in form and substance reasonably satisfactory to the Debtors (a "Qualified Bid Purchase Agreement"), and (ii) if a Stalking Horse APA has been entered into, or if a form purchase agreement is provided, a redline of the executed Qualified Bid Purchase Agreement to reflect any proposed amendments and modifications to the Stalking Horse APA or the form purchase agreement, as applicable, and the applicable schedules and exhibits;

(c) be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), which may include (i) information about the Potential Bidder's financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors' reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iv) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected counterparties to any contracts or leases potentially being assumed and assigned in connection with the Sale and the Consultation Parties in the event that the Debtors determine such bid to be a Qualified Bid (as defined below); and

(d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in the amount of ten percent

> (10%) of the cash consideration of the Bid, which funds will be deposited, prior to the Bid Deadline, into an escrow account to be identified and established by the Debtors (a "Good Faith Deposit"), and (ii) written evidence, documented to the Debtors' satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder's financing) and such other evidence of ability to consummate the transaction(s) as the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtors). The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

26. A Bid received from a Potential Bidder for any portion of the Assets that is determined by the Debtors, in consultation with the Consultation Parties, to meet the above requirements will be considered a "Qualified Bid" and each Potential Bidder that submits such a Qualified Bid will be considered a "Qualified Bidder." The Debtors shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than the earlier of (i) twenty-four (24) hours after such Bids are received, or (ii) August 8, 2024, at 5:00 p.m. (prevailing Eastern Time). For the avoidance of doubt, any Stalking Horse Bid will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder. The Debtors shall inform the Stalking Horse Bidder of the Qualified Bids received no later than the earlier of (i) twenty-four (24) hours after such Bids are received, or (ii) August 8, 2024, at 5:00 p.m. (prevailing Eastern Time).

27. Starting Bid(s). If at least two (2) Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtors will conduct the Auction with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid

is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction for the relevant Assets (the "Starting Bid(s)"). In the event a Stalking Horse Bidder is selected, the Starting Bid shall include the amount provided for in the Stalking Horse Bid plus the amount of any Bid Protections. The Starting Bid(s) will be communicated to Qualified Bidders prior to or at the commencement of the Auction.

28. The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors (in consultation with the Consultation Parties) reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things, the following: (i) the amount and nature of the consideration, including any obligations to be assumed; (ii) the executory contracts and unexpired leases of the Debtors, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (iii) the number, type and nature of any changes to the form of purchase agreement, or Stalking Horse APA, as applicable, requested by each Qualified Bidder; (iv) the extent to which such modifications are likely to delay closing of the sale of the Assets and the cost to the Debtors of such modifications or delay; (v) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (vi) the net benefit to the Debtors' estates (including after taking account of the Bid Protections); (vii) the tax consequences of such Qualified Bid; and (viii) the impact on employees and the proposed treatment of employee obligations.

29. Auction. The Auction, if required, will be conducted on August 9, 2024, starting at 10:00 a.m. (prevailing Eastern Time), either by video conference, at the offices of Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801,

or at such other place as is noticed by the Debtors. Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any other parties the Debtors deem appropriate shall be permitted to attend and observe the Auction in accordance with the Bidding Procedures. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

30. At the Auction, participants will be permitted to increase their Bids and improve their terms in accordance with the Bidding Procedures; *provided* that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for any part or all of the Assets will start at the applicable Starting Bid(s) and will continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Qualified Bidder. Following consultation with the Consultation Parties, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding Process and not in conflict with the Bidding Procedures, the Bankruptcy Code, or applicable orders of the Court.

31. Prior to the conclusion of the Auction, the Debtors will: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction; (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer or collection of offers in respect of the Assets (the "Successful Bid(s)"); (c) inform and consult with the Consultation Parties regarding the foregoing, so long as the Consultation Party is not also a

Potential Bidder; and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the "Successful Bidder(s)") and the amount and other material terms of the Successful Bid(s).

32. After determining the Successful Bid(s) for the Assets, the Debtors may determine, in their reasonable business judgment, in consultation with the Consultation Parties, which Qualified Bid(s) are the Next-Highest Bid(s) for the Assets.

33. Acceptance of Qualified Bids. The Debtors' selection and submission to the Court of the selected Bid as the Successful Bid will not constitute the Debtors' acceptance of the Bid. The Debtors will have accepted a Qualified Bid only when such Qualified Bid has been approved by the Court at the Sale Hearing. If the Successful Bidder does not close the Sale by the date agreed upon by the Debtors and the Successful Bidder, the Debtors shall be authorized, but not required, to close with the Next-Highest Bidder pursuant to further order of the Court.

34. Modification of Bidding Procedures. Following consultation with the Consultation Parties, the Debtors may amend the Bidding Procedures or the Bidding Process at any time and from time to time in any manner that the Debtors determine in good faith will best promote the goals of the process, including extending or modifying any of the dates described herein or included in the Sale Timeline.

35. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified Bidders will be held in escrow and will not become property of the Debtors' bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Court. At the closing of a sale transaction contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of any Next-Highest Bidder

shall be retained until three (3) business days after the applicable Closing Date. The Good Faith Deposits of any other Qualified Bidders will be returned as soon as practicable but no later than ten (10) business days following the Auction.

NOTICE PROCEDURES FOR THE SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

36. The Debtors also request approval of the notice of the Auction, Sale Hearing, and Bidding Procedures (the "Sale Notice"), substantially in the form attached to the Bidding Procedures Order as Exhibit 2.

37. Within one (1) business day of the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will serve the Sale Notice by regular mail and/or email upon: (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (ii) the United States Securities and Exchange Commission; (iii) the United States Department of Justice; (iv) counsel to any statutory committee appointed in these chapter 11 cases; (v) the state attorneys general for all states in which the Debtors conduct business; (vi) the parties included on the Debtors' list of thirty (30) largest unsecured creditors; (vii) all parties who are known by the Debtors to assert liens against the Assets, if any; (viii) all non-Debtor parties to the Assumed Contracts; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or all or substantially all of the Assets in the past six (6) months; and (x) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

38. Within five (5) Business Days of entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will also cause the Sale Notice to be published once in the national edition of *USA Today*, *The Wall Street Journal*, or another publication with similar national circulation, and post the Sale Notice and the Bidding Procedures Order on the

website of the Debtors' proposed claims and noticing agent, Stretto, Inc. The Sale Notice will include, among other things, the date, time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Sale Motion once they are set by the Court.

ASSUMPTION AND ASSIGNMENT PROCEDURES

39. To facilitate the Sale, the Debtors seek authority to assume and assign to any Successful Bidder(s), the Assumed Contracts in accordance with the Assumption and Assignment Procedures provided herein and the form and manner of notice thereof, including the notice substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the "Assumption and Assignment Notice").

40. Within one (1) business day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will file a schedule of cure obligations (the "Cure Schedule") for the Assumed Contracts, which will include a description of each Assumed Contract potentially to be assumed and assigned and the amount, if any, the Debtors believe is necessary to cure such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs"), and serve such Cure Schedule together with the Assumption and Assignment Notice on each of the non-Debtor parties listed therein by first class mail and/or email.

41. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, the Cure Costs set forth on such schedule, must be in writing, filed with the Court no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) calendar days from date of the service of the Cure Schedule, and served on the following parties: (i) proposed counsel to the Debtors, Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801 (Attn: Erin R. Fay, Shane M. Reil, and Catherine C. Lyons (emails:

efay@wsgr.com, sreil@wsgr.com, and clyons@wsgr.com)), (ii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn.: Linda J. Casey (email: linda.casey@usdoj.gov) and Fang Bu (fang.bu@usdoj.gov)); and (iii) counsel to any statutory committee that has been appointed in these chapter 11 cases (collectively, the "Notice Parties"). Any such objections shall set forth a specific default by the Debtors in any Assumed Contracts and claim a specific monetary amount that differs from the amount (if any) specified in the Cure Schedule.

42. If no objection is timely and properly received with respect to an Assumed Contract, then (i) the Cure Cost set forth in the Cure Schedule will be binding upon the non-Debtor party to such Assumed Contract for all purposes in these chapter 11 cases and will constitute a final determination of the total Cure Costs required to be paid by the Successful Bidder in connection with the assumption and assignment of the Assumed Contract; and (ii) the counterparty to the Assumed Contract will (a) be forever barred from asserting any additional cure or other amounts with respect to the Assumed Contract, and the Debtors and the Successful Bidder will be entitled to rely solely upon the Cure Costs set forth in the Assumption and Assignment Notice; (b) be deemed to have consented to the assumption and assignment of such Assumed Contract; and (c) be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract, or that there is any objection or defense to the assumption and assignment of such Assumed Contract.

43. Where a non-Debtor counterparty to an Assumed Contract timely files an objection asserting a cure amount higher or different than the proposed Cure Costs (the "Disputed Cure Amount"), then (y) to the extent that the parties are able to consensually resolve the Disputed Cure

Amount, the Cure Amount shall be as agreed between the parties, or (z) to the extent the parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Assumption/Assignment Hearing to be scheduled by the Court. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing, unless adjourned by agreement of the parties. The Debtors intend to reasonably cooperate with counterparties to Assumed Contracts to attempt to reconcile any differences with respect to a particular cure amount.

THE PROPOSED SALE ORDER

44. Pursuant to the Bidding Procedures Order, the Debtors propose to file a proposed form of the Sale Order no later than fourteen (14) calendar days prior to the Sale Hearing, subject to modifications by the Debtors and the Successful Bidder(s) following the Auction. The Debtors anticipate that the Sale Order will contain certain provisions that require disclosure under Local Rule 6004-1. At this time, the Debtors make the following statements:

(a) Local Rule 6004-1(b)(iv)(A). To the extent a proposed purchaser is an insider (within the meaning of section 101(31) of the Bankruptcy Code), the Debtors will make the necessary disclosures to the Court and take measures to ensure the fairness of the sale process and the proposed transaction.

(b) Local Rule 6004-1(b)(iv)(B). The Debtors do not presently have any agreement between any interested bidder and the Debtors' management or key employees. If any agreements are reached, the Debtors will make the necessary disclosures.

(c) Local Rule 6004-1(b)(iv)(C). To the extent that the Sale Order includes a release in favor of any entity, the Debtors will make the necessary disclosures.

(d) Local Rule 6004-1(b)(iv)(E). The contemplated Closing Date for the Sale is August 29, 2024.

(e) Local Rule 6004-1(b)(iv)(F). The Debtors are requiring Qualified Bids to include a good faith deposit constituting ten percent (10%) of the total cash consideration of the bid.

(f) Local Rule 6004-1(b)(iv)(G). There are currently no interim management or other agreement with any party. If any agreements are reached, the Debtors will make the necessary disclosures.

(g) Local Rule 6004-1(b)(iv)(H). The Debtors are not seeking to release or allocate any sale proceeds without further order of the Court.

(h) Local Rule 6004-1(b)(iv)(I). To the extent the Debtors are seeking to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code, the Debtors will make the necessary disclosure.

(i) Local Rule 6004-1(b)(iv)(J). The Debtors will retain necessary books and records, copies thereof, or include as part of the Purchase Agreement appropriate access to such information, to enable it to administer these chapter 11 cases following any Sale.

(j) Local Rule 6004-1(b)(iv)(K). The Debtors may seek to sell avoidance actions.

(k) Local Rule 6004-1(b)(iv)(L). The Debtors are seeking to sell the Assets free and clear of successor liability claims. The Debtors will likely have unpaid prepetition unsecured claims after the closing of the Sale. No party would likely be willing to purchase the Debtors' assets if it were at risk of liability for those claims under principles of successor liability.

(l) Local Rule 6004-1(b)(iv)(M). The Debtors are seeking to sell the Assets free and clear of all liens, claims, and encumbrances to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code.

(m) Local Rule 6004-1(b)(iv)(O). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for any Sale, as further described below.

RELIEF REQUESTED

45. By this Motion, the Debtors seek entry of (i) the Bidding Procedures Order, (a) scheduling a date for the Auction and Sale Hearing, (b) approving the Bidding Procedures and the form and manner of notice of the Bidding Procedures, (c) approving procedures related to the designation of a Stalking Horse Bidder, (d) establishing the Assumption and Assignment Procedures and the form and manner and notice thereof; (e) scheduling a hearing to authorize and

approve the assumption and assignment of the Assumed Contracts, if applicable, and (g) granting related relief; and (ii) the Sale Order, (a) authorizing and approving the Debtors' entry into the Purchase Agreement with the Successful Bidder(s) or Next-Highest Bidder(s), as applicable, (b) approving the Sale, free and clear of all Encumbrances, (c) authorizing and approving the assumption and assignment of the Assumed Contracts, and (d) granting related relief.

BASIS FOR RELIEF REQUESTED

A. The Court Should Approve the Bidding Procedures

46. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtors "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm.*, 330 F.3d at 573 (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the Debtor's assets").

47. The Debtors and their professional advisors have designed the Bidding Procedures to promote a competitive and fair Bidding Process and, thus, to maximize value for the Debtors' estates and all stakeholders in these chapter 11 cases. Having the option to enter into a Stalking Horse APA with a Stalking Horse Bidder ensures that the Debtors retain flexibility to set the floor from which other potential bidders can submit higher or better offers. As a baseline bid, a Stalking Horse Bid fosters competitive bidding, increasing the likelihood that the purchase price of the Assets will increase, allowing the Debtors to maximize value for the benefit of all stakeholders.

48. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders,

thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors and their fiduciaries and professional advisors to review, analyze, and compare any Bids received to determine which Bids are in the best interests of the Debtors' estates and their stakeholders. The Debtors submit that the Bidding Procedures are necessary and transparent and will derive the highest or best Bids for the Assets. Therefore, the Debtors request that the Court approve the Bidding Procedures.

B. Approval of the Sale is Warranted Under Section 363(b) of the Bankruptcy Code

49. Section 363(b) of the Bankruptcy Code 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). Debtors must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g.*, *In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

50. Courts typically consider the following factors in determining whether a proposed sale meets 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.

In re Decora Indus., Inc., 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

51. When a debtor demonstrates a valid business justification for a decision, a strong presumption arises "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 taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11) (citations omitted).

52. The Debtors submit that their decision to pursue a Sale on the terms set forth in this Motion, including the Sale Timeline, represents a reasonable exercise of their business judgment and, accordingly, the Sale should be approved under section 363(b) of the Bankruptcy Code. The Debtors will continue to conduct an extensive and fulsome process to market the Assets. The open and fair Auction and sale process contemplated by the Bidding Procedures will ensure that the Debtors' estates receive the highest or otherwise best value available for the Assets by allowing the market to dictate the value of the Assets and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Successful Bidder(s) and establish that the Debtors and the Successful Bidder(s) proceeded in good faith.

53. Additionally, the Debtors believe that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtors to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtors believe that the proposed notice procedures fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Sale, the Auction, and the Sale Hearing to the Debtors'

creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets.

54. The Sale, conducted in accordance with the Bidding Procedures, will generate maximum value for the Debtors' estates and represents the best path forward for maximizing recoveries. The Debtors submit that ample business justification exists for the consummation of the Sale and therefore request that the Court approve such Sale.

C. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

55. The Debtors request approval to sell the Assets free and clear of any and all liens, claims, interests and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

(a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(b) such entity consents;

(c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(d) such interest is in bona fide dispute; or

(e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a "free and clear" sale even if only one of the subsections is met).

56. Furthermore, it is well established that a bankruptcy court has the power, pursuant to section 363(f) of the Bankruptcy Code, to approve the sale of the Debtors' assets free and clear

of any claims against the Debtors. *In re TWA Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are "interests in property" within the meaning of section 363(f)); *United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (same).

57. The Debtors submit that the Sale of the Assets free and clear of the Encumbrances will satisfy the requirements of section 363(f) of the Bankruptcy Code. The Debtors also believe that the service of the Sale Notice and any Stalking Horse Supplement in accordance with the terms set forth in this Motion will afford creditors sufficient notice of the Sale, including, as applicable, the designation of the Stalking Horse Bidder and the Stalking Horse APA, and therefore provides additional justification for approval of the Sale free and clear of all Encumbrances.

D. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

58. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code 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. *See* 11 U.S.C. § 363(m).

59. In approving the Sale free and clear of Encumbrances, the Debtors request that the Court find and hold that all purchasers of the Assets purchased in accordance with the Bidding Procedures are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that the selection of the Successful Bidder will be the result of a competitive Bidding Process and arm's-length, good-faith negotiations, and parties in interest will

have the opportunity to review and object to a proposed transaction. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

E. The Assumption and Assignment of the Assumed Contracts Satisfies Section 365 of the Bankruptcy Code

60. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *See, e.g.*, *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that Debtor's decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court").

61. The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten a court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any

default, including compensation for "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1).

62. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("The Code generally favors free assignability as a means to maximize the value of the Debtor's estate."); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtors' assets). Section 365(f)(2)(B) requires that the non-debtor contract counterparty be given adequate assurance of future performance by an assignee. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease, but only such terms that are "material and economically" significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007).

63. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at *23 (D. Del. 2002) ("[A]dequate assurance falls short of an absolute guarantee of payment."). 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) (finding that adequate assurance is

present when prospective assignee of lease from a debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

64. The assumption and assignment of certain executory contracts and unexpired leases is an appropriate exercise of the Debtors' business judgment. Additionally, the Debtors submit that the notice provisions and the objection deadline for counterparties to raise objections to the assumption and assignment of the Assumed Contracts proposed in this Motion are adequate to protect the rights of counterparties to the Debtors' contracts and leases. Furthermore, the Debtors will demonstrate adequate assurance of future performance at the Sale Hearing.

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

65. The Debtors request that, upon entry of the Sale Order, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is necessary to permit the Sale to close expeditiously.

NOTICE

66. Notice of this Motion will be provided to the following, or their counsel, if known: (i) the U.S. Trustee; (ii) the United States Securities and Exchange Commission; (iii) the United States Department of Justice; (iv) the state attorneys general for all states in which the Debtors conduct business; (v) the parties included on the Debtors' list of thirty (30) largest unsecured creditors; (vi) all parties who are known by the Debtors to assert liens against the Assets; (vii) any party known or reasonably believed to have expressed an interest in acquiring some or all or substantially all of the Debtors' assets in the past six (6) months; and (viii) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested herein, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) grant the relief requested herein and (ii) grant such other and further relief to the Debtors as is just and proper.

Dated: June 21, 2024
Wilmington, Delaware

WILSON SONSINI GOODRICH & ROSATI, P.C.

/s/ Shane M. Reil

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Proposed Counsel to the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DERMTECH, INC., *et al.*,[1]	Case No. 24-11378 (JTD)
Debtors.	(Jointly Administered)
	Bidding Procedures Objection Deadline: July 5, 2024 at 4:00 p.m. (ET)
	Bidding Procedures Hearing Date: July 16, 2024 at 1:00 p.m. (ET)

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE; (II) THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION; (III) THE UNITED STATES DEPARTMENT OF JUSTICE; (IV) THE STATE ATTORNEYS GENERAL FOR ALL STATES IN WHICH THE DEBTORS CONDUCT BUSINESS; (V) THE PARTIES INCLUDED ON THE DEBTORS' LIST OF THIRTY (30) LARGEST UNSECURED CREDITORS; (VI) ALL PARTIES WHO ARE KNOWN BY THE DEBTORS TO ASSERT LIENS AGAINST THE ASSETS; (VII) ANY PARTY KNOWN OR REASONABLY BELIEVED TO HAVE EXPRESSED AN INTEREST IN ACQUIRING SOME OR ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS IN THE PAST SIX (6) MONTHS; AND (VIII) ALL PARTIES WHO, AS OF THE FILING OF THIS MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that DermTech, Inc. and DermTech Operations, Inc. (each, a "Debtor" and collectively, the "Debtors"), as debtors and debtors in possession in the above-captioned chapter 11 cases, have filed the *Debtors' Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Approving Procedures Related to the Designation of a Stalking Horse Bidder, (C) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets, (D) Establishing Certain Assumption and Assignment Procedures and Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors' Entry Into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* (the "Motion"). Attached to the Motion as Exhibit A is a proposed form of order (the "Bidding

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

Procedures Order") granting the relief requested in the Motion pertaining to the establishment of the Bidding Procedures (as defined therein).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion, solely as it pertains to approval of the Bidding Procedures and entry of the Bidding Procedures Order, must be filed on or before **July 5, 2024 at 4:00 p.m. (ET)** (the "**Objection Deadline**") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE PROPOSED BIDDING PROCEDURES ORDER WILL BE HELD ON **JULY 16, 2024 AT 1:00 P.M. (ET)** BEFORE THE HONORABLE JOHN T. DORSEY, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY ENTER THE PROPOSED BIDDING PROCEDURES ORDER WITHOUT FURTHER NOTICE OR A HEARING.

Dated: June 21, 2024
Wilmington, Delaware

WILSON SONSINI GOODRICH & ROSATI, P.C.

/s/ Shane M. Reil

Erin R. Fay (No. 5268)
Shane M. Reil (No. 6195)
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-and-

Benjamin Hoch
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Proposed Counsel for Debtors and Debtors in Possession

Exhibit A

Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DERMTECH, INC., *et al.*,[1]	Case No. 24-11378 (JTD)
Debtors.	(Jointly Administered)
	Ref. Docket No. ___

ORDER (I) (A) APPROVING CERTAIN BIDDING PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF, (B) APPROVING PROCEDURES RELATED TO THE DESIGNATION OF A STALKING HORSE BIDDER, (C) SCHEDULING AN AUCTION AND A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (D) ESTABLISHING CERTAIN ASSUMPTION AND ASSIGNMENT PROCEDURES AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Debtors, pursuant to sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014, and Local Rules 2002-1, 6004-1 and 9006-1, requesting entry of an order (this "Order") (i) approving certain bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures") for the sale of all or substantially all of the Debtors' assets (the "Sale") and the form and manner of notice thereof substantially in the form attached hereto as **Exhibit 2** (the "Sale Notice"), (ii) approving procedures related to the designation of a Stalking Horse Bidder, (iii) scheduling an Auction and a Sale Hearing in connection with the Sale, (iv) establishing certain assumption and assignment procedures and approving the form and manner of notice thereof, including the notice substantially in the form attached hereto as **Exhibit 3** (the "Assumption and Assignment Notice"), and

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

[2] Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

(v) granting related relief; and the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the "Bidding Procedures Hearing"); and the Court having considered the statements of counsel, the First Day Declaration, the Miller Declaration in support of the Motion, and the evidence presented at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT**:[3]

A. The Court has jurisdiction over this matter and over the property of the Debtors and their bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014. Venue of these chapter 11 cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interest of their estates will be served by, the Court granting the Motion to the extent provided in this Order, including (i) approving the Bidding Procedures, attached hereto as **Exhibit 1**, and the form and manner of notice thereof substantially in the form of the Sale Notice, attached hereto as **Exhibit 2**, (ii) authorizing, but not directing, the Debtors to designate the Stalking Horse Bidder and approving the Bid Protections in accordance with the Bidding Procedures, (iii) scheduling an Auction and a Sale Hearing in connection with the Sale, (iv) establishing certain assumption and

[3] 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 any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

assignment procedures and approving manner of notice thereof substantially in the form of the Assumption and Assignment Notice, attached hereto as **Exhibit 3**, and (v) granting related relief.

C. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. In accordance with Local Rule 6004-1, the Debtors have properly filed and noticed the Motion. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications.

E. The proposed Sale Notice and the Assumption and Assignment Notice, as set forth in the Motion and this Order, are appropriate, sufficient, and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, and the potential assumption and assignment of the Assumed Contracts, and no other or further notice shall be required for the Sale or the assumption and assignment of the Assumed Contracts.

F. The process for filing the Stalking Horse Supplement and the granting of any Bid Protections is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of: (i) the identification of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor), (b) the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse

Bid, (d) any proposed Bid Protections, (e) the Stalking Horse APA, and (g) the Stalking Horse Objection Deadline (as defined below).

G. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances, and are reasonably designed to maximize the value to be achieved for the Assets.

H. The Assumption and Assignment Procedures provided for herein and the Assumption and Assignment Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption and Assignment Notice have been tailored to provide an adequate opportunity for all counterparties to assert any objections to the assumption and assignment of Assumed Contracts and any related Cure Costs.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** to the extent provided herein.

2. The Bidding Procedures, attached as **Exhibit 1** to this Order, are hereby approved in their entirety, incorporated by reference as if fully set forth herein, and shall govern all Bids and Bid processes relating to the Assets. The Debtors and Stretto, Inc. ("Stretto"), their claims and noticing agent, are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

3. Objections to approval of the Sale (with the exception of objections related solely to the conduct of the Auction, identity of the Successful Bidder, the ability of the Successful Bidder to provide adequate assurance of future performance, and the assumption and assignment of contracts, including any cure amounts, which must be received by a different deadline), must be in writing, state the basis of such objection with specificity, and be filed with this Court and served

on or before **4:00 p.m. (prevailing Eastern Time) on August 7, 2024** (the Sale Objection Deadline") on the following parties (collectively, the "Notice Parties"):

(a) proposed counsel to the Debtors, Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801 (Attn: Erin R. Fay, Shane M. Reil, and Catherine C. Lyons (emails: efay@wsgr.com, sreil@wsgr.com, and clyons@wsgr.com));

(b) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn.: Linda J. Casey (email: linda.casey@usdoj.gov) and Fang Bu (fang.bu@usdoj.gov)); and

(c) counsel to any statutory committee appointed in these chapter 11 cases.

4. All objections to the entry of this Order or to the relief provided herein that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

A. Designation of Stalking Horse Bidder

5. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, to (i) designate a Stalking Horse Bidder, (ii) enter into a Stalking Horse APA in accordance with the Bidding Procedures, and (iii) agree to any bid protections (the "Bid Protections"), subject to further Court approval, in each case at any time prior to the Auction and in accordance with the Bidding Procedures.

6. In the event that the Debtors designate a Stalking Horse Bidder and enter into the Stalking Horse APA on or prior to **July 24, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Stalking Horse Supplement Deadline"), the Debtors shall file a supplement to the Motion (the "Stalking Horse Supplement") seeking approval of the same, with no less than five (5) business days' notice of the objection deadline (the "Stalking Horse Objection Deadline") to the U.S. Trustee, any statutory committee appointed in these chapter 11 cases, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in these chapter 11 cases (the "Stalking Horse Notice Parties") with no further

notice being required, provided that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor), (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash, (c) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (d) specifies any proposed Bid Protections, (e) attaches the Stalking Horse APA, and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections.

7. If the Stalking Horse Bidder and the Stalking Horse APA are designated after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors reserve the right to file a motion with the Court seeking approval, on an expedited basis, of the Stalking Horse Bidder and Stalking Horse APA, subject to consultation with the Consultation Parties prior to the filing of any such motion.

8. Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the "Stalking Horse Objection") shall (a) be in writing, (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties within five (5) business days after the service of the Stalking Horse Supplement.

9. If a timely Stalking Horse Objection is filed, the Debtors will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable. If no timely Stalking Horse Objection is filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the "Stalking Horse Approval Order), which may be entered without a hearing, including

with respect to any Bid Protections set forth in the Stalking Horse Supplement. For the avoidance of doubt, no determination is made in this Order regarding the authorization of any Bid Protections.

10. Upon entry of a Stalking Horse Approval Order and subject to the provisions of such order and any Stalking Horse APA, any Bid Protections that are authorized thereby and become due and owing shall constitute administrative expense claims against the Debtors' bankruptcy estates pursuant to sections 503(b) of the Bankruptcy Code and shall survive termination of the Stalking Horse APA. For the avoidance of doubt, this Order does not grant the Bid Protections superpriority administrative expense treatment pursuant to sections 364(c)(1) or 507(b) of the Bankruptcy Code, but the Debtors reserve their rights to request such treatment by filing a separate motion.

B. The Bidding Procedures, Auction, and Sale Hearing

11. The deadline for submitting a Qualified Bid shall be **August 7, 2024, at 5:00 p.m. (prevailing Eastern Time)**, unless extended by the Debtors pursuant to the Bidding Procedures (the "Bid Deadline").

12. For the purposes of the Bidding Procedures: (a) any designated Stalking Horse Bidder will be considered a Qualified Bidder, and any Stalking Horse APA will be considered a Qualified Bid; and (b) in determining whether the Potential Bidders constitute Qualified Bidders, the Debtors may consider a combination of bids for the Assets.

13. All bidders submitting a Qualified Bid are deemed to have submitted to the jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Assets.

14. If no Qualified Bid other than any Stalking Horse Bid is submitted on or before the Bid Deadline, the Debtors will not hold an Auction and will request at the Sale Hearing that this Court approve the Stalking Horse APA.

15. If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtors will conduct the Auction. The Auction will take place on **August 9, 2024, starting at 10:00 a.m. (prevailing Eastern Time)**, either by video conference, at the offices of Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801, or at such other place as is noticed by the Debtors. Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any other parties the Debtors deem appropriate shall be permitted to attend and observe the Auction in accordance with the Bidding Procedures.

16. Each Qualified Bidder participating at the Auction will be required to confirm in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

17. Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or otherwise best Bid for the Assets or subsets thereof.

18. Objections related solely to conduct at the Auction, the identity of the Successful Bidder, and adequate assurance of future performance by the Successful Bidder must be raised at or prior to the Sale Hearing.

19. The Court shall convene the Sale Hearing on **August 14, 2024, at [●] (prevailing Eastern Time)** or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the Sale to the Successful Bidder(s) or Next-Highest Bidder(s) and the entry of the Sale Order. At the Sale Hearing, the Debtors will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder(s) or Next-Highest Bidder(s).

Subject to consultation with the Consultation Parties, the Debtors may adjourn the Sale Hearing from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing or in notice or agenda filed with the Court.

20. The Debtors shall file a form of Sale Order no later than fourteen (14) calendar days before the Sale Hearing.

C. Assumption and Assignment Procedures

21. Within one (1) business day of the entry of this Order, or as soon as reasonably practicable thereafter, the Debtors will file an Assumption and Assignment Notice, substantially in the form attached as **Exhibit 3** to this Order, which shall include a schedule of cure obligations (the "Cure Schedule") for the Assumed Contracts, and serve such Assumption and Assignment Notice on each of the non-Debtor parties listed therein by first class mail and/or email. The Cure Schedule will include a description of each Assumed Contract potentially to be assumed and assigned by a potential buyer and the amount, if any, the Debtors believe is necessary to cure, or compensate the non-Debtor parties for, any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs").

22. Objections to (a) the Cure Costs set forth in the Cure Schedule or (b) the assumption and assignment of any Assumed Contracts identified in the Cure Schedule must be in writing, state the basis of such objection with specificity, be filed with the Court, and be served on the Notice Parties no later than **4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) calendar days from the date of service of the Assumption and Assignment Notice**.

23. Unless a non-Debtor party to an Assumed Contract has timely and properly filed and served an objection to the assumption and assignment of its Assumed Contract, such non-Debtor counterparty shall (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assumed Contract, and the Debtors and

the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment of such Assumed Contract; and (c) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract or that there is any objection or defense to the assumption and assignment of such Assumed Contract. In addition, the Cure Costs set forth in the Cure Schedule shall be binding upon the non-Debtor parties to the Assumed Contracts for all purposes in these chapter 11 cases and will constitute a final determination of the total Cure Costs required to be paid in connection with the assumption and assignment of the Assumed Contracts.

24. Where a non-Debtor counterparty to an Assumed Contract timely and properly files an objection asserting a cure amount higher or different than the proposed Cure Amount (the "Disputed Cure Amount"), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount, the Cure Amount shall be as agreed between the parties, or (b) to the extent the parties are unable to consensually resolve the dispute, then such objection, including payment of cure (if any), will be heard at an Assumption/Assignment Hearing to be scheduled subject to the availability of this Court.

D. Notice Procedures

25. The form of the Sale Notice and the Assumption and Assignment Notice annexed hereto are hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale.

26. Within one (1) business day of the entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall cause the Sale Notice to be served upon, without limitation,

(i) the U.S. Trustee; (ii) the United States Securities and Exchange Commission; (iii) the United States Department of Justice; (iv) counsel to any statutory committee appointed in these chapter 11 cases; (v) the state attorneys general for all states in which the Debtors conduct business; (vi) the parties included on the Debtors' list of thirty (30) largest unsecured creditors; (vii) all parties who are known by the Debtors to assert liens against the Assets; (viii) all non-Debtor parties to the Assumed Contracts; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets in the past six (6) months; and (x) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

27. In addition, within five (5) Business Days of the entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall publish the Sale Notice once in the national edition of *USA Today* or *The Wall Street Journal* and post the Sale Notice and this Order on the website of the Debtors' claims and noticing agent: Stretto, Inc. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including any Potential Bidder(s), and to afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

28. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

29. All parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

30. In the event there is any conflict between this Order and the Bidding Procedures, the terms and conditions of this Order shall control and govern in all respects.

31. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied, modified, or waived.

32. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7052 or 9014, this Order shall be immediately effective and enforceable upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

33. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Exhibit 1

The Bidding Procedures

BIDDING PROCEDURES

On June 18, 2024, DermTech, Inc. and its affiliated debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Set forth below are the bidding procedures (the "Bidding Procedures")[1] to be used with respect to the sale or disposition (the "Sale") of the Assets (as defined below) of the Debtors.

Any party interested in bidding on the Assets should contact TD Cowen, the Debtors' proposed investment banker, (Attn: Ann M. Miller (email: ann.miller@tdsecurities.com)).

Summary of Key Sale Process Dates

Date	Deadline/Event
July 16, 2024	Bidding Procedures Hearing
One (1) business day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to file and serve the Sale Notice
One (1) business day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for Debtors to file and serve the Assumption and Assignment Notice and Cure Schedule
Five (5) business days after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to publish the Sale Notice
July 24, 2024, at 4:00 p.m. (ET)	Stalking Horse Supplement Deadline
Fourteen (14) calendar days after service of the Assumption and Assignment Notice, at 4:00 p.m. (ET)	Deadline to object to the Debtors' proposed assumption and assignment of the Assumed Contracts and related Cure Costs
August 7, 2024, at 4:00 p.m. (ET)	Deadline to object to the Sale[2] of the Assets

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors' Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Approving Procedures Related to the Designation of a Stalking Horse Bidder, (C) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets, (D) Establishing Certain Assumption and Assignment Procedures and Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtors' Entry Into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* (the "Motion").

[2] This objection deadline applies to all objections to the Sale of the Assets to a Successful Bidder, with the exception of objections related solely to conduct of the Auction, the identity of the Successful Bidder(s), adequate assurance

Date	Deadline/Event
August 7, 2024, at 5:00 p.m. (ET)	Bid Deadline
August 9, 2024, starting at 10:00 a.m. (ET)	Auction (if necessary)
As soon as practicable after conclusion of the Auction	Deadline to file and serve Notice of Successful Bidder(s)
At the Sale Hearing	Deadline to object to (i) conduct of the Auction and (ii) ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
August 14, 2024	Sale Hearing
On or prior to August 29, 2024	Closing
TBD	Assumption/Assignment Hearing (if necessary)

I. Description of the Assets to Be Sold

The Debtors are seeking to sell all or substantially all of their assets, including but not limited to the equipment, intellectual property, unexpired leases, contract rights, and other assets related to or necessary to operate the business currently operated by the Debtors (the "Assets"), in each case free and clear of all liens, claims, and encumbrances thereon.

The Sale of the Assets shall be subject to a competitive Bidding Process (as defined below) as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to sections 105, 363, and 365 of title 11 of the Bankruptcy Code, rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). The Debtors may consider bids for the Assets (or any portion thereof) in a single bid from a single bidder, or in multiple bids from multiple bidders.

II. Confidentiality Agreement

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process (as defined below), each person or entity must enter into (unless previously entered into) with the Debtors, on or before the Bid Deadline (as defined below), a confidentiality agreement in form and substance reasonably satisfactory to the Debtors (the "Confidentiality Agreement"). Further, to participate in the diligence process and receive access to due diligence information, a party must submit to the Debtors, or their advisors, sufficient information, as reasonably determined by the Debtors, to allow the Debtors to determine that the interested party

of future performance by the Successful Bidder(s), and the assumption and assignment of contracts and related cure costs.

(i) has the financial wherewithal to consummate the applicable Sale and (ii) intends to access the Data Room (as defined below) for a purpose consistent with these Bidding Procedures. Each person or entity that enters into the Confidentiality Agreement with the Debtors on or before the Bid Deadline is hereinafter referred to as a "Potential Bidder."

After a Potential Bidder (as defined below) enters into a Confidentiality Agreement with the Debtors and demonstrates the financial wherewithal to potentially consummate a sale transaction, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information (including, if applicable, financial data) with respect to the Assets.

III. Determination by the Debtors

As appropriate throughout the Bidding Process (as defined below), the Debtors will consult with any statutory committee appointed in these chapter 11 cases and any other party that the Debtors deem appropriate (the "Consultation Parties") and shall (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders on any or all of the Assets, (c) following consultation with the Consultation Parties, negotiate any bid made to acquire any or all of the Assets, and (d) following consultation with the Consultation Parties, make such other determinations as are provided in these Bidding Procedures (collectively, the "Bidding Process"); provided that the Debtors shall not consult with a Consultation Party (or its advisors) that is actively participating as a Potential Bidder for the Assets. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

IV. Due Diligence

The Debtors have established a confidential electronic data room concerning the Assets (the "Data Room") and will grant each Potential Bidder access to such Data Room. Up to and including the Bid Deadline (as defined below) (such period, the "Diligence Period"), the Debtors shall afford any Potential Bidder such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate under the circumstances. The Debtors may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders and/or Consultation Parties, as applicable. In the event that any such due diligence material is prepared by the Debtors in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide access to such materials to (a) all Potential Bidders, and (b) all Consultation Parties. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid (as defined below).

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity who is not a Potential Bidder who does not otherwise comply with the participation requirements set forth above.

V. Stalking Horse Designation

The Debtors may, at any time prior to the Auction, in consultation with the Consultation Parties, designate a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid (as defined below) shall serve as the stalking horse bid (the "Stalking Horse Bid"), and any asset purchase agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (the "Stalking Horse APA"), including any bid protections (the "Bid Protections") will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids, subject to higher or otherwise better offers at the Auction. If the Stalking Horse Bid is not selected as the Successful Bid, the Stalking Horse Bidder may serve as the Next-Highest Bidder (as defined below). Notwithstanding any of the foregoing, the Debtors are not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one.

In the event that the Debtors designate a Stalking Horse Bidder and enter into a Stalking Horse APA on or prior to July 24, 2024, at 4:00 p.m. (prevailing Eastern Time) (the "Stalking Horse Supplement Deadline"), the Debtors shall file a supplement to the Motion (the "Stalking Horse Supplement") seeking approval of the same, with no less than five (5) business days' notice of the objection deadline (the "Stalking Horse Objection Deadline") to the U.S. Trustee, any statutory committee appointed in the chapter 11 cases, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the chapter 11 cases (the "Stalking Horse Notice Parties") with no further notice being required, provided that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor), (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (d) specifies any proposed Bid Protections, (e) attaches the Stalking Horse APA, and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections.

In the event the Debtors designate a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtors may seek Court approval on an expedited basis of the Stalking Horse Bidder and Stalking Horse APA, including the Bid Protections, and reserve their rights to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any proposed motion, the Debtors will consult with the Consultation Parties with respect to the designation of the Stalking Horse Bidder and Stalking Horse APA.

Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the "Stalking Horse Objection") shall (a) be in writing, (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties within five (5) business days after the service of the Stalking Horse Supplement.

If a timely Stalking Horse Objection is filed, the Debtors will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid. If no timely Stalking Horse Objection is filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtors will submit

to the Bankruptcy Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the "Stalking Horse Approval Order), which may be entered without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

VI. Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid (as defined below) in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) to TD Cowen, (Attn.: Ann M. Miller (email: ann.miller@tdsecurities.com], **by no later than August 7, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"). As soon as reasonably practicable following the Bid Deadline, the Debtors will provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

VII. Bid Requirements[3]

All bids (each hereinafter, a "Bid") must comply with the following requirements (collectively, the "Bid Requirements"):

(a) be accompanied by a letter or email:

(i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtors or their advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder;

(ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;

(iii) stating with specificity the Assets (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale;

(iv) providing, other than as may be exclusively applicable to the Stalking Horse Bidder, if designated, that the Bid is not subject to any break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement, and including an express waiver of any substantial contribution claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets; provided that, in the event a Stalking Horse Bidder

[3] The Debtors will also consider proposals to acquire any and all of the Assets through a plan of reorganization. Should any such proposal be received prior to the Bid Deadline that the Debtors, in consultation with the Consultation Parties, conclude is in the best interest of their estates and stakeholders, the Debtors reserve the right to postpone the Auction and proceed toward the confirmation of a plan.

is designated, all bids must provide consideration to the Debtors of at least the sum of (i) the Stalking Horse Bid, (ii) the Bid Protections, and (iii) a reasonable minimum overbid amount equal to or greater than $250,000 or such other amount determined by the Debtors in consultation with the Consultation Parties (the "Incremental Overbid") over the Starting Bid or Leading Bid (as defined below);

(v) agreeing that the Potential Bidder's offer is binding, unconditional, and irrevocable until two (2) Business Days after the closing of the Sale;

(vi) containing a commitment to close the contemplated transaction(s) by a Closing Date (as defined below) of no later than August 29, 2024;

(vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;

(viii) (viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Assets, has relied solely upon its own independent review and investigation and/or inspection of any documents and any other information in making the Bid;

(ix) providing that the Potential Bidder agrees to serve as a backup bidder (the "Next-Highest Bidder") if the Potential Bidder's Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as defined below) (the "Next-Highest Bid") with respect to the relevant Assets through the Closing Date; and

(b) be accompanied by (i) an executed purchase agreement in form and substance reasonably satisfactory to the Debtors (a "Qualified Bid Purchase Agreement"), and (ii) if a Stalking Horse APA has been entered into, or if a form purchase agreement is provided, a redline of the executed Qualified Bid Purchase Agreement to reflect any proposed amendments and modifications to the Stalking Horse APA or the form purchase agreement, as applicable, and the applicable schedules and exhibits;

(c) be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), which may include (i) information about the Potential Bidder's financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors' reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iv) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected counterparties to any contracts or leases potentially being assumed and assigned in connection with the Sale and the Consultation Parties in the event that the Debtors determine such bid to be a Qualified Bid (as defined below); and

(d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited, prior to the Bid Deadline, into an escrow account to be identified and established by the Debtors (a "Good Faith Deposit"), and (ii) written evidence, documented to the Debtors' satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder's financing) and such other evidence of ability to consummate the transaction(s) as the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtors). The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

The Debtors, in consultation with those Consultation Parties that have not submitted a Bid, will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A bid received from a Potential Bidder for any portion of the Assets that is determined by the Debtors, in consultation with the Consultation Parties, to meet the above requirements will be considered a "Qualified Bid" and each Potential Bidder that submits such a Qualified Bid will be considered a "Qualified Bidder." For the avoidance of doubt, any Stalking Horse Bid will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder. The Starting Bid(s) will be communicated to Qualified Bidders prior to or at the commencement of the Auction.

A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors deem pertinent in their reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transactions(s) with the Qualified Bidder, (c) any excluded assets or executory contacts and leases, and (d) any other factors that the Debtors, in consultation with the Consultation Parties, may reasonably deem relevant.

The Debtors, in their business judgment and in consultation with the Consultation Parties, reserve the right to reject any Bid if such Bid, among other things:

(a) requires any indemnification of the Potential Bidder in any Qualified Bid Purchase Agreement submitted as part of the Bid;

(b) is not received by the Bid Deadline;

(c) does not comport with the Bid Requirements;

(d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; or

(e) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors' estates or in furtherance of the purposes of the Auction.

Any Bid rejected pursuant to the foregoing shall not be deemed to be a Qualified Bid; provided that the Debtors have the right to work with the parties to any rejected Bid to cure any such defects. In the event that any Bid is so rejected, the Debtors shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it as soon as reasonably practicable, but no later than five (5) Business Days after the Bid Deadline.

The Debtors may, in consultation with the Consultation Parties, among other things, (y) extend such Bid Deadline with respect to the subject Assets and postpone the Auction, or (z) cancel the Auction and terminate the proposed Sale for the subject Assets.

VIII. No Qualified Bids

If no Qualified Bids other than a Stalking Horse Bid are received by the Bid Deadline, then the Debtors, after consultation with the Consultation Parties, may cancel the Auction, and may decide, in the Debtors' reasonable business judgment, to designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the Sale Order approving the Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

IX. Auction

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction (as defined below). The Consultation Parties shall be permitted to attend the Auction. In addition, any creditor of the Debtors or other party the Debtors deem appropriate may observe the Auction, provided that such parties provide reasonable advance notice to the Debtors of their desire to attend the Auction. At least one (1) day prior to the start of the Auction, each Qualified Bidder must inform the Debtors in writing whether it intends to participate in the Auction. If the Debtors receive only one Qualified Bid with regard to any particular Assets (or all of the Assets), (a) the Debtors shall not hold an Auction with respect to such Assets; (b) the Qualified Bid, as applicable, will be deemed the Successful Bid with respect to such Assets; and (c) the Qualified Bidder will be named the Successful Bidder with respect to such Assets. At any point and at its sole discretion, the Debtors shall have the right to remove any Assets from the Auction.

If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtors will conduct an auction (the "Auction") with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction for the relevant Assets (the "Starting Bid(s)"). The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors (in consultation with the Consultation Parties) reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things, the following: (i) the amount and nature of the consideration, including any obligations to be assumed; (ii) the executory contracts and unexpired leases of the Debtors, if any, for which assumption and

assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (iii) the number, type and nature of any changes to the Stalking Horse APA, as applicable, requested by each Qualified Bidder; (iv) the extent to which such modifications are likely to delay closing of the sale of the Assets and the cost to the Debtors of such modifications or delay; (v) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (vi) the net benefit to the Debtors' estates (including after taking account of the Bid Protections); (vii) the tax consequences of such Qualified Bid; and (viii) the impact on employees and the proposed treatment of employee obligations.

The Auction, if required, will be conducted on August 9, 2024, starting at 10:00 a.m. (prevailing Eastern Time), either by video conference, at the offices of Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801, or at such other place as is noticed by the Debtors. Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any other parties the Debtors deem appropriate shall be permitted to attend and observe the Auction. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Assets (or subset thereof) that are subject to Qualified Bids will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtors reasonably determine, in consultation with the Consultation Parties, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estate in an amount equal to or greater than $250,000 or such other amount determined by the Debtors in consultation with the Consultation Parties ("Incremental Overbid") over the Starting Bid or the Leading Bid (as defined below). After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the subject Assets (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtors' authority to revise the Auction procedures as set forth below. In any Subsequent Bid by the Stalking Horse Bidder, if designated, the amount of the Bid Protections shall be included in the calculation of such Bid.

The Debtors may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (*e.g.*, the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit "best and final" Bids) for conducting the Auction or otherwise modify these Bidding Procedures; *provided* that such rules (i) are not materially inconsistent with these Bidding Procedures, the Bankruptcy Code, or applicable orders of the Bankruptcy Court, and (ii) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all Bids made and announced at the Auction.

Immediately prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction for the subject Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder") with respect to the subject Assets, and the amount and other material terms of the Successful Bid. The Debtors may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close with respect to the subject Assets in the event that the Successful Bidder does not close the Sale. Unless the Bankruptcy Court orders otherwise upon application by the Debtors, the Debtors shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

As soon as practicable following the conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder(s) for the Assets (or subset thereof) and any applicable Next-Highest Bidder(s).

All bidders at the Auction will be deemed to have consented to the core jurisdiction and constitutional authority of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and all agreements entered into in connection with any proposed sale transaction.

X. Acceptance of Qualified Bids

The Debtors may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any Bid that, in the Debtors' business judgment, upon considering any comments of the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors' and their estates.

The Debtors' presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such Bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

XI. No Fees for Potential Bidders or Qualified Bidders

Potential Bidders or Qualified Bidders, other than the Stalking Horse Bidder, if applicable, shall not be allowed any Bidding Fee as a precondition to, or in consideration of, presenting any bid or participating in the Bidding Process reflected herein.

XII. Sale Hearing

Each Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of one Qualified Bidder is received with respect to the Assets (or subset thereof), then the Qualified Bid of such Qualified Bidder) shall be subject to approval by the Bankruptcy Court. The hearing to approve a Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of

one Qualified Bidder is received with respect to the Assets (or subset thereof), then the Qualified Bid of such Qualified Bidder) shall take place on August 14, 2024, at [●] (prevailing Eastern Time) (the "Sale Hearing"). The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of these chapter 11 cases.

XIII. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in escrow, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court. The Debtors shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of any Next-Highest Bidder shall be retained until three (3) business days after the applicable closing date (the "Closing Date"). The Good Faith Deposits of any other Qualified Bidders will be returned as soon as reasonably practicable, but no later than ten (10) business days following the Auction.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the applicable Qualified Bid Purchase Agreement (as such agreement may be amended or modified at the Auction) or any other form of purchase agreement reasonably satisfactory to the Debtors, the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

XIV. Reservation of Rights and Modifications

Notwithstanding any of the foregoing, the Debtors, in consultation with the Consultation Parties, reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and/or adjourn the Sale Hearing.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, that the Debtors shall not be required to consult with any Consultation Party (or its advisors) if the Debtors determine, in their reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (y) likely to have a chilling effect on the potential bidding or (z) otherwise contrary to the goal of maximizing value from the Sale process for the Debtors' estates, their creditors, and all other parties in interest.

XV. Next-Highest Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the applicable purchase agreement (or such date as may be extended by the Debtors), the Debtors, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid for the Assets (or subset thereof), the Next-Highest Bidder will be deemed to be the Successful Bidder for such Assets, and the Debtors will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid as approved by further order of the Bankruptcy Court.

XVI. Fiduciary Out

Nothing in these Bidding Procedures will require the Debtors' board of directors (or similar governing body) to take any action, or to refrain from taking any action (including, but not limited to, with respect to the Bidding Procedures or Sale) to the extent that the Debtors' boards of directors determine in good faith (upon consultation with outside financial advisors or legal counsel) that taking such action, or refraining from taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law. Further, notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall diminish the right of the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving any or all of the Debtors' assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternate Proposals; and (e) enter into or continue discussions or negotiations with holders of claims against or equity interests in a Debtor or any other party in interest in these chapter 11 cases (including any official committee and the U.S. Trustee), or any other entity regarding Alternate Proposals.

Exhibit 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DERMTECH, INC., *et al.*,[1]	Case No. 24-11378 (JTD)
Debtors.	(Jointly Administered)
	Docket Ref. Nos. __ & __

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On June 18, 2024, DermTech, Inc. and DermTech Operations, Inc. (each, a "Debtor" and collectively, the "Debtors") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. On June 21, 2024, the Debtors filed a motion (the "Bidding Procedures and Sale Motion"), pursuant to sections 363 and 365 of the Bankruptcy Code and rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), seeking entry of an order (the "Bidding Procedures Order") (a) scheduling an auction (the "Auction") for the sale of all or substantially all of the Debtors' assets (the "Assets") and a hearing to approve the sale of the Assets (the "Sale Hearing"), (b) approving procedures (the "Bidding Procedures")[2] for submitting competing bids for the Assets, (c) approving procedures related to the designation of a Stalking Horse Bidder, (d) approving the form and manner of the notice of the Auction and the Sale Hearing, (e) establishing procedures for the assumption and assignment of the Assumed Contracts (as defined in the Bidding Procedures Order) to any purchaser(s) of the Assets and approving manner of notice thereof (the "Assumption and Assignment Notice"), and (f) granting related relief.

3. On [July 16], 2024, the Bankruptcy Court entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if at least two (2) Qualified Bids with regard to any particular Assets (as defined in the Bidding Procedures Order) are received by the Bid Deadline (as defined below), the Debtors will conduct the Auction. The Auction shall be held on August 9, 2024, starting at 10:00 a.m. (prevailing Eastern Time) or such other time as the Debtors shall designate and notify to all Qualified Bidders. Professionals and principals for the Debtors, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

other parties the Debtors deem appropriate shall be permitted to attend and observe the Auction. Only parties that have submitted a Qualified Bid, as set forth in the Bidding Procedures Order, by no later than **August 7, 2024, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") may bid at the Auction. Any party that wishes to take part in this process and submit a Bid (as defined in the Bidding Procedures) for any portion of the Assets must submit their competing Bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the sale of the Assets to the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances, will be held before the Honorable John T. Dorset, United States Bankruptcy Judge, 824 North Market Street, Wilmington, Delaware 19801 on **August 14, 2024, at [●] (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned by the Debtors 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 by including such adjournment on any agenda filed with the Bankruptcy Court or by the filing of a notice with the Bankruptcy Court.

5. Objections to approval of the Sale (with the exception of objections related solely to the conduct of the Auction, the identity of the Successful Bidder, the ability of the Successful Bidder to provide adequate assurance of future performance, or the assumption and assignment of contracts, including related cure costs, which must be received by a different deadline), must be in writing, state the basis of such objection with specificity, and be filed with the Bankruptcy Court and served on or before **August 7, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline") by the following parties (collectively, the "Notice Parties"):

(a) proposed counsel to the Debtors, Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801 (Attn: Erin R. Fay, Shane M. Reil, and Catherine C. Lyons (emails: efay@wsgr.com, sreil@wsgr.com, and clyons@wsgr.com));

(b) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn.: Linda J. Casey (email: linda.casey@usdoj.gov) and Fang Bu (fang.bu@usdoj.gov)); and

(c) counsel to any statutory committee that has been appointed in these chapter 11 cases.

6. Objections related solely to conduct at the Auction, identity of the Successful Bidder, and adequate assurance of future performance by the Successful Bidder must be raised at or prior to the Sale Hearing (the "Auction Objection Deadline").

UNLESS AN OBJECTION IS TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

7. This Sale Notice is subject to the fuller terms and conditions of the Bidding Procedures and Sale Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict. The Debtors encourage all parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Bidding Procedures and Sale Motion or the Bidding Procedures Order, may make a written request to Catherine C. Lyons (clyons@wsgr.com). In addition, copies of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and this Notice are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 North Market Street, Wilmington, Delaware 19801 and are available on the Debtors' claims and noticing agent's website free of charge at https://cases.stretto.com/DermTech.

Dated: [●], 2024
Wilmington, Delaware

WILSON SONSINI GOODRICH & ROSATI, P.C.

/s/

Erin R. Fay (No. 5268)
Shane M. Reil (No. 6195)
Catherine C. Lyons (No. 6854)
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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3

Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
DERMTECH, INC., *et al.*,[1]	Case No. 24-11378 (JTD)
Debtors.	(Jointly Administered)
	Docket Ref. No. __

NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNTS

You are receiving this notice because you may be a counterparty to a contract or lease with DermTech, Inc. or DermTech Operations, Inc. (each, a "Debtor" and collectively, the "Debtors"). Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On June 21, 2024, the Debtors filed a motion seeking approval of the Bidding Procedures for the sale of all or substantially all of the Debtors' assets (the "Assets") and approval of the sale of the Assets (the "Bidding Procedures and Sale Motion") to the highest or best qualified bidder (the "Successful Bidder").

2. On July 16, 2024, the Bankruptcy Court entered and order approving the Bidding Procedures (the "Bidding Procedures Order"), pursuant to which a hearing to approve the sale of the Assets (the "Sale Hearing") has been scheduled for August 14, 2024 at [●] (prevailing Eastern Time).

3. Pursuant to the Bidding Procedures and Sale Motion, the Debtors may potentially seek approval at the Sale Hearing (or such later hearing as may be scheduled in accordance with the Bidding Procedures) to assume and assign to the Successful Bidder one or more of the executory contracts and unexpired leases listed on **Schedule A** annexed hereto (collectively, the "Potentially Assigned Agreements" and each, a "Potentially Assigned Agreement"), pursuant to section 365 of the Bankruptcy Code.

4. The Debtors have indicated on **Schedule A** annexed hereto the cure amounts, if any, that the Debtors believe must be paid to cure any prepetition defaults and pay all amounts accrued under the Potentially Assigned Agreements (in each instance, the "Cure Amount").

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

5. Any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including any objections to the proposed Cure Amount (an "Assumption/Assignment Objection") must (a) be in writing, (b) set forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assignment and the support therefor, (c) be filed with the Clerk of the Bankruptcy Court and (d) be served on (i) proposed counsel to the Debtors, Wilson Sonsini Goodrich & Rosati, P.C., 222 Delaware Avenue, Suite 800, Wilmington, Delaware 19801 (Attn: Erin R. Fay, Shane M. Reil, and Catherine C. Lyons (emails: efay@wsgr.com, sreil@wsgr.com, and clyons@wsgr.com)); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn.: Linda J. Casey (email: linda.casey@usdoj.gov) and Fang Bu (fang.bu@usdoj.gov)); and (iii) counsel to any statutory committee that has been appointed in these chapter 11 cases (collectively, the "Notice Parties") by no later than **4:00 p.m. (prevailing Eastern Time) on [ ]** (the "Assumption/Assignment Objection Deadline").

6. Unless an Assumption/Assignment Objection is timely and properly filed and served before the Assumption/Assignment Objection Deadline, the non-debtor party to a Potentially Assigned Agreement shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Potentially Assigned Agreement, and the Debtors and any Successful Bidder(s) shall be entitled to rely solely upon the Cure Amount; (ii) be deemed to have consented to any assumption and assignment of such Potentially Assigned Agreement; and (iii) be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Potentially Assigned Agreement or that there is any objection or defense to the assumption and assignment of such Potentially Assigned Agreement.

7. Where a non-debtor counterparty to a Potentially Assigned Agreement timely and properly files an objection asserting a cure amount higher or different than the proposed Cure Amount (the "Disputed Cure Amount"), then (y) the cure amount shall be as agreed between the parties or (z) to the extent the parties are unable to consensually resolve the dispute, then the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Assumption/Assignment Hearing at such date and time as may be fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of a Potentially Assigned Agreement will be heard at the Sale Hearing, pursuant to the Bidding Procedures Order, unless adjourned by agreement of the parties.

8. If you agree with the Cure Amount indicated on **Schedule A**, and otherwise do not object to the Debtors' assignment of your lease or contract, you need not take any further action.

9. The Debtors' decision to assume and assign the Potentially Assigned Agreements is subject to Bankruptcy Court approval and consummation of the sale of the Assets.

Inclusion of any document on the list of Potentially Assigned Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder(s) that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are being expressly reserved.

Dated: [●], 2024
Wilmington, Delaware

WILSON SONSINI GOODRICH & ROSATI, P.C.

/s/

Erin R. Fay (No. 5268)
Shane M. Reil (No. 6195)
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Proposed Counsel to the Debtors and Debtors in Possession

Schedule A

LEASES

Landlord Name / Address	Address of Subject Property	Cure Amount

EXECUTORY CONTRACTS

Counterparty Name / Address	Description of Contract	Cure Amount