

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

IN RE:	)	
	)	Case No. 3:16-bk-01708
APEX ENDODONTICS OF TN, PLLC,	)	Chapter 11
	)	Judge Marian F. Harrison
Debtor.	)	

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**EXPEDITED MOTION FOR ORDER (I) AUTHORIZING SALE OF  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES;  
(II) APPROVING FORM AND MANNER OF NOTICE OF SALE; (III) SETTING  
OBJECTION AND COMPETING BID DEADLINES AND HEARING ON  
OBJECTIONS, IF ANY, WITHIN A SHORTENED TIME PERIOD; AND,  
(IV) GRANTING RELATED RELIEF**

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Debtor Apex Endodontics of TN, PLLC. (“Debtor”), pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 2002 and 6004, respectfully moves this Court for entry of an order: (I) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Encumbrances; (II) Approving Form and Manner of Notice of Sale; (III) Setting Objection and Competing Bid Deadlines and Hearing on Objections, if any, within a Shortened Time Period; and, (IV) Granting Related Relief, including lifting the 14-day stay of the order provided by Rule 6004(h), finding that the sale of Debtor’s assets is protected by Section 363(m) of the Bankruptcy Code and approving a termination fee and expense reimbursement.

**SUMMARY OF RELIEF REQUESTED**

1. Expedited Relief Requested. Debtor respectfully requests the Court to enter, on an expedited basis, an Order (I) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Encumbrances; (II) Approving Form and Manner of Notice of Sale; (III) Setting Objection and Competing Bid Deadlines and Hearing on Objections, if any, within a Shortened Time Period; and, (IV) Granting Related Relief, including lifting the 14-day stay of the order provided by Rule

6004(h), finding that the sale of Debtor's assets is protected by Section 363(m) of the Bankruptcy Code and approving a termination fee and expense reimbursement.

2. Basis for Urgency. An order approving the relief requested in this Motion (the "Sale Motion") on an expedited basis is necessary because: (1) Debtor is a single member professional limited liability company, whose principal died unexpectedly on November 5, 2016; (2) Debtor's primary value is generated through operations, operating revenues, and referral relationships; (3) Debtor has attempted to continue operating, but with only one full time endodontist and five operating locations, the remaining value of Debtor is rapidly decreasing; (4) Debtor and its professionals have solicited and aggregated bids to purchase part or all of Debtor's assets; (5) Debtor and its professionals believe that the offer from Leon Capital Group, LLC (the "Buyer"), as described herein, is currently the highest and best offer and presents the best recovery for Debtor's creditors; and (6) in order to complete the sale and provide a recovery for Debtor's creditors, the sale of Debtor's assets must close on or before January 31, 2017, the date set forth in the Letter of Interest between Debtor and Buyer. Debtor faces a real risk that it will deplete its cash reserves, lose employees and referral sources, and will potentially forfeit all value as a going concern if the sale does not close in January.

3. Notice. Notice of this Sale Motion has been served on (i) all parties consenting to electronic service via the CM/ECF system; (ii) the Office of the United States Trustee via ECF/e-mail and U.S. Mail; (iii) Debtor's 20 largest unsecured creditors and all secured creditors via facsimile, e-mail or U.S. Mail; (iv) all governmental taxing authorities who have, or as a result of the sale may have, claims, contingent or otherwise, against Debtor via facsimile, e-mail or U.S. Mail; and (v) to all parties listed at the addressed provided in the Certificate of Service to this motion by U.S. Mail. Upon the Court setting deadlines for objections to the sale Motion and

submission of any competing bids, and a corresponding hearing date, counsel for Debtor shall cause such an expedited order to be served on the foregoing in conformance with LBR 9075-1(d) and evidence such by filing a Certificate of Service thereafter.

4. Requested Hearing Date. Debtor requests the Court set a hearing on the Sale Motion for **Tuesday, January 17, 2017 at 9:00 a.m.**, Courtroom 3, Customs House, 701 Broadway, Nashville, Tennessee. Debtor further requests that the Court set **Monday, January 16, 2017 at 12:00 p.m.** as the deadline for (i) any party wishing to make a competing bid to that of Buyer and (ii) the filing of any objections to the Sale Motion so that in the event no timely objection is filed, the Debtor be authorized to submit an Order substantially in the form of the proposed order attached hereto as Exhibit A.

5. Supporting Argument. In further support of the relief requested herein, Debtor states the following:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157(b)(2) and 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

#### **BACKGROUND**

3. Debtor filed its Chapter 11 petition on March 10, 2016. Debtor is operating and managing its locations as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No creditors' committee, trustee or examiner has been appointed in this case.

4. Debtor has filed a statement of its company profile, which includes the history of Debtor, a summary of Debtor's operations, and the reasons for filing Chapter 11, to which

reference is hereby made. (Doc. No. 8.) Debtor also incorporates the detailed background in Debtor's Disclosure Statement. (Doc. No. 139).

5. On August 5, 2016, Debtor filed its Chapter 11 Plan of Reorganization and Disclosure Statement. (Doc. Nos. 138 & 139).

6. Tortola Advisors, LLC ("Tortola") began assisting Debtor prior to the Petition Date. After the Petition Date, on April 19, 2016, the Court authorized the employment of Tortola as restructuring and general business advisors for Debtor. (*See* Doc. No. 78.)

7. On November 5, 2016, F. Graham Locke, D.D.S. ("Dr. Locke") passed away unexpectedly. Dr. Locke's Last Will and Testament was subsequently admitted to probate in the Davidson County Probate Court ("Probate Court") and his wife, Kristin Locke, was appointed as the Personal Representative (the "Executrix") of his estate (the "Probate Estate") on November 14, 2016.

8. Debtor is a service-based business which had significant value as a going concern at the time of Dr. Locke's death; however, because Debtor's value was directly tied to his ability to continue generating revenue, such value has been and will continue to diminish pending closing of the sale.

9. In addition to losing the production volume and income associated with Dr. Locke, Debtor also lost the production volume and income of Dr. Ben Locke, Dr. Locke's father. At present, Debtor only has one full-time endodontist, Dr. Tom Heeren ("Dr. Heeren"), who has a significant pre- and post-petition compensation claim against Debtor's estate. As such, Debtor's income has dropped precipitously.

10. Tortola took steps, with Debtor, to temporarily close four of Debtor's office locations, operating only out of Debtor's Nashville office. Even with the associated cuts in

expenses, Debtor will run out of available cash at year end, or soon thereafter. Given the status quo, there is a significant risk that Debtor will lose referral sources and employees, and that the going concern value of Debtor's endodontics practice will continue to dissipate.

11. Under these circumstances, Debtor and its professionals determined that it was in the best interest of Debtor and Debtor's creditors to sell Debtor's assets as quickly as possible.

12. Tortola began, soon after Dr. Locke's death, to request from interested parties the names and contact information of any party potentially interested in acquiring some or all Debtor's assets. Tortola contacted attorneys representing creditors and related parties, CPA firms in Middle Tennessee with dental specialties, real estate investors, local endodontics practices, local dental specialists – including periodontists, and to general dentistry practices. Tortola made over 140 total phone contacts, and numerous other e-mail contacts. Tortola contacted numerous potentially interested parties, and requested that each interested party complete a form with basic background information, as well as relevant financial information demonstrating the interested party's ability to bid.

13. In addition to contacting interested bidders, Tortola, Debtor's attorneys and accountants constructed a cloud-based data room with relevant information concerning Debtor's assets and liabilities. The data room included summary financial information on each of Debtor's operating locations, the equipment in each location, and the number and type of each procedure completed or conducted in each location over the past two years.

14. The data room also included information on the real estate holdings of Apex Investments, LLC ("Apex Investments"), a related entity also formerly wholly owned by Dr. Locke. Apex Investments owns three parcels of real property, which include two of Debtor's operating locations. Debtor and Apex Investments have certain common creditors – namely Live

Oak Bank, Bank of America and Truxton Trust. The indebtedness due to these creditors purportedly exceeds \$6,000,000.00 and is secured by certain personal property of the Debtor and/or real property owned by Apex Investments.

15. Tortola collected 15 formal offers by early December, some of which were submitted by the same interested bidder. Most of the submitted bids proposed only partial acquisitions – i.e., a single location of Debtor’s practice, together with the associated real estate (three of Debtor’s operating locations are owned by unrelated third parties). Similarly, most bidders interested in Apex Investments’ real estate placed little to no value on Debtor’s endodontics practice or equipment.

16. Tortola reviewed the offers from potential purchasers, consulted with Debtor’s creditors, and obtained input and support from counsel for Apex Investments and the Executrix. Based on all information and bids gathered, Debtor and its professionals have determined that the offer from Buyer is the highest and best offer currently available to Debtor, representing the maximum recovery for Debtor’s creditors.

17. Included in the assets to be purchased by Buyer are all assets of Debtor, including equipment, fixtures, furniture and other items used in Debtor’s endodontics practice, together with the real estate holdings of Apex Investments. Also included in the sale are the assets sold to either Dr. Locke, individually, or Debtor by Patterson Dental Supply, Inc.

18. The Buyer’s bid has few contingencies, and Buyer is believed to be financially capable of completing the purchase and closing by January 31, 2017. The Buyer’s bid contemplates retaining the Apex Endodontics name, retaining all five of Debtor’s office locations, and working with Dr. Heeren, Dr. Ben Locke, and the current staff of Debtor.

19. Although Dr. Heeren and Dr. Ben Locke have substantial unsecured claims against Debtor's estate and understand that the proposed transaction is unlikely to result in any recovery on their claims, Dr. Heeren and Dr. Ben Locke are believed to support the sale of substantially all Debtor's assets to Buyer.

20. Further, Debtor and its professionals have engaged in discussions with creditors whereby certain secured creditors have agreed to take reduced payments in satisfaction of their claims to facilitate the sale to Buyer. Debtor is currently working with its creditors to determine final payoff amounts to make appropriate distributions of the sale proceeds, but there will not be sufficient proceeds from the sale to pay the claims of all creditors who assert a lien in assets of the Debtor.

### **RELIEF REQUESTED**

21. Debtor and Buyer have agreed to the terms of Buyer's acquisition of substantially all Debtor's assets in a Letter of Interest and are working on an Asset Purchase Agreement, which is subject to approval by the Bankruptcy Court. A copy of the Letter of Interest is attached hereto as **Exhibit B**.

22. Pursuant to the terms of the Letter of Interest, Buyer will purchase all of the assets used or useful in the operation of Debtor's endodontics practice, together with the real estate holdings of Apex Investments.

23. The total purchase price for the assets to be sold is Five Million Six Hundred Thousand and no/100 Dollars (\$5,600,000).

24. A condition of Buyer's offer is that all of the assets be purchased free and clear of any and all liens, claims and encumbrances. With respect to Debtor's assets being sold, Debtor proposes that the liens held by secured creditors holding liens against any or all of its assets attach

to the sale proceeds to the extent of the value of such creditor's interest in Debtor's interest in such property. The recovery to creditors who hold a lien in any assets will be determined by the priority of their lien and the values of the assets subject to those liens.

25. The proceeds attributable to the sale of Debtor's assets contemplated by this Sale Motion will be held in trust for the benefit of Debtor's creditors. The proceeds from the sale of Apex Investments' assets that are not secured by liens of common creditors will be retained by Apex Investments and distributed as directed by the Probate Court. Within ten (10) days after closing of the sale, Debtor shall file a motion with this Court setting forth the net funds available for distribution and proposed payoff amounts to Debtor's secured creditors from the proceeds attributable to the value of Debtor's assets. To the extent that there are any disputes concerning the validity and/or priority of any liens or claims against any asset of the Debtor, or the value thereof, such disputes shall be resolved by the filing of an appropriate objection to said motion. To the extent that there are any disputes concerning the validity and/or priority of any liens or claims against any asset of Apex Investments or Dr. Locke, or the value thereof, such disputes shall be resolved solely by the Probate Court.

26. Debtor proposes to serve a copy of this Sale Motion and the Expedited Order setting the objection and competing bid deadlines and hearing date for this motion in accordance with Paragraph 3 above. Unless the party is scheduled to receive automatic electronic notice through CM/ECF, within one business day of entry of the Expedited Order approving the sale objection, bid and hearing schedule, Debtor shall serve by U.S. Mail, copies of the Expedited Order and the Sale Motion to the following parties: (i) the Office of the United States Trustee; (ii) Debtor's 20 largest unsecured creditors and all creditors who assert a lien on any of Debtor's assets; (iii) all governmental taxing authorities who have, or as a result of the sale may have, claims, contingent



or otherwise, against Debtor; and (iv) all parties identified in the Certificate of Service attached hereto, which parties have submitted bids for all or part of Debtor's assets, or otherwise expressed interest in acquiring Debtor's assets.

27. Debtor requests that the form and scope of notice provided for herein be deemed good, sufficient, and adequate notice pursuant to Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure.

28. Debtor also requests that the Court order and direct a waiver of the 14-day stay period provided for in Federal Rules of Bankruptcy Procedure 6004(h) and that the Court approve the form and manner of notice of sale.

29. Debtor requests that the Court order and direct any party wishing to make a competing bid to that of Buyer, as described above, shall do so by sending a proposed asset purchase agreement to the following parties at the addresses below so as to be received by no later than 12:00 p.m. CDT on January 16, 2017:

To Debtor: Apex Endodontics, PLLC  
c/o Steve Curnutte  
Tortola Advisors, LLC  
500 Church Street, Suite 600  
Nashville, Tennessee 37219  
[sdc@tortolaadvisors.com](mailto:sdc@tortolaadvisors.com)

With a copy to: Dunham Hildebrand, PLLC  
Attn: Alex Payne  
2510 Franklin Pike, Suite 210  
Nashville, Tennessee 37204  
[alex@dhnashville.com](mailto:alex@dhnashville.com)

To Apex Investments: Apex Investments LLC  
Attn: Executrix of the Estate of F. Graham Locke  
4031 Sneed Road  
Nashville, TN 37215  
[dlstegall@comcast.net](mailto:dlstegall@comcast.net)

With a copy to:

Watkins & McNeilly, PLLC  
Attn: John Van Cleave  
214 Second Avenue North, Suite 300  
Nashville, TN 37201-1638  
[john@watkinsmcneilly.com](mailto:john@watkinsmcneilly.com)

and

Watson Law Group PLLC  
Attn: Glen Watson  
2 Music Circle South, Suite 101  
Nashville, TN 37203  
[glen@watsonpllc.com](mailto:glen@watsonpllc.com)

30. If any timely competing bids are received, counsel for Debtor, Apex Investments and the Probate Estate shall conduct a bid conference prior to the hearing on this Sale Motion, at 9:00 a.m., Courtroom 3, Customs House, 701 Broadway, Nashville, Tennessee.

31. If Debtors' assets are ultimately sold to a party or parties other than Buyer, then pursuant to the Letter of Interest, Debtor has agreed to pay a break up or termination fee to Buyer in the amount of five percent of the amount paid by the successful purchaser for the assets of Debtor plus Buyer's due diligence expenses.

### **ARGUMENT**

32. Pursuant to 11 U.S.C. § 363, the Bankruptcy Court must approve any use, sale, or lease of property by Debtor outside the ordinary course of business. Section 363(b)(1) of the Bankruptcy Code provides that the trustee or debtor-in-possession "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In the Sixth Circuit, a court may authorize a sale of a Chapter 11 debtor's assets under section 363(b)(1) if a "sound business purpose dictates such action." *In re New Era Resorts, LLC*, 238 B.R. 381, 387 (Bankr. E.D. Tenn. 1999) (quoting *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986)).

33. In addition to the sound business purpose, the court should also consider whether (a) the sale price is fair and reasonable, (b) the purchaser is proceeding in good faith, and (c) Debtor has provided interested parties with proper notice of the sale. *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (Bankr. D. Del. 1991).

34. A sale of even all a Chapter 11 debtor's assets is appropriate if the provisions of §363 of the Bankruptcy Code are followed and the price is fair and reasonable and in the best interests of the estate and creditors. *In re Nicole Energy Services, Inc.*, 385 BR 201, 260 (Bankr. S.D. Ohio 2008) (“[o]utside the context of a Chapter 11 plan, a bankruptcy court can authorize a sale of a chapter 11 debtor's assets under §363(b)(1) when a sound business purpose dictates such action.”) (quoting *Stephens*, 789 F.2d at 390).

35. Debtor has a sound business purpose for the sale. Tortola believes that the sale of Debtor's assets will maximize the possible return to Debtor's creditors. While Debtor believes that its assets have value, Debtor is not able to profitably operate its business, risks losing its only full-time endodontist, and faces an uncertain future. The sale proposed herein allows Debtor to liquidate its assets and realize the maximum available value, rather than simply ceasing operations and draining Debtor of all remaining value and operational goodwill. Although the proceeds of the sale will be insufficient to satisfy all allowed claims against Debtor's estate, Debtor's professionals believe the proposed sale value provides the best possible return to Debtor's creditors.

36. Debtor does not believe that a public auction sale of its assets will benefit the estate, since Debtor has minimal equity, if any at all, in its assets. Debtor believes efforts to continue its operations will further diminish the value of its assets, and will result in increased administrative expense claims against the bankruptcy estate.

37. The proposed sale meets the good faith requirement for the approval of a sale outside the ordinary course of business. The issue of good faith focuses principally on whether there is any special treatment of a debtor's insiders in the sales transactions and related transactions. *See In re Indus. Valley Refrigeration & Air Conditioning Supp., Inc.*, 77 B.R. 15 (Bankr. E.D. Pa. 1987). Here, the proposed sale is to an unrelated third party. The proposed sale has been negotiated in good faith, is an arms-length business transaction, and the Court should therefore find the good faith requirement has been met.

38. Debtor represents it is authorized to sell its assets free and clear of liens, and it believes that the attachment of the liens to its sale proceeds adequately meets the requirements of Bankruptcy Rule 6004 and Section 363(f) of the Bankruptcy Code, which provides:

The trustee may sell property under subsection (b)...of this section free and clear of any interest in such property of an entity other than the estate, only if -- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) 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; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

40. Debtor submits that the claims of the majority of entities asserting security interests in the assets to be sold will be substantially satisfied from the resulting proceeds; therefore, Debtor does not anticipate an objection to the sale from any such claimants.

41. Debtor is further permitted to sell property free and clear of the liens, claims, and encumbrances of any secured claimant because such entities could be compelled in a legal or equitable proceeding to accept a money satisfaction of their interest.

42. The termination fee and expense reimbursement provided for in the Letter of Interest are appropriate and should be approved. These items were a condition to Buyer's offer, as Buyer was unwilling to enter into the Letter of Interest without the inducement of the fee and

the expense reimbursement. Without the Buyer's offer, the Debtor would not have the certainty of a minimum price for the purchased assets and, thus, the expense reimbursement and the break-up fee preserve the value of the Debtor's estate. *See Corradino v. Lamb (In re Lamb)*, No. 96-1-1099-DK, 2002 WL 31508913, at \*2 (Bankr. D. Md. Oct. 11, 2002) (stating that a break-up fee should be in the best interest of the estate and necessary); *see also Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 536-38 (3d Cir. 1999).

43. The Buyer is proceeding in reliance upon the agreement by the Debtor to seek approval of these matters and in reasonable expectation that this Court would enter an order providing such relief. Debtor submits that protections such as the break-up fee and the expense reimbursement encourage a potential purchaser to invest the requisite time, money, and effort to conduct due diligence and negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See e.g., In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence"); *In re Marrose Corp.*, Nos. 89 B 12171 (CB) to 89 B 12179 (CB), 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. Feb. 15, 1992) (stating that "agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

44. Debtor also requests that the order approving the sale provide that the Buyer has acted in good faith and is entitled to the protections found in Section 363(m) of the Bankruptcy Code. This transaction has been negotiated at an arms-length and is fair to Debtor.

45. Pursuant to Federal Rules of Bankruptcy Procedure 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property outside the ordinary course of business

pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Given the interest of Debtor and its estate in closing the sale on or before January 31, 2017, as required by the Letter of Interest, Debtor requests that the Court order and direct a waiver of the 14-day stay period so that the Court's order is effective immediately upon entry.

WHEREFORE, Debtor respectfully requests the entry of an order on an expedited basis (i) authorizing the sale of Debtor's assets on the terms set forth in the Letter of Interest, free and clear of liens, claims, encumbrances and interests of any kind; (ii) finding that the purchaser of Debtor's assets is entitled to the protections of Section 363(m) of the Bankruptcy Code; (iii) lifting the 14-day stay of the order provided by Bankruptcy Rule 6004; (iv) approving the form and manner of notice of sale; (v) authorizing the payment of a termination fee in the event of a sale of the assets to party or parties other than Buyer; and (vi) granting such other relief as the Court deems appropriate and just.

Respectfully submitted,

/s/ Griffin S. Dunham  
Griffin S. Dunham  
R. Alex Payne  
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2510 Franklin Pike, Suite 210  
Nashville, Tennessee 37204  
615.933.5850  
griffin@dhnashville.com  
*Counsel for Debtor*

**CERTIFICATE OF SERVICE**

On January 3, 2016, I hereby certify that the foregoing shall be delivered in accordance with Paragraph 3 above.

/s/ Griffin S. Dunham  
Griffin S. Dunham

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE:	)	
	)	Case No. 3:16-bk-01708
APEX ENDODONTICS OF TN, PLLC,	)	Chapter 11
	)	Judge Marian F. Harrison
Debtor.	)	

**ORDER GRANTING DEBTOR’S EXPEDITED MOTION FOR AN ORDER  
(I) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES; (II) APPROVING FORM AND MANNER OF NOTICE OF SALE;  
AND, (III) GRANTING RELATED RELIEF**

This matter is before the Court upon the Expedited Motion of Debtor Apex Endodontics of TN, PLLC (“Debtor”) for an order (I) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Encumbrances; (II) Approving Form and Manner of Notice of Sale; (III) Setting an Objection Deadline and Hearing on Objections, if any, within a Shortened Time Period; and, (IV) Granting Related Relief (the “Sale Motion”). Due and proper notice having been given, and after due deliberation and sufficient cause appearing therefore, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Proper, timely, adequate and sufficient notice of the Sale Motion and the hearing on the Sale Motion (the “Sale Hearing”) has been provided in accordance with Sections 102(1) and 363(b) of the United States Code, 11 U.S.C. *et seq.* (the “Bankruptcy Code”), Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008 and 9014, the local rules of this Court, and the procedural due process requirements of the United States Constitution. No other or further notice of the Sale Hearing or of the entry of this Order is necessary.

D. Notice of the sale was sufficient to justify its consideration on shortened notice.

E. A reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion has been afforded to all interested persons and entities, including, without limitation (i) all parties consenting to electronic service via the CM/ECF system; (ii) the Office of the United States Trustee; (iii) Debtor’s 20 largest creditors and all secured creditors; (iv) all governmental taxing authorities who have, or as a result of the sale may have, claims, contingent or otherwise, against Debtor; and (v) to all parties listed at the address provided in the Certificate of Service to Debtor’s Sale Motion, which parties were identified based on an expressed interest in purchasing some or all of Debtor’s assets.

F. Debtor has presented ample evidence that the proposed sale constitutes the highest and best offer both in the sound exercise of Debtor’s business judgment and from an objective value viewpoint, and that the proposed sale maximizes the value of Debtor’s assets.

G. Debtor has advanced sound business reasons for proceeding with the sale of its assets on an expedited basis.

H. Debtor has presented sufficient evidence that the bid solicitation process and provision of information to interested parties was appropriate and was reasonably designed to generate the highest and best offers for Debtor’s assets.



I. The purchase price to be paid by Leon Capital Group, LLC (“Buyer”), as set forth in the Sale Motion and Letter of Interest and any related Asset Purchase Agreement, is fair, is in the best interest of Debtor’s estate, and constitutes full and adequate consideration and reasonably equivalent value for Debtor’s assets.

J. Buyer is not an insider, as that term is defined in the Bankruptcy Code and the decisions thereunder. Buyer is a purchaser in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Section 363(m) of the Bankruptcy Code with respect to the assets to be purchased. The purchase of Debtor’s assets was negotiated and executed in good faith and without collusion. There are no undisclosed deals or agreements between Buyer and Debtor, or any other party in interest. Neither Debtor nor Buyer has engaged in any conduct that would prevent the application of Section 363(m) of the Bankruptcy Code.

K. Debtor has full corporate power and authority to execute an Asset Purchase Agreement and all other documents contemplated thereby, and the sale of the assets has been duly and validly authorized by all corporate authority necessary to consummate the transactions contemplated by the asset sale transaction.

L. Debtor has advanced sound business reasons for executing the Asset Purchase Agreement and to sell the assets, as more fully set forth in the Sale Motion, and it is a reasonable exercise of Debtor’s business judgment to sell its assets and to execute and deliver the Asset Purchase Agreement to the Buyer.

M. The terms and conditions of the Asset Purchase Agreement announced at the hearing are fair and reasonable, and the transactions contemplated by the Asset Purchase

Agreement are in the best interest of Debtor's creditors and estate and are the best available practical alternatives.

N. A valid business purpose exists for approval of the transactions contemplated by the Sale Motion pursuant to Section 363(b) of the Bankruptcy Code. The transfer of substantially all of Debtor's assets from Debtor to Buyer is a legal, valid and effective transfer of the assets notwithstanding any requirement for approval or consent by any person.

O. Buyer is not assuming and shall not be liable or otherwise responsible for any of the debts, liabilities or obligations of Debtor, except for any assumed liabilities set forth in the Asset Purchase Agreement.

P. The Asset Purchase Agreement is being entered into in good faith and not to hinder, delay or defraud any creditors of Debtor. Debtor shall not in any way be liable or responsible for any liabilities, commitments or obligations in any way related to the assets arising from and after the date of the closing of the transactions contemplated by the Asset Purchase Agreement (the "Closing Date").

Q. Debtor and Buyer do not have any common controlling shareholders or senior management. Buyer is not merely a continuation of Debtor or its estate. There is no continuity of enterprise between Debtor and Buyer. Buyer is not a successor to Debtor or its estate, and the transactions contemplated in the Asset Purchase Agreement do not amount to, or otherwise constitute, a consolidation, merger or de facto merger of Buyer and Debtor or its estate.

R. The sale of substantially all Debtor's assets on the terms provided in the Asset Purchase Agreement comply with Section 363(b)(1) of the Bankruptcy Code.

**THEREFORE**, based upon the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The relief requested in Debtor's Sale Motion is **GRANTED**.
2. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.
3. This proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A), (N) and (O). The statutory predicate for the Sale Motion is Section 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.
4. The Asset Purchase Agreement and the transactions contemplated thereby are approved, and Debtor is hereby authorized, empowered and directed to execute, and to perform its obligations under, the Asset Purchase Agreement and to execute and perform such agreements or documents and take such other actions as are necessary or desirable to effectuate the terms of the Asset Purchase Agreement.
5. Debtor is authorized, empowered and directed, pursuant to Section 363(b) of the Bankruptcy Code, to sell its assets to Buyer in accordance with the terms and conditions of the Asset Purchase Agreement.
6. Pursuant to Section 363(f) of the Bankruptcy Code, Debtor's assets sold pursuant to the Asset Purchase Agreement and this Order shall be sold free and clear of all liens, claims, encumbrances, interests and liabilities of any kind or nature, arising prior or subsequent to the date on which Debtor filed its voluntary petition for relief under the Bankruptcy Code. The liens held by secured creditors holding liens against any assets of the Debtor being sold shall attach to the sale proceeds to the extent of such creditor's interest in the pre-transaction interest held by Debtor in that asset.

7. Proceeds attributable to the sale of Debtor's assets contemplated by this Sale Motion will be held in trust for the benefit of Debtor's creditors. The proceeds from the sale of Apex Investments' assets that are not secured by liens of common creditors will be retained by Apex Investments and distributed as directed by the Probate Court. Within ten (10) days after closing of the sale, Debtor shall file a motion with this Court setting forth the net funds available for distribution and proposed payoff amounts to Debtor's secured creditors from the proceeds attributable to the value of Debtor's assets. To the extent that there are any disputes concerning the validity and/or priority of any liens or claims against any asset of the Debtor, or the value thereof, such disputes shall be resolved by the filing of an appropriate objection to said motion. To the extent that there are any disputes concerning the validity and/or priority of any liens or claims against any asset of Apex Investments or Dr. Locke, or the value thereof, such disputes shall be resolved solely by the Probate Court.

8. This Order shall be binding upon and govern the acts of all persons or entities, including without limitation, all filing agents, recording agencies, secretaries of state and all other persons and entities who may be required by operation of law to accept, file, register or otherwise record or release any documents or instruments.

9. The sale of Debtor's assets to Buyer under the Asset Purchase Agreement will constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable law.

10. The sale of Debtor's assets on the terms provided in the Asset Purchase Agreement satisfies the requirements set forth in Section 363(b)(1) of the Bankruptcy Code.

11. This Order and the Asset Purchase Agreement shall be binding upon, and shall inure to the benefit of, Debtor and Buyer, and their respective successors and assigns, including

without limitation, any Chapter 11 trustee appointed for Debtor's estate or any trustee appointed in a Chapter 7 case if this case is converted from Chapter 11.

12. The provisions of this Order are non-severable and mutually dependent.

13. Debtor and Buyer are authorized to close under the Asset Purchase Agreement immediately. If Debtor and Buyer close under the Asset Purchase Agreement, Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protection of Section 363(m) of the Bankruptcy Code as to all aspects of the transactions provided for in the Asset Purchase Agreement and this Order.

14. The sale approved by this Order is not subject to avoidance pursuant to Section 363(n) of the Bankruptcy Code and Debtor's estate shall not be entitled to a judgment against Buyer under Section 363(n) of the Bankruptcy Code.

15. Debtor and Buyer are authorized and empowered to take all and execute and deliver all documents and instruments that either Debtor or Buyer deem necessary or appropriate to implement and effectuate the terms of the Asset Purchase Agreement and this Order.

16. To the extent applicable, the automatic stay pursuant to Section 362 of the Bankruptcy Code is lifted to the extent necessary, without further order of the Court (a) to allow Buyer to give Debtor any notice provided for in the Asset Purchase Agreement, and (b) to allow Buyer to take any and all actions permitted by the Asset Purchase Agreement.

17. All persons and entities (i) holding any lien, claim, encumbrance, or interest in any of the Debtor's assets, (ii) that have filed a financing statement, mortgage, mechanic's lien, *lis pendens*, or other document or agreement evidencing any claim with respect to any of Debtor's Assets, or (iii) otherwise asserting any claim against the Debtor's assets subject to the Asset Purchase Agreement are directed to execute and deliver to Debtor or its designated

representative(s) any and all agreements, instruments and other documents necessary to effectuate the transfer of the assets to the Buyer free and clear of all liens and encumbrances, with such releases to be held in trust pending disbursement of funds from closing of the amounts due to the holder thereof. If any person or entity that has filed statements or other documents evidencing any lien, claim, encumbrance, or interest in any of the assets sold by Debtor does not deliver such termination statements or other required documents to Debtor or Buyer prior to the closing date, in proper executed form for filing, Debtor and/or Buyer may execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to any of the assets. Nothing in this paragraph, including the execution and delivery of an instrument or document releasing any lien, claim, encumbrance, or interest in the assets, shall operate to waive or release any lien, claim, or interest that such party may have in the proceeds from the sale of the Debtor's assets under the Asset Purchase Agreement.

18. The transactions contemplated in the Asset Purchase Agreement do not amount to, or otherwise constitute, a consolidation, merger or *de facto* merger of Buyer and Debtor or its estate, nor shall Buyer be deemed a successor to Debtor solely by reason of the transactions contemplated by the Asset Purchase Agreement.

19. Buyer shall have no liability or responsibility for any debt, liability or other obligation of or claim against Debtor, other than for any assumed liabilities set forth in the Asset Purchase Agreement.

20. The Asset Purchase Agreement and any related agreements may be modified, amended, or supplemented by agreement of Debtor and Buyer without further action of the Court; provided such modification, amendment, or supplement is not a material alteration of the Asset Purchase Agreement.

21. Nothing contained in any plan of reorganization, plan of liquidation, or order of dismissal in Debtor's Chapter 11 case, or in any other order of the Court shall conflict with or deviate from the terms of the Asset Purchase Agreement or this Order, and to the extent such provisions do conflict, then the terms of the Asset Purchase Agreement and this Order control over such conflicting order or plan. As between Debtor and Buyer, to the extent this Order conflicts with the Asset Purchase Agreement, the Asset Purchase Agreement controls.

22. Notwithstanding Bankruptcy Rule 6004(h), this Order will take effect immediately upon entry.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS INDICATED AT  
THE TOP OF THE FIRST PAGE

Submitted for entry by:

/s/ Griffin S. Dunham  
Griffin S. Dunham  
R. Alex Payne  
DUNHAM HILDEBRAND, PLLC  
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Nashville, Tennessee 37204  
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alex@dhnashville.com  
*Counsel for Debtor*

EXHIBIT B

December 26, 2016

Re: Leon Capital Group: Letter of Interest - Apex Endodontics of TN, PLLC and Apex Investments, LLC

Leon Capital Group, LLC ("LCG") is pleased to submit this proposal to acquire substantially all assets of both Apex Endodontics of TN, PLLC ("Apex Endodontics") and Apex Investments, LLC ("Apex Investments") collectively the "Transaction". The following describes the primary terms and conditions under which LCG, its affiliates or assignees will move forward with the contemplated Transaction.

This proposal is intended to be a non-binding expression of interest only, describing the basic terms upon which the parties would be interested in pursuing a transaction pursuant to mutually acceptable definitive documentation to be negotiated and executed hereafter.

Investment Objective:

LCG, via a wholly owned acquisition subsidiary (collectively, the "Purchaser") proposes to acquire substantially all of the assets of Apex Endodontics and Apex Investments.

The Purchaser in partnership with Vardiman Black endeavor to provide jobs to all Apex Endodontics employees and immediately begin hiring to provide economic benefit to the surrounding community. The partnership will operate the endodontic clinics as a cohesive entity post acquisition with additional management support from Vardiman Black, a specialty Dental Support Organization led by Dr. Sabin Ewing, a well-respected veteran in the Nashville dental community.

Purchase Price:

The Purchaser proposes to acquire the assets of the companies for \$5,600,000 in an all cash transaction.

Conditions Precedent:

- Clear Title obtained, including title insurance on the real property at the sole expense of Purchaser.
- Offer conditioned on Purchaser renegotiating and/or an assumption of the leases with 3rd party landlords prior to closing of the Transaction.
- The U.S. Bankruptcy Court for the Middle District of Tennessee to enter as soon as possible an order or orders in the pending Chapter 11 proceeding of Apex Endodontics (Case No. 16-bk-01708) approving the sale of the assets of Apex Endodontics to Purchaser, free and clear of all liens, establishing deadline of no later than January 10, 2017 for objections and setting the sale hearing for no later than January 17, 2017.
- Entry of an order of the Circuit Court for Davidson County, Tennessee (Probate Division) in the case styled *In Re: Franklin Graham Locke*, Docket No. 16P1912, approving the Transaction in all respects no later than January 30, 2017.

Transitions Services Agreement:

Dr. Sabin Ewing and Vardiman Black will sign a transition services agreement with Apex Endodontics subsequent to execution of this LOI to provide management and professional services to Apex Endodontics including, without limitation, the employment of endodontists licensed in the State of Tennessee to provide continuing quality patient care to all existing or future patients, or make such referrals to other local endodontists as is necessary to ensure quality patient care. Services will be provided at no charge and in the interest of preserving value of Apex Endodontics during the sale process. After LCG posts a good faith deposit, and subject to the approval of any entity having a security interest in the assets of Apex Endodontics, Vardiman Black will be entitled to 10% of collections on any collections above the previous month's aggregate collection amount as a management fee. The intention of this provision is to preserve the value of the practices during the sale process and compensate Vardiman Black management team for any increase in value attributed to their immediate services during this period.



**Due Diligence:**

Consummation of this proposal will be subject to LCG's completion of, and satisfaction with, a customary business, financial and legal due diligence review of Apex Endodontics and Apex Investments, and receipt of all necessary approvals from the U.S. Bankruptcy Court for the Middle District of Tennessee and the Circuit Court for Davidson County, Tennessee (Probate Division). Upon acceptance of this term sheet LCG will commence a due diligence review, with best efforts to close on or before 1/31/2017. During such time, "The Companies" shall make themselves available under reasonable conditions.

At the later of: (i) 15 business days or (ii) within 24 hours of the Bankruptcy Court approving the sale at the sale hearing, LCG will post a 10% of Purchase Price good faith deposit into escrow with Watkins & McNelly PLLC, counsel for the estate of Franklin Graham Locke.

**Exclusivity:**

Upon execution of this term sheet, Apex Investments and any representative of them agree not to hold discussions with any other capital partners without LCG's consent in connection with the opportunity contemplated by this term sheet for a period of 15 business days, or at such time as the parties mutually agree that no agreement will be reached.

Upon receipt of LCG's good faith deposit into escrow, LCG will be granted an additional 30 days of Exclusivity. However, so long as LCG is making reasonable efforts to close the Transaction then under no circumstance shall the Exclusivity period be lifted.

**Term:**

The parties intend for the closing to occur no later than 30 days from the execution of this term sheet. Unless the parties mutually agree to extend the negotiations or negotiations are terminated by either party, the term sheet shall automatically expire on the 60th day following execution of this term sheet with no additional penalties or obligation of either party to the other except for the non-disclosure of the confidential information as set forth in the Confidentiality Agreement previously executed by the parties.

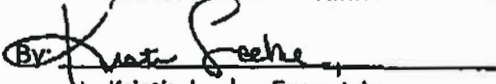
**Leon Capital Group, LLC**

By:   
Vice President

Agreed and Accepted as of the date first written above:

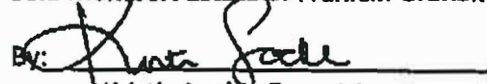
**Apex Endodontics PLLC**

Sole Member: Estate of Franklin Graham Locke

By:   
Kristin Locke, Executrix

**Apex Investments LLC**

Sole Member: Estate of Franklin Graham Locke

By:   
Kristin Locke, Executrix

The estate of Franklin Graham Locke is the sole member of Apex Endodontics PLLC and Apex Investments LLC; therefore, Kristin Locke executes this agreement solely in her capacity as the duly appointed Executrix, not individually, and assumes no personal liability or obligation hereunder.



**EXHIBIT A-TERMS AND CONDITIONS**

**Asset Purchase Agreement:**

The Asset Purchase Agreement will provide that the assets are being sold in "as is, where is" condition. Seller will make limited representation and warranties consistent with an "as is, where is" sale. Standard conditions to Closing will include, among other things, satisfactory completion of financial and legal due diligence and execution of an Asset Purchase Agreement agreeable to the parties. The Companies and LCG will each pay their respective legal and administrative costs of the transaction. Any fees related to debt financing shall be borne by the Purchaser.

**Access:**

During the period from the date this letter is signed by the companies (the "Effective Date") until the earlier of the date on which either party provides the other party with written notice that negotiations toward a definitive agreement are terminated or this letter expires and is not renewed within 60 days of execution of the Effective Date (the "Termination Date"), the Companies and Tortola Advisors will permit LCG to conduct due diligence by providing LCG with full access to the Company at times agreed upon by the parties, provided that LCG does not disrupt the business operations of the Companies.

**Break-Up Fee:**

Unless Purchaser withdraws its bid or breaches any obligation to close under an executed Asset Purchase Agreement, then in any other circumstance, if the Bankruptcy Court approves a sale of all the assets of Apex Endodontics to another bidder, the Purchaser shall be entitled to a sum equal to LCG's due diligence expenses plus 5% of the Purchase Price paid by the successful bidder for the assets of Apex Endodontics. Break-up Fee will not be applicable until the time at which LCG has posted its good faith deposit and only in the event of a joint sale of all the assets of Apex Endodontics and Apex Investments to a bidder other than LCG for a total amount in excess of \$5,600,00.00. This fee will not serve as the exclusive remedy to LCG under this letter in the event of a breach by either Apex Endodontics or Apex Investments, and LCG will be entitled to all other rights and remedies provided by law or in equity.

**Requirements:**

Except for any indemnities and Exclusivity, and Break-Up Fee contained herein, this letter is not a binding agreement on both parties. Approval of the Investment is subject to the satisfactory completion of Leon Capital Group's underwriting and due diligence, including review and approval of all information that Leon Capital Group deems pertinent in its sole discretion.

Handwritten notes: JL, HD, 4/24/14, 12/27/16