

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Pending)

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

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (this “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit B (the “**Proposed Order**”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 2002, 6004, and 6006 of the Federal Rules

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

of Bankruptcy Procedure (as amended from time to time, the “**Bankruptcy Rules**”); and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i)(a) approving procedures in connection with the sale of substantially all of the Assets (as that term is defined below) of the Debtors, (b) approving certain bid protections for the Stalking Horse Bidder, (c) scheduling the related auction and hearing to consider approval of the sale, (d) approving procedures related to the assumption of certain of the Debtors’ executory contracts and unexpired leases, (e) approving the form and manner of notice thereof, and (f) granting related relief; and (ii)(a) approving asset purchase agreement between the Debtors and a successful bidder, (b) authorizing the sale of the subject assets free and clear of liens, claims, encumbrances, and other interests, (c) approving the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases related thereto, and (d) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Martin McGahan, Chief Restructuring Officer of EBH Topco, LLC, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are Bankruptcy Code sections 105(a), 363, 365, 503(b), and 507(a)(2), Bankruptcy Rules 2002, 6004, and 6006(a), and Local Rules 2002-1, 6004-1, and 9013-1(m).

BACKGROUND

A. The Debtors' Chapter 11 Cases

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

5. The Debtors intends to sell substantially all of their assets in the Chapter 11 Cases and Project Build Behavioral Health, LLC (the "**Prepetition First Lien Lender and DIP Lender**") has, subject to certain conditions, agreed to provide financing and to allow its cash collateral to be used to fund the Chapter 11 Cases and the 363 sale. However, given their lack of liquidity, the Debtors needs to complete the 363 sale process as expeditiously as possible.

RELIEF REQUESTED

6. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit B (the "**Bidding Procedures Order**"):

- (a) authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1 in connection with the sale of substantially all of the Debtors' assets (the "**Assets**");
- (b) approving the form and manner of notice attached to the Bidding Procedures Order as Exhibit 2 (the "**Sale Notice**") of an auction (the "**Auction**") and sale hearing (the "**Sale Hearing**") with respect to the sale of the Assets free and clear of liens, claims, encumbrances, and other interests (the "**Sale**");
- (c) scheduling the Auction and Sale Hearing;
- (d) approving procedures for the assumption and assignment (as set forth in the Bidding Procedures Order, the "**Assumption Procedures**") of certain executory contracts and unexpired leases in connection with the Sale (collectively, the "**Contracts**"); and
- (e) granting related relief.

7. The Prepetition First Lien Lender and DIP Lender will serve as the stalking horse purchaser (the "**Stalking Horse Bidder**") pursuant to the proposed Letter of Intent (the "**LOI**") attached hereto as Exhibit A, which contemplates the entry into a definitive Asset Purchase Agreement (the "**Stalking Horse Agreement**") with the Stalking Horse Bidder no later than June 1, 2018. Pursuant to the LOI, the Stalking Horse Bidder is entitled to:

- (a) reimbursement of the Stalking Horse Bidder's reasonable and actual fees and expenses incurred as the Stalking Horse Bidder up to \$325,000 (the "**Expense Reimbursement**"); and
- (b) initial overbid protection in the amount of \$100,000 (the "**Initial Overbid**") and, together with the Expense Reimbursement, the "**Bid Protections**").

8. Furthermore, the Debtors will seek entry of an order at the conclusion of the Sale Hearing, substantially in the form attached hereto as Exhibit C (the "**Sale Order**");

- (a) authorizing and approving the Sale of the Assets to the Successful Bidder (as defined in the Bidding Procedures) on the terms substantially set forth in the Successful Bid;
- (b) authorizing and approving the Sale of all or substantially all of the Assets free and clear of liens, claims, encumbrances, and other interests, all in accordance with the Successful Bid; and

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

9. The Debtors reserve the right to file and serve any supplemental pleading or declaration that the Debtors deem appropriate or necessary in their reasonable business judgment, including any pleading summarizing the competitive bidding and sale process and the results thereof, in support of their request for entry of the Sale Order before the Sale Hearing.

PREPETITION MARKETING AND SALE PROCESS

10. As set forth in detail in the First Day Declaration, the Debtors, through their investment banker, Jefferies, LLC, engaged in an extensive prepetition marketing process. In addition, the Debtors have retained, subject to court approval, Houlihan Lokey as their investment banker in these Chapter 11 Cases.

11. As part of the proposed sale process, the Debtors, through Houlihan Lokey and their professionals, will continue to engage in the robust marketing effort for the Debtors' assets, which started well before the Petition Date, continuing to contact both financial and strategic investors regarding a potential sale process, including all parties contacted prior to the commencement of the cases. There will be no conditions on potentially interested parties regarding bid levels, structure, financing, or management in connection with the solicitation of indications of interest. All interested parties will be given an opportunity to execute a confidentiality agreement and be given access to the data room maintained by counsel to the Debtors. Those parties that execute a confidentiality agreement will be provided with substantial due diligence information concerning, and access to, the Debtors, including, without limitation, presentations by the Debtors and their advisors, and access to financial, operational, and other detailed information.

LOI & STALKING HORSE AGREEMENT

12. The key terms of the proposed transaction can be found in the LOI attached hereto as Exhibit A. No later than June 1, 2018, in addition to filing a fully executed copy of the Stalking Horse Agreement on the docket, the Debtors will file a notice on the docket with the relevant disclosures required by Local Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware.

THE PROPOSED SALE

13. The Debtors believe a prompt sale of the Assets represents the best option available to maximize value for all stakeholders in these Chapter 11 Cases. Moreover, it is critical for the Debtors to execute on a sale transaction as expeditiously as possible, as the Debtors are utilizing the Prepetition First Lien Lender's and DIP Lender's cash collateral and additional financing in order to conduct this sale process. Therefore, time is of the essence.

14. By this Motion, the Debtors request that the Court approve the following general timeline, with the assumption that the Bankruptcy Court will enter an order granting this motion on shortened notice. These dates are subject to change in the event that the Bankruptcy Court does not enter an order at that hearing:

- (a) ***Contract Cure Objection Deadline:*** Objections to the potential assumption and assignment of any Contract will be filed and served no later than **June 21, 2018** at 4:00 p.m. (prevailing Eastern Time) (the "**Cure or Assignment Objection**").
- (b) ***Bid Deadline:*** Bids for the Assets, including a marked-up form of the Stalking Horse Agreement, if one has been accepted by the Debtors as contemplated by the Bidding Procedures Order, as well as the deposit and the other requirements for a bid to be considered a Qualified Bid (as defined in the Bidding Procedures) must be received by no later than **June 26, 2018** at 4:00 p.m. (prevailing Eastern Time) (the "**Bid Deadline**").
- (c) ***Auction:*** The Auction, if necessary, will be held at the offices of Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 on

June 27, 2018 at 10:00 a.m. (prevailing Eastern Time), or such other location as identified by the Debtors after notice to all Qualified Bidders.

- (d) ***Sale Objection Deadline:*** Objections to the Sale will be filed and served no later than 4:00 p.m. (prevailing Eastern Time) on **June 21, 2018**.
- (e) ***Sale Hearing:*** Consistent with the Court's availability and schedule, the Sale Hearing will commence on or before **June 28, 2018**.

15. The Debtors believe that this timeline maximizes the prospect of receiving a higher or otherwise better offer without unduly prejudicing the bankruptcy estates. Given the Debtors' extensive prepetition marketing efforts, the proposed timeline is more than sufficient to complete a fair and open sale process that will maximize the value received for the Assets. To further ensure that the Debtors' proposed Auction and Sale process maximizes value for the benefit of the Debtors' estates, the Debtors and their professionals will use the time following the Petition Date to continue to actively market the Assets in an attempt to solicit the highest or otherwise best bids available. The Debtors believe the relief requested by this Motion is in the best interests of their creditors, their other stakeholders, and all other parties in interest, and should be approved.

16. Moreover, the Debtors determined that the bid submitted by the Stalking Horse Bidder was the highest and best because, among other reasons, but perhaps most importantly, it preserves jobs. The bid submitted by the Stalking Horse Bidder provides that the Company will continue to operate as a going concern. As part of its bid, the Stalking Horse Bidder negotiated for the timeline requested herein. The Debtors believe that an expedited sale process will minimize any further deterioration of the Assets and is in the best interests of all stakeholders. Thus, the Debtors have determined that pursuing the Sale in the manner and within the time periods prescribed in the Bidding Procedures is in the best interest of the Debtors' estates and will provide interested parties with sufficient opportunity to participate.

THE BIDDING PROCEDURES ORDER

A. The Bidding Procedures

17. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order. The Bidding Procedures were developed to permit an expedited sale process, to promote participation and active bidding, and to ensure that the Debtors receive the highest or otherwise best offer for the Assets. Given the terms and conditions of the Debtors' use of cash collateral, the Debtors believe that the timeline for consummating the sale process established pursuant to the Bidding Procedures is in the best interest of their estates and all parties in interest.

18. The Bidding Procedures describe, among other things, the requirements for prospective purchasers to participate in the bidding process, the availability and conduct of due diligence, the deadline for submitting a competing bid, the method and factors for determining qualifying bids, the criteria for selecting a successful bidder, and the Debtors' selection of a Stalking Horse Bidder and certain Bid Protections afforded to the Stalking Horse Bidder that will enhance the Debtors' efforts to maximize the value of the Assets.

19. The following summary describes the salient points of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1:²

- (a) **Qualification of Bidders (Local Bankr. R. 6004-1(c)(i)(A)).** To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a "**Bid**"), and each party submitting such a Bid (each, a "**Bidder**"), must be determined by the Debtors to satisfy each of the following conditions:

² This summary of the Bidding Procedures is qualified in its entirety by the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

- (i) **Corporate Authority.** Written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the Sale; *provided, however*, that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Sale by the equity holder(s) of such Bidder. *See* Bidding Procedures § (C)(3)(4).
- (ii) **Proof of Financial Ability to Perform.** Written evidence that the Debtors reasonably conclude demonstrates that the Bidder has the necessary financial ability to close the Sale and provide adequate assurance of future performance under all Assigned Contracts. Such information should include, *inter alia*, the following:
 - contact names, email addresses and telephone numbers for verification of financing sources;
 - evidence of the Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the Sale;
 - the Bidder's current financial statements (audited if they exist); and
 - any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Bidder has the ability to close the Sale; *provided, however*, that the Debtors shall determine, in their sole discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder's financial qualifications.

See Bidding Procedures § (C)(3)(5).

- (b) **Qualified Bids (Local Bankr. R. 6004-1(c)(i)(B)).** Each Bid must be determined by the Debtors to satisfy each of the following conditions:
 - (i) **Good Faith Deposit.** Each Bid must be accompanied by a deposit paid in cash or by wire transfer in immediately available funds, into an interest bearing escrow account to be identified and established by the Debtors in an amount equal to ten percent (10%) of the proposed purchase price, (the "**Good Faith Deposit**"). *See* Bidding Procedures § (C)(3)(1).
 - (ii) **Terms.** A Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse Agreement, as determined by the Debtors, and the Bid must identify which Assets the Bidder intends to

purchase and include executed transaction documents (the “**Transaction Documents**”). A Bid shall include (i) an executed asset purchase agreement and (ii) a copy of such asset purchase agreement marked to show all changes requested by the Bidder as compared to the Stalking Horse Agreement. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse Agreement (it being agreed and understood that such Bid shall modify the Stalking Horse Agreement as needed to comply in all respects with the Bid Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder (in its capacity as the stalking horse bidder) such as the protections relating to the Expense Reimbursement); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made. The Debtors shall evaluate all Bids to determine whether such Bid(s) maximizes the value of the Debtors’ estates as a whole. The Transaction Documents shall also identify any executory contracts and unexpired leases of the Debtors that the Bidder wishes to have assumed and assigned to it pursuant to the Sale (collectively, the “**Assigned Contracts**”). *See* Bidding Procedures § (C)(3)(2).

- (iii) **Contingencies.** A Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties. *See* Bidding Procedures § (C)(3)(6).
- (iv) **Irrevocable.** A Bid must be irrevocable until the closing of the Auction; *provided, however*, that if such Bid is accepted as the Successful Bid or the Backup Bid (as defined in the Bidding Procedures), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures. *See* Bidding Procedures § (C)(3)(7).
- (v) **Disclaimer of Fees.** Each Bid (other than the bid of the Stalking Horse Bidder) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion

or request for reimbursement on any basis, including pursuant to section 503(b) of the Bankruptcy Code. *See* Bidding Procedures § (C)(3)(8)

- (vi) **Bid Deadline.** The Debtors must receive a Bid in writing, on or before the Bid Deadline, **June 26, 2018 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors. *See* Bidding Procedures § (C)(3)(9).
- (c) **Right to Credit Bid (Local Bankr. R. 6004-1(b)(iv)(N)).** The Stalking Horse Bidder (for itself and in its capacity as Prepetition First Lien Lender and DIP Lender) shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder (for itself and in its capacity as Prepetition First Lien Lender and DIP Lender) may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the DIP Loan Documents (as defined in the DIP Order) and Pre-Petition First Lien Obligations (as defined in the DIP Order), each in their respective full amounts of such obligations outstanding as of the Closing Date (defined in the Stalking Horse Agreement) and (ii) all or a portion of its Bid Protections (including as part of any Overbid), at any time on any individual Asset, portion of the Assets, or all Assets constituting the DIP Lender's DIP Collateral (as defined in the DIP Order) and the Prepetition First Lien Lender's Prepetition Senior Secured Collateral (as defined in the DIP Order) in conjunction with the Sale of the Assets (the "**Credit Bid**"). Upon exercise of a its Credit Bid, the Prepetition First Lien Lender and DIP Lender shall not be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), any individual Asset, portion of the Assets, or all of the Assets, and the Stalking Horse Bidder (including in its capacity as Prepetition First Lien Lender and DIP Lender) shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual Asset, portion of the Assets, or all of the Assets that are subject to the Credit Bid. Except for the Stalking Horse Bidder, no other person may credit bid unless the entire amount of the Prepetition First Lien Lender's and DIP Lender's claims will be indefeasibly paid in full in cash on the closing of the Sale. In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid will be accepted by the Debtors and be presented for approval to the Bankruptcy Court.

Subject to the prior paragraph, the Stalking Horse Bidder shall have the right (including as part of any Overbid) to credit bid all or a portion of its Bid Protections pursuant to Bankruptcy Code section 363(k).

See Bidding Procedures § (C)(4).

- (d) **Cancellation of the Auction.** If the Debtors do not receive a Qualified Bid (other than the Credit Bid) or otherwise determines not to proceed with the Auction, the Debtors may elect not to conduct the Auction and may cancel the Auction. If the Debtors have received only the Credit Bid, the Debtors may declare the Credit Bid the Successful Bid without conducting the Auction. *See* Bidding Procedures § (D).
- (e) **Bidding Increments and Overbid (Local Bankr. R. 6004-1(c)(i)(C)).** At the Auction, the Debtors will announce the leading Qualified Bid (the “**Auction Baseline Bid**”). Bidding on the Assets beyond the Auction Baseline Bid will be done in increments of \$100,000 (the “**Minimum Overbid Increment**”); *provided* that the Debtors shall retain the right to modify the bid increment requirements at the Auction. Additional consideration may include cash, the assumption of debt or marketable securities, a credit bid under Bankruptcy Code section 363(k) of an allowed secured claim, other consideration as the Debtors may permit and value in their sole discretion, or any combination thereof. *See* Bidding Procedures § (D)(2).
- (f) **Backup Bidder (Local Bankr. R. 6004-1(c)(i)(C)).** Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid(s) at the Auction (other than a Credit Bid submitted by the Prepetition First Lien Lender and DIP Lender), as determined by the Debtors, in the exercise of their business judgment, shall be required to serve as a backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more overbids at the Auction, its final overbid) (the “**Backup Bid**”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty five (25) days after entry of the Sale Order (the “**Outside Backup Date**”) or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit, if any, shall be forfeited to the Debtors’ estate, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Backup Bidder shall be no later than the later of twenty five (25) days after the date that the Debtors provide notice to the Backup Bidder that the Successful Bidder failed to consummate a Sale and that the Debtors desires to consummate the transaction with the Backup Bidder or five (5) calendar days after necessary regulatory approvals are completed by the Backup Bidder and/or the Debtors. The deposit, if any, of the Backup Bidder shall be held by the Debtors until the earlier of two (2) business days after (i) the closing of the Sale with the Successful Bidder or (b) the Outside Backup Date; *provided, however*, that in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to

the Backup Bidder, the Backup Bidder's deposit shall be held until the closing of the transaction with the Backup Bidder. In the event that the Debtors fail to consummate a transaction with the Backup Bidder as described above, the Backup Bidder's deposit shall be forfeited to the Debtors' estate, and the Debtors specifically reserve the right to seek all available damages from the defaulting Backup Bidder. The Stalking Horse Bidder will not be a Backup Bidder unless the Stalking Horse Bidder otherwise consents in writing. *See* Bidding Procedures § (D)(4).

- (g) **Diligence Materials and Data Room.** Any person or entity that wishes to conduct due diligence with respect to the Assets (the "**Diligence Materials**") must deliver to the Debtors an executed confidentiality agreement, the form of which is attached as Attachment A to the Bidding Procedures (it being understood that any person or entity that previously signed a confidentiality agreement in a form satisfactory to the Debtors shall not be required to execute a new confidentiality agreement). The executed confidentiality agreement must be signed and transmitted by the person or entity wishing to have access to the Debtors' data room (the "**Data Room**") and other Diligence Materials. *See* Bidding Procedures § (C)(2).
- (h) **Reservation of Rights (Local Bankr. R. 6004-1(c)(i)(D)).** The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customer terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadline set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing (as defined below) in open court without further notice; (c) reopening the Auction to consider further Bids or Overbids; (d) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (*e.g.*, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (e) canceling the Auction; and (f) rejecting any or all Bids or Qualified Bids (excluding the Qualified Bid of Stalking Horse Bidder). *See* Bidding Procedures § (H).

20. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize the value of their assets and, as such, do not impair the Debtors' ability to consider all qualified bid proposals. Additionally, as noted above, the Bidding Procedures preserve the Debtors' rights to modify the Bidding Procedures as necessary or appropriate to maximize value of the Debtors' estates.

B. The Auction and Sale.

21. If one or more Qualified Bids are received by the Bid Deadline, the Debtors will conduct an Auction to determine the highest and best Qualified Bid. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, without limitation, the following: (i) the amount and nature of the consideration, (ii) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any, (iii) the ability of the Qualified Bidder to close the proposed transaction, (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing, including delays owing to regulatory uncertainty, (v) any purchase price adjustments, (vi) the impact of the transaction on any actual or potential litigation, and (vii) the net after-tax consideration to be received by the Debtor's estate (collectively, the "**Bid Assessment Criteria**"). If no Qualified Bid other than the Credit Bid is received by the Bid Deadline, the Debtors may determine not to conduct the Auction and deem the Credit Bid to be the Successful Bid without conducting the Auction. The Debtors seek authority from the Court to schedule the Auction on a date as further described in the Bidding Procedures.

C. Form and Manner of Sale Notice

22. On or within two business days after entry of the Bidding Procedures Order, the Debtors will cause the Sale Notice to be served on (a) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the Prepetition First Lien Lender and DIP Lender; (d) the Debtors' prepetition lenders; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) all state and local tax authorities with an interest in the Assets; (h) all parties known or reasonably believed to have asserted an Interest (as defined herein) in the Assets; (i) the counterparties to the Contracts (the "**Contract Counterparties**");

(j) the Debtors' insurance carriers; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002.

23. The Debtors (or their agents) shall also serve a notice in substantially the form as that appearing in Exhibit D (the "**Creditor Notice**") upon all of the parties set forth on the Debtors' creditor matrix who were not served with a Sale Notice. Finally, the Debtors propose to publish the notice attached hereto as Exhibit E (the "**Bidding Procedures Notice**") once in *The USA Today (National Edition)* within five business days after entry of the Bidding Procedures Order.

D. Summary of the Assumption Procedures.

24. The Debtors are also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Contracts in connection with the Sale (the "**Assumption Procedures**"). Pursuant to the Bidding Procedures Order, notice of the proposed assumption and assignment of the Contracts to the Successful Bidder, the proposed cure amounts related thereto, and the right, procedures, and deadlines for objecting thereto, will be provided in separate notices, attached to the Bidding Procedures Order as Exhibit 3 (the "**Cure and Possible Assumption and Assignment Notice**") and Exhibit 4 (the "**Assumption Notice**") to be sent to the applicable Contract Counterparties. Because the Bidding Procedures Order sets forth the Assumption Procedures in detail, they are not restated herein. Generally, however, the Assumption Procedures: (i) outline the process by which the Debtors will serve notice to all Contract Counterparties regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of their right, and the procedures, to object thereto, and (ii) establish objection and other relevant deadlines and the manner for resolving disputes relating to the assumption and assignment of the Contracts to the extent necessary.

BASIS FOR RELIEF

A. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors' Estates and Should Be Approved

1. The Proposed Notice of the Bidding Procedures and the Sale Process Is Appropriate

25. The Debtors seek to sell substantially all of the Assets through an Auction and asset sale. The Debtors and their advisors will conduct an extensive marketing process. The Debtors will develop a list of "Contact Parties" who will receive a copy of the "Information Package" (both as defined in the Bidding Procedures). The list of Contact Parties will encompass those parties whom the Debtors believe may be potentially interested in pursuing a Sale and whom the Debtors reasonably believe may have the financial resources to consummate such a transaction. The Bidding Procedures are designed to elicit bids from one or more parties and to encourage a robust auction of the Assets, thus maximizing the value of the Debtors' estates for the benefit of their creditors and other stakeholders.

26. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Assets, including a disclosure of the time and place of any auction, the terms and conditions of a sale, and the deadline for filing any objections.

27. The Debtors respectfully submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one will be held), (ii) the Bidding Procedures, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) a reasonably specific identification of the Assets, (v) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity

and priority to the Sale proceeds, and (vi) notice of the proposed assumption and assignment of the Contracts to the Successful Bidder.

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

2. The Bidding Procedures Are Appropriate and Will Maximize Value

29. Bidding procedures should be approved when they provide a benefit to the debtor's estate by maximizing the value of the debtor's assets. *See In re Edwards*, 228 B.R. 552, 361 (Bankr. E.D. Pa. 1998) ("The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate."). Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'" (internal citations omitted)); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (quoting *Schipper*); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (same); *see also In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (S.D.N.Y.

1992) (noting that bidding procedures that have been negotiated by a trustee are to be reviewed in accordance with the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”).

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

31. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore appropriate in the context of bankruptcy transactions. *See, e.g., In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *Integrated Resources*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y.1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

32. The Debtors believe that the proposed Bidding Procedures will establish the parameters under which the value of the Sale may be tested at the Auction. The Bidding

Procedures will increase the likelihood that the Debtors will receive the greatest possible consideration because they will ensure a competitive and fair bidding process.

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

34. Specifically, the proposed Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

35. At the same time, the proposed Bidding Procedures provide the Debtors with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale. Additionally, entering into the LOI and Stalking Horse Agreement with the Stalking Horse Bidder ensures that the Debtors obtain fair market value by setting a minimum purchase price for the Assets that will be tested in the marketplace. As such, creditors of the Debtors' estates can be assured that the consideration obtained will be fair and reasonable and at or above the market.

36. The Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved in this District. *See, e.g., In re Emerald Oil, Inc.*, No. 16-10704 (KG)

(Bankr. D. Del. July 28, 2016); *In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Oct. 6, 2015); *In re Source Home Entm't LLC*, No. 14-11553 (KG) (Bankr. D. Del. July 21, 2014); *In re Palm Harbor Homes, Inc.*, No. 10-13850 (Bank. D. Del. Jan. 6, 2011); *In re Ultimate Escapes Hldgs, LLC*, No. 10-12915 (Bankr. D. Del. Oct. 8, 2010); *In re PTC Alliance Corp.*, No. 09-13395 (Bankr. D. Del. Nov. 6, 2009); *In re Hayes Lemmerz Int'l, Inc.*, No. 09-11655 (Bankr. D. Del. Sept. 22, 2009); *In re VeraSun Energy Corp.*, No. 08-12606 (Bankr. D. Del. Feb. 19, 2009); *see also In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. July 14, 2007); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr D. Del. Apr. 20, 2007); *In re Three A's Holdings, L.L.C.*, Case No. 06-10886 (BLS) (Bankr. D. Del. Sept. 7, 2006).³

37. Thus, the Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances because the Bidding Procedures are designed to maximize the value to be received by the Debtors' estates.

3. The Overbid Increment Is Appropriate

38. One important component of the proposed Bidding Procedures is the "Overbid" provision. Once the Debtors determine the Auction Baseline Bid and holds the Auction, all subsequent Overbids must be made in increments of at least \$100,000 more than the Auction Baseline Bid (the "**Initial Minimum Overbid**") and then continue in minimum increments of at least \$100,000; provided that the Debtors shall retain the right to modify the bid increment requirements at the Auction.

39. The Debtors believe that such Initial Minimum Overbid is reasonable under the circumstances, and will enable the Debtors to maximize the value received for the Assets while

³ Because the number of orders cited is voluminous, individual orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

limiting any chilling effect in the marketing process. The Overbid increment is also well within the increment level previously approved by courts in this District. *See In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. July 28, 2016) (approving \$500,000 bid increment); *In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. July 24, 2007) (approving \$750,000 increment); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 20, 2007) (approving \$500,000 increment); *In re Three A's Holdings, L.L.C.*, Case No. 06-10886 (BLS) (Bankr. D. Del. Sept. 7, 2006) (approving \$500,000 increment).

4. Entering into the LOI and Stalking Horse Agreement with Bid Protections Has a Sound Business Purpose and Should Be Approved

40. Pursuant to the Motion, the Debtors are seeking the approval of this Court of the Stalking Horse Bidder and to offer the Bid Protections. The Debtors believe that, in this case, such relief is warranted to ensure the Debtors' ability to take advantage of a potentially value-maximizing bid. The ability of the Debtors to offer the Stalking Horse Bidder the Bid Protections is beneficial to the Debtors' estates and creditors in that, by providing these incentives, the Debtors will have an opportunity to induce a Potential Bidder to submit or increase its bid prior to the Auction.

41. Specifically, bid protections "may be legitimately necessary to convince a 'white knight' bidder to enter the bidding by providing some form of compensation for the risks it is undertaking." *995 Fifth Ave.*, 96 B.R. at 28 (quotation omitted); *see also Integrated Resources*, 147 B.R. at 660-61 (bid protections can prompt bidders to commence negotiations and "ensure that a bidder does not retract its bid"); *In re Hupp Int'l Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) ("[W]ithout such fees, 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.").

42. As a result, courts routinely approve bid protections similar to the Bid Protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999). The Debtors believe that the allowance of the Bid Protections is in the best interests of the Debtors' estates and their creditors, as these protections will only be employed where a stalking horse bid will establish a floor for further bidding that may increase the consideration given in exchange for the Assets for the benefit of the Debtors' estates.

43. The Stalking Horse Bidder has expended, and will continue to expend, time and resources negotiating, drafting, and performing due diligence activities necessitated by the Sale transactions, despite the fact that the Debtors will maintain a fiduciary out, and its bid will be subject not only to Court approval, but also to overbidding by third parties. The Bid Protections granted to the Stalking Horse Bidder were negotiated in good faith and at arm's length, with significant give-and-take with respect to those Bid Protections. The Debtors agreed to the Bid Protections because they ensure that the Debtors will have the benefit of the transaction with the Stalking Horse Bidder, without sacrificing the potential for interested parties to submit overbids at the Auction.

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

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

assumption and assignment of the Contracts and/or related cure amounts (the “**Assumption Procedures**”).

45. The Bidding Procedures specify the process by which the Debtors will serve Cure and Possible Assumption and Assignment Notices and the procedures and deadline for Contract Counterparties to Assigned Contracts to file and serve Cure or Assignment Objections.

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

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

48. The Debtors believe that the Assumption Procedures are fair and reasonable, provide sufficient notice to the Contract Counterparties of the potential assumption and assignment of its Contracts, and provide certainty to all parties in interest regarding their obligations and rights with respect thereof. Accordingly, the Debtors request that the court approve the Assumption Procedure set forth in the Bidding Procedures Order.

B. Approval of the Proposed Sale Is Appropriate and in the Best Interests of the Estates

1. The Sale of the Assets Should Be Authorized Pursuant to Bankruptcy Code Section 363 as a Sound Exercise of the Debtors' Business Judgment

49. Bankruptcy Code section 363(b)(1) provides that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A sale of the debtor’s assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for the proposed transaction. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (“Under Section 363, the debtor-in-possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 174 (Bankr. D. Del. 1991); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (same); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Telesphere Commc’ns, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

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

51. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estates, creditors, or interest holders. *See, e.g., In re Abbotts Dairies of Pa, Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

52. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Res.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (“The business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.’”) (citations omitted); *In re Filene’s Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (“If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate.”) (citations omitted). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under Bankruptcy Code section 363(b)(1). Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3 (N.D. Ill. 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference unless shown that the bankrupt’s decision was taken in bad faith or in gross abuse of the bankrupt’s retained discretion.”).

53. As set forth above, and in the First Day Declaration, the Debtors have a sound business justification for selling the Assets. **First**, the Debtors believe that the Sale will

maximize the Assets' going-concern value by allowing a party to bid on business assets that would have substantially less value on a stand-alone basis. Moreover, to the extent that the Successful Bidder assumes certain of the Contracts, it will result in payment in full for a number of the Debtors' creditors.

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

55. Thus, the Debtors submit that the Successful Bidder's purchase agreement will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. As such, the Debtors' determination to sell the Assets through an Auction process and subsequently to enter into the purchase agreement with the Successful Bidder will be a valid and sound exercise of the

Debtors' business judgment. The Debtors will submit evidence at the Sale Hearing to support these conclusions. Therefore, the Debtors request that the Court make a finding that the proposed sale of the Assets is a proper exercise of the Debtors' business judgment and is rightly authorized.

2. Sale Provisions Highlighted Pursuant to Local Rule 6004-1(b)(iv)⁴

56. Pursuant to Local Rule 6004(b)(iv)(C), a sale motion must highlight any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied. The Sale Order provides that certain claims against the Debtors and/or Purchaser are barred or otherwise waived. *See* Sale Order, ¶¶ 20, 22, 24, and 25.

57. Pursuant to Local Rule 6004(b)(iv)(E), a sale motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction. As set forth above, the Debtors are subject to the deadlines under the DIP Order, among which include the condition that the Stalking Horse Agreement be executed by June 1, 2018; the Sale and Bid Procedures Order be entered by June 8, 2018; Court approval of the Sale by June 28, 2018; and a Sale closing by August 10, 2018.

58. Pursuant to Local Rule 6004(1)(b)(iv)(J), a sale motion must highlight whether, if the debtor proposes to sell substantially all of its assets, the debtor will retain or have reasonable access to its books and records to enable it to administer its bankruptcy case. The proposed Sale Order provides that the Debtors shall have reasonable access to their books and records. *See* Sale Order, ¶ 27.

59. Pursuant to Local Rule 6004-1(b)(iv)(L), a sale motion should highlight any provision limiting the proposed purchaser's successor liability. The proposed Sale Order

⁴ If a provision of Local Rule 6004-1(b)(iv) is not discussed in this section, it means that the provisions governing the sale of the Assets do not contain a provision that triggers disclosure under that rule.

provides that Purchaser shall not have any successor liability related to the Debtors or the transferred Assets. *See* Sale Order ¶¶ DD, JJ, 24, and 25.

60. Pursuant to Local Rule 6004-1(b)(iv)(N), a sale motion must highlight any provision by which the debtor seeks to allow credit bidding pursuant to Bankruptcy Code section 363(k). The Bidding Procedures allow the Prepetition First Lien Lender and DIP Lender to credit bid the full amount of its obligations in connection with each round of bidding at the Auction. *See* Bidding Procedures § (C)(4).

61. Pursuant to Local Rule 6004-1(b)(iv)(O), a sale motion must highlight any provision whereby the debtor seeks relief from the ten-day stay imposed by Bankruptcy Rule 6004(h). As explained in further detail below, to maximize the value received for the Assets (and consistent with the Cash Collateral deadlines), the Debtors seek to close the Transaction as soon as possible after the Sale Hearing. Accordingly, the Debtors have requested that the Court waive the ten-day stay period under Bankruptcy Rules 6004(h) and 6006(d). *See* Bidding Procedures Order ¶ 29; Sale Order ¶ 26.

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

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

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

63. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457 (1999). The Debtors will continue to market the Assets and solicit offers consistent with the Bidding Procedures, including, without limitation, by providing acceptable bidders with access to the Data Room and requested information. In this way, the number of bidders that are eligible to participate in the competitive Auction process will be maximized. On the other hand, if the Debtors enter into the Stalking Horse Agreement and no auction is held because no auction is necessary, the Stalking Horse Agreement's purchase price conclusively will have been demonstrated to be fair value.

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

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

65. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if (i) applicable nonbankruptcy law permits such a free and clear sale, (ii) the holder of the interest consents, (iii) the interest is a lien and the sale price of the property exceeds the value of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, (v) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f).

66. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to permit the Debtors' sale of the Assets free and

clear of all interests (*i.e.*, all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the applicable purchase agreement. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“[I]f any of five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *see also In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *Citicorp Homeowners Servs., Inc. v. Eliot (In re Eliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that the court may approve the sale “free and clear” provided that at least one of the subsections of Bankruptcy Code section 363(f) has been satisfied).

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

Bankruptcy Code section 363(f) authorizes the sale and transfer of the Assets free and clear of any such Interests.

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

68. The Sale Order provides that Purchaser shall not have any successor liability related to Seller or the Transferred Assets to the maximum extent permitted by law. *See* Sale Order, ¶ 24. Extensive case law establishes that claims against a winning bidder may be directed to the proceeds of a free and clear sale of property, and may not subsequently be asserted against that buyer.

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

70. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes free from successor liability resulting from pre-existing claims. *See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under Bankruptcy Code section 363(f)); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale was free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded from being asserted against his successor in a sale of assets free and clear); *WBQ P'ship v. Virginia Dept. of Medical Assistance Services (In re WBQ P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).

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

72. Accordingly, consistent with the above-cited case law, the order approving the sale of the Assets should state that Purchaser is not liable as a successor under any theory of successor liability, for Interests that encumber or relate to the Assets.

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

73. The Debtors request that the Court find that the Successful Bidder is entitled to the benefits and protections provided by Bankruptcy Code section 363(m) in connection with the sale of the Assets.

74. Bankruptcy Code section 363(m) provides, in pertinent part:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

75. Bankruptcy Code section 363(m) thus protects the purchaser of assets sold pursuant to Bankruptcy Code section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchased or leased or purchased the assets in “good faith.” While the Bankruptcy Code does not define “good faith,” courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that, where there is a lack of such integrity, a good-faith finding may not be made. *See, e.g., Abbotts Dairies of Pa.*, 788 F.2d at 147 (“Typically, the misconduct that would destroy a [buyer’s] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an

attempt to take grossly unfair advantage of other bidders.”); *In the Matter of Andy Frain Servs., Inc.*, 798 F.2d 1113 (7th Cir. 1986) (same); *In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

76. The Debtors submit that the Stalking Horse Bidder, or any other Successful Bidder arising from the Auction, would be a “good faith purchaser” within the meaning of Bankruptcy Code section 363(m), and the resulting purchase agreement would be a good-faith agreement on arm’s-length terms entitled to the protections of Bankruptcy Code section 363(m).⁵ **First**, as set forth in more detail above, the consideration to be received by the Debtors pursuant to the Sale will be subject to a market process by virtue of Debtors’ marketing efforts and the Auction and will be substantial, fair, and reasonable. **Second**, the purchase agreement entered into by the Debtors and the Successful Bidder will be the result of extensive arm’s-length negotiations, during which all parties will have the opportunity to be, and the Debtors will be, represented by competent counsel, and any purchase agreement with a Successful Bidder will be the culmination of the Debtors’ competitive market process and, if necessary, the Auction, in which all negotiations will be conducted on an arm’s-length, good-faith basis. **Third**, where—as the Debtors anticipate will be the case here—there is no indication of any “fraud or collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” or similar conduct, there is no cause that would permit the Sale to be avoided pursuant to Bankruptcy Code section 363(n). Moreover, with respect to potential bidders, the Bidding Procedures are designed to ensure that no party is able to exert undue

⁵ The Debtors believe that a finding of good faith within the meaning of Bankruptcy Code section 363(m) will be appropriate for the Successful Bidder arising from the Auction and the Bidding Procedures. Pursuant to the Bidding Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bidding Procedures. In addition, the Debtors will not choose as the Successful Bidder or the Backup Bidder (as defined in the Bidding Procedures) any entity whose good faith under Bankruptcy Code section 363(m) can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the “good faith” standard of Bankruptcy Code section 363(m) has been satisfied.

influence over the process. *Finally*, the Successful Bidder's offer will be evaluated and approved by the Debtors in consultation with their advisors. Accordingly, the Debtors believe that the Successful Bidder and the resulting purchase agreement should be entitled to the full protections of Bankruptcy Code section 363(m).

77. Moreover, because there will be absolutely no fraud or improper insider dealing of any kind, the Sale does not constitute an avoidable transaction pursuant to Bankruptcy Code section 363(n), and, as a result, Purchaser should receive the protections afforded good faith purchasers by Bankruptcy Code section 363(m). Accordingly, the Debtors request that the Court make a finding at the Sale Hearing that the agreement reached with the Successful Bidder was at arm's length and is entitled to the full protections of Bankruptcy Code section 363(m). The Debtors will submit evidence at the Sale Hearing to support these conclusions.

8. Credit Bidding Should Be Authorized Pursuant to Bankruptcy Code Section 363(k)

78. A secured creditor is allowed to "credit bid" the amount of its claims in a sale of assets in which it has a security interest. Bankruptcy Code section 363(k) provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with Bankruptcy Code section 506(a), section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the creditor's economic value. *See In re Submicron Sys. Corp.*, 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that "[i]t is well settled . . . that creditors can bid the full face value of their secured claims under section 363(k)").

79. In this District, absent cause for restriction on credit bidding, courts have consistently ruled in favor of reserving a secured creditor's right to credit bid its claim. *See In re Source Home Entm't, LLC*, No. 14-115533 (KG) (Bankr. D. Del. July 21, 2014) (order approving Bidding Procedures which authorized parties with secured claims to credit bid); *In re Fisker Auto. Hldgs, Inc.*, No. 13-13087 (KG) (Bankr. D. Del. Jan. 23, 2014) (order authorizing secured creditors to exercise right under Bankruptcy Code section 363(k) to make a credit bid); *In re PTC Alliance Corp.*, No. 09-13395 (Bankr. D. Del. Nov. 6, 2009) (order authorizing, but not directing, the administrative agent to credit bid); *In re Hayes Lemmerz Int'l, Inc.*, No. 09-11655 (Bankr. D. Del. Sept. 22, 2009) (order authorizing interested party to exercise its right under Bankruptcy Code section 363(k) to make a credit bid); *In re Foamex Int'l Inc.*, 09-10560, (Bankr. D. Del. May 27, 2009) (order authorizing the sale of substantially all of the debtor's assets in a \$155 million credit bid over a \$151.5 million all-cash bid); *see also Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (citations omitted).

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

1. The Assumption and Assignment of the Contracts Reflects the Debtors' Reasonable Business Judgment

80. To facilitate and effectuate the sale of the Assets, the Debtors are seeking authority to assign the Assigned Contracts to the Successful Bidder to the extent required by such Successful Bidder.

81. Bankruptcy Code section 365 authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. *See* 11 U.S.C. § 365(b)(1).

82. The standard applied by the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the “business judgment” test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”) (superseded in part by 11 U.S.C. § 1113).

83. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *8 (D. Del. 2002); *Official Comm. for Unsecured Creditors v. Aust (In re Network Access Solutions, Corp)*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006) (“The propriety of a decision to reject an executory contract is governed by the business judgment standard”); *see also Phar Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) (“Courts should generally defer to a debtor’s decision whether to reject an executory contract.”) (citation omitted). A debtor’s decision to assume or reject an executory contract or expired lease will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pac. Ry. Co.*, 318 U.S. 523 (1943) (applying Bankruptcy Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting a test of whether an executory contract was burdensome in favor of determining whether rejection is within the debtor’s business judgment); *see also Sharon Steel*, 872 F.2d at 40 (describing deference to a debtor’s business judgment as “breathing space afforded [to] the debtor to

consider whether to reject or assume executory contracts under the Code”); *Network Access Solutions*, 330 B.R. at 75; *Exide Techs.*, 340 B.R. at 239.

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

85. A debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with Bankruptcy Code section 365(a), and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

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

87. Counterparties to Assigned Contracts will have the opportunity to object to adequate assurance of future performance by any of the Bidders. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

88. To assist in the assumption, assignment, and sale of the Assigned Contracts, the Debtors also request that the Sale Order approving the sale of the Assets provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

89. Bankruptcy Code section 365(f)(1) permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection

11 U.S.C. § 365(f)(1).

90. Bankruptcy Code section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See*,

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

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

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

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, the Debtors request that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of

the Assigned Contracts, and be deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

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

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

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

94. To maximize the value received from the Assets, and to ensure that they are in compliance with the requirements of the Cash Collateral Order, the Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

95. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Prepetition First Lien Lender and DIP Lender; (c) the Debtors' prepetition lenders; (d) the parties included on the Debtors' list of thirty (30) largest unsecured creditors; (e) the Internal Revenue Service; (f) the Taxing Authorities; (g) the United States Attorney for the District of Delaware; (h) the Attorney General for the state of Delaware; (i); any party that has requested notice pursuant to Bankruptcy Rule 2002; (j) counsel to the Stalking Horse Bidder; and (k) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

96. In addition, copies of the Sale Notice, the Bidding Procedures, and the Bidding Procedures Order will be served on the Notice Parties no later than one (1) business day after entry of the Bidding Procedures Order by this Court. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required. A copy of the Motion also is available on the website of the Debtors' notice and claims agent, Donlin, Recano & Company, Inc.

NO PRIOR REQUEST

97. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that this Court: (i) enter the Bidding Procedures Order, the form of which is attached as Exhibit B hereto, (ii) enter the Sale Order, the form of which is attached as Exhibit C hereto, and (iii) grant such other and further relief as is just and proper.

Dated: May 23, 2018
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Christopher A. Ward

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A to Motion

Letter of Intent

Project Build Behavioral Health, LLC

May 23, 2018

EBH Topco, LLC

Attn: Edye Bauer

5000 Airport Plaza Drive, Suite 100

Long Beach, CA 90815

Dear Edye:

This Letter of Intent (this “**Letter**”) dated May 23, 2018 is made by and among EBH Topco, LLC, a Delaware limited liability company (“**EBH Topco**”), Elements Behavioral Health, Inc., a Delaware corporation (“**Elements Behavioral Health**”), EBH Holding Company, Inc., a Delaware corporation (“**EBH Holding**”), EBH Big Rock, Inc., a California corporation (“**EBH Big Rock**”), SoCal Rehab and Recovery, Inc., a Delaware corporation (“**SoCal Rehab**”), The Sexual Recovery Institute, Inc., a California corporation (“**Sexual Recovery**”), Westside Sober Living Centers, Inc., a California corporation (“**Westside Sober Living**”), Ehrman Subsidiary Corp., a California corporation (“**Ehrman Subsidiary**”), PROMAL2, Inc., a California corporation (“**PROMAL2**”), PROMAL4, Inc., a California corporation (“**PROMAL4**”), SBAR2, Inc., a California corporation (“**SBAR2**”), Promises Residential Treatment Center VI, Inc., a California corporation (“**Promises Residential**”), Assurance Toxicology Services, LLC, a Delaware limited liability company (“**Assurance Toxicology**”), Elements Screening Services, Inc., a Texas corporation (“**Elements Screening**”), TRS Behavioral Care, Inc., a Texas corporation (“**TRS Behavioral**”), Spirit Lodge, LLC, a Texas limited liability company (“**Spirit Lodge**”), San Cristobal Treatment Center, LLC, a Texas corporation (“**San Cristobal Treatment**”), EBH Acquisition Subsidiary, Inc., a Delaware corporation (“**EBH Acquisition Subsidiary**”), EBH Services of Florida, Inc., a Delaware corporation (“**EBH Services**”), Outpatient Services FL, Inc., a Delaware corporation (“**Outpatient Services Florida**”), EBH Northeast Services, Inc., a Delaware corporation (“**EBH Northeast**”), Intensive Outpatient Services PA, Inc., a Delaware corporation (“**Intensive Outpatient**”), Wrightsville Services, LLC, a Delaware limited liability company (“**Wrightsville Services**”), NE Sober Living, Inc., a Delaware corporation (“**NE Sober Living**”), Northeast Behavioral Services, Inc., a Delaware corporation (“**Northeast Behavioral**”), The Ranch on Piney River, Inc., a Tennessee corporation (“**Piney River**”), Outpatient Services TN, Inc., a Delaware corporation (“**Outpatient Services Tennessee**”), EBH Southwest Services, Inc., a Delaware corporation (“**EBH Southwest**”), Elements Medical Group of Utah, Inc., a Utah corporation (“**Elements Utah**”), Southeast Behavioral Health Services, Inc., a Delaware corporation (“**Southeast Behavioral Health**”), Elements Medical Group of Mississippi, Inc., a Mississippi corporation (“**Elements**

Mississippi”), and Elements Medical Group of Arizona, Inc., a Arizona corporation (**“Elements Arizona”**) (EBH Topco, Elements Behavioral Health, EBH Holding, EBH Big Rock, SoCal Rehab, Sexual Recovery, Westside Sober Living, Ehrman Subsidiary, PROMAL2, PROMAL4, SBAR2, Promises Residential, Assurance Toxicology, Elements Screening, TRS Behavioral, Sprit Lodge, San Cristobal Treatment, EBH Acquisition Subsidiary, EBH Services, Outpatient Services Florida, EBH Northeast, Intensive Outpatient, Wrightsville Services, NE Sober Living, Northeast Behavioral, Piney River, Outpatient Services Tennessee, EBH Southwest, Elements Utah, Southeast Behavioral Health, Elements Mississippi, and Elements Arizona are referred to collectively herein as **“Sellers”** and each individually a **“Seller”**), and Project Build Behavioral Health, LLC, a Delaware limited liability company (**“Buyer”**). Capitalized terms not defined herein shall have the meaning set out on the last page hereof entitled **“Other Defined Terms.”**

RECITALS

WHEREAS, on May 23, 2018 (the **“Petition Date”**), each Seller plans to commence a voluntary petition for relief (collectively, the **“Bankruptcy Cases”**) under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101-1532 (the **“Bankruptcy Code”**) in the United States Bankruptcy Court for the District of Delaware (the **“Bankruptcy Court”**);

WHEREAS, Sellers are in the business of providing mental health, behavioral health and addiction treatment services in Pennsylvania, Utah, Florida, Texas, California, Arizona, Tennessee, Mississippi, New Jersey, and Texas (the **“Business”**);

WHEREAS, Sellers and Buyer contemplate that upon obtaining approval of the Bankruptcy Court, Buyer shall provide debtor in possession financing in accordance with that certain Debtor in Possession Credit Agreement dated May 23, 2018 (the **“DIP Facility”**) executed by the Parties; and,

WHEREAS, Sellers and Buyer intend to file a sale motion in the Bankruptcy Cases (the **“Sale Motion”**) proposing to sell the Business to Buyer, subject to higher and better offers and as approved by the Bankruptcy Court pursuant to bid procedures (the **“Bidding Procedures”**) to be outlined in the Sale Motion.

AGREEMENT

This Letter is intended to summarize the principal terms of a proposal put forth by Buyer regarding its proposed acquisition of substantially all of the assets, and certain specified liabilities, of the Business of Sellers. The possible acquisition of the Business is referred to as the "**Transaction**" and Buyer and Sellers are referred to collectively as the "**Parties**."

1. Acquisition of Assets and Purchase Price.

(a) Subject to the satisfaction of the conditions described in this Letter, at the closing of the Transaction, Buyer would acquire substantially all of the assets, and certain specified liabilities, of the Business (the "**Assets**"), free and clear of all liens, claims, encumbrances, and interests for the purchase price set forth in **Section 1(b)**, subject to the process approved by the Bankruptcy Court in the Bidding Procedures; and (ii) have assumed and assigned to it certain executory contracts and nonresidential real property leases used in the Business pursuant to section 365 of the Bankruptcy Code (collectively, the "**Assigned Contracts**"). Buyer will assume no liabilities and will not take any assets subject to liabilities or encumbrances, except as expressly set forth in the Definitive Agreement or except as Buyer, in its sole discretion, expressly states otherwise in a signed writing.

(b) Subject to the terms and conditions of the Definitive Agreement, the aggregate purchase price to be paid by Buyer to Sellers for the purchase of the Assets will be \$65,000,000.00, plus Buyer's contract cure costs for the Assigned Contracts (collectively, the "**Purchase Price**"). The Purchase Price will be paid as follows, in each case as a dollar-for-dollar credit against the Purchase Price: first, a credit (the "**DIP Credit**") in the amount of the DIP Obligations; and second, for any Purchase Price amount remaining after crediting the DIP Credit against the Purchase Price (the "**Remaining Purchase Price**"), a credit on account of the Prepetition First Lien Obligations (as defined in the DIP Facility) in the amount of the Remaining Purchase Price; plus the Buyer's contract cure costs relating to the Assigned Contracts.

2. Proposed Definitive Agreement. The Parties have commenced negotiating a definitive purchase agreement (the "**Definitive Agreement**") relating to Buyer's acquisition of the Assets. The Definitive Agreement would include the terms summarized in this Letter and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for transactions of this kind and are not inconsistent with this Letter. The Parties will also negotiate and finalize all customary ancillary agreements, including, without limitation, an interim management agreement (if Buyer is the ultimate bidder) for the period after the auction and until the closing of the Transaction,

a transition services agreement, and service provider agreements (collectively, the “**Ancillary Agreements**”) by June 28, 2018.

3. Milestones. The Parties recognize that the DIP Facility includes certain milestones, including the execution of the Definitive Agreement no later than June 1, 2018; approval by the Bankruptcy Court of the Definitive Agreement on or before June 28, 2018; and Bidding Procedures that provide that: (i) the last day to submit bids shall be June 26, 2018 at 4:00 p.m. (prevailing Eastern Time), and (ii) the auction shall take place on June 27, 2018 at 10:00 a.m. (prevailing Eastern Time). The Sellers shall use commercially reasonable efforts to file all necessary pleadings and notices to meet the foregoing deadlines and all the sale-related deadlines detailed in the Bidding Procedures.

4. Conditions. Buyer's and Sellers' obligations to close the proposed Transaction will be subject to customary conditions, including:

(a) the Parties' execution of the Definitive Agreement and the Ancillary Agreements;

(b) no order by any governmental entity shall be in effect that: (i) prevents the sale and purchase of the Assets, and (ii) would materially adversely affect or interfere with the operation of the Business as contemplated to be conducted after the closing;

(c) the Bankruptcy Court shall have entered an order approving the sale in form and substance reasonably acceptable to Buyer (the “**Sale Order**”); the Sale Order shall be in full force and effect, and no order staying, reversing, modifying, vacating, or amending the Sale Order shall be in effect on the closing date of the Transaction;

(d) the receipt of required regulatory approvals; and

(e) other closing conditions customary for this type of transaction.

Buyer's obligations to close the proposed Transaction will be subject to customary conditions, including:

(a) there being no material adverse change in the results of operations, prospects, condition (financial or otherwise) or Assets of the Business (the Bankruptcy Cases not constituting a material adverse change);

(b) the receipt of any third party consents, and transfer to Buyer of the Assigned Contracts required to operate the Business;

5. Covenants of Sellers. During the period from the signing of this Letter through the execution of the Definitive Agreement, Sellers shall (unless otherwise consented to in writing by Buyer), subject to the requirements of the Bankruptcy Cases and orders of the Bankruptcy Court: (i) use commercially reasonable efforts to conduct the Business in the

ordinary course in a manner consistent with past practice, and (ii) use commercially reasonable efforts to maintain the Business and employees, customers, Assets and operations as an ongoing concern in accordance with past practice.

6. Termination. This Letter shall automatically terminate and be of no further force and effect upon the earlier of (i) execution of the Definitive Agreement by Buyer and Sellers, (ii) mutual agreement of Buyer and Sellers, and/or (iii) order of the Bankruptcy Court terminating this Letter.

7. Reserved.

8. **GOVERNING LAW. THIS LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE. UPON FILING OF THE BANKRUPTCY CASES, THE PARTIES AGREE EXCLUSIVE JURISDICTION AND VENUE FOR ENFORCING THIS LETTER SHALL BE IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE.**

9. No Third Party Beneficiaries. Except as specifically set forth or referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this Letter.

10. Expenses. Except as provided in the DIP Facility or the related budget, the Parties shall each pay their own transaction expenses, including the fees and expenses of investment bankers and other advisors, incurred in connection with the proposed Transaction.

11. No Binding Agreement. Except for paragraphs 3, 5, 6, 8, 9, 10, 11 and 12 (collectively, the “**Binding Terms**”) herein, which shall be binding from execution through the date of termination of this Letter, this Letter reflects the intention of the Parties, and neither this Letter, nor its acceptance shall give rise to any legally binding or enforceable obligation on any Party. Except for the Binding Terms, no contract or agreement providing for any transaction involving the Business shall be deemed to exist between Sellers and Buyer and any of its affiliates unless and until a final definitive agreement satisfactory to each in their sole discretion has been executed and delivered.

12. Miscellaneous. This Letter may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various sections of this Letter have been inserted for reference only and shall not be deemed to be a part of this Letter.

[SIGNATURE PAGE FOLLOWS]

If you are in agreement with the terms set forth above and desire to proceed with the proposed Transaction on that basis, please sign this Letter in the space provided below and return an executed copy to the attention of Ben Klein at bklein@plthc.com.

Very truly yours,

BUYER

**Project Build Behavioral Health,
LLC**

By: _____

Name: Benjamin Klein

Title: _____

Managing Member

Agreed to and accepted as of May 23,
2018:

SELLERS

EBH Topco, LLC
Elements Behavioral Health, Inc.
EBH Holding Company, Inc.
EBH Big Rock, Inc.
SoCal Rehab and Recovery, Inc.
The Sexual Recovery Institute, Inc.
Westside Sober Living Centers, Inc.
Ehrman Subsidiary Corp.
PROMAL2, Inc.
PROMAL4, Inc.
SBAR2, Inc.
Promises Residential Treatment Center VI, Inc.
Assurance Toxicology Services, LLC
Elements Screening Services, Inc.
TRS Behavioral Care, Inc.
Spirit Lodge, LLC
San Cristobal Treatment Center, LLC
EBH Acquisition Subsidiary, Inc.
EBH Services of Florida, Inc.
Outpatient Services FL, Inc.
EBH Northeast Services, Inc.
Intensive Outpatient Services PA, Inc.
Wrightsville Services, LLC
NE Sober Living, Inc.
Northeast Behavioral Services, Inc.
The Ranch on Piney River, Inc.
Outpatient Services TN, Inc.
EBH Southwest Services, Inc.
Elements Medical Group of Utah, Inc.
Southeast Behavioral Health Services, Inc.
Elements Medical Group of Mississippi, Inc.
Elements Medical Group of Arizona, Inc.

By: 

Name: Edye Bauer

Title: Secretary

Other Defined Terms

“DIP Facility” shall mean the DIP Financing Agreement and any related security agreements, guarantees, or orders entered by the Bankruptcy Court in connection therewith, and all other documents, instruments, related writings, financing statements, security documents, intercreditor agreements, or warrants executed in connection with the DIP Financing Agreement (each as amended, restated or otherwise modified from time to time), and any joinder to the foregoing.

“DIP Obligations” shall mean the outstanding amount of the DIP Facility at any relevant time including any unpaid interest, fees, costs and expenses owed under the DIP Facility.

“Prepetition First Lien Credit Agreement” shall mean that certain Second Amended and Restated First Lien Credit Agreement dated February 12, 2014 (as amended, restated or otherwise modified from time to time) between certain of the Sellers and certain predecessors in interest to Buyer.

“Prepetition First Lien Guaranty” shall mean that certain Second Amended and Restated Guarantee and Collateral Agreement dated February 12, 2014 (as amended, restated or otherwise modified from time to time) between certain of the Sellers and certain predecessors in interest to Buyer.

“Prepetition First Lien Loan Documents” shall mean the Prepetition First Lien Guaranty, the Prepetition First Lien Credit Agreement and all other documents, instruments, related writings, financing statements, security documents, intercreditor agreements, or warrants executed in connection with the Prepetition First Lien Credit Agreement and the Prepetition First Lien Guaranty (each as amended, restated or otherwise modified from time to time), and any joinder to the foregoing.

“Prepetition First Lien Obligations” shall mean the amount owing under the Prepetition First Lien Credit Agreement at any relevant time including any unpaid interest, fees, costs and expenses owed under the Prepetition First Lien Loan Documents.

Exhibit B to Motion

Proposed Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Joint Administered

Re: Docket No. ____

**ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE
SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) APPROVING
STALKING HORSE BID PROTECTIONS, (III) APPROVING THE FORM AND
MANNER OF NOTICE THEREOF, (IV) SCHEDULING AN AUCTION AND A SALE
HEARING, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND
ASSIGNMENT OF CONTRACTS, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (the “**Debtors**”) for entry of an order (this “**Order**”) (i) authorizing and approving the bidding procedures attached hereto as Exhibit 1 (the “**Bidding Procedures**”) in connection with the sale of substantially all of the Debtors’ assets (the “**Assets**”), (ii) approving certain bid protections for the Stalking Horse Bidder, (iii) approving the form and manner of notice attached as Exhibit 2 to the Bidding Procedures Order (the “**Sale Notice**”) of an auction (the “**Auction**”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

and sale hearing (the “**Sale Hearing**”) with respect to the sale of the Assets free and clear of liens, claims, encumbrances, and other interests (the “**Sale**”), (iv) scheduling the Sale Hearing, (v) approving procedures for the possible assumption and assignment of executory contracts and unexpired leases in connection with the Sale (collectively, the “**Contracts**”), and (vi) authorizing the Debtors to (a) enter into that certain Asset Purchase Agreement by and among the Debtors and Project Build Behavioral Health, LLC (the “**Stalking Horse Agreement**”), and (b) offer Project Build Behavioral Health, LLC (the “**Stalking Horse Bidder**”) the following: (A) the Expense Reimbursement (as defined below), and (B) initial overbid protection in the amount of \$100,000 (the “**Initial Overbid**” and, together with the Expense Reimbursement, the “**Bid Protections**”); this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); this Court having found that it may enter a final order consistent with Article III of the United States Constitution; this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “**Hearing**”); this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of

the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, THE COURT FINDS THAT:

A. The findings and conclusions set forth in here constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, date February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), to the entry of a final order by this Court in connection with the Motion, to the extent that it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper in this District and in this Court pursuant to 28 U.S.C. § 1408.

E. The bases for the relief requested in the Motion are sections 105(a), 363, 365, 503(b), and 507(a)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Bankruptcy Rules 2002, 6004, and 6006(a), 9007 and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to: (a) the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) counsel to the Prepetition First Lien Lender and DIP Lender; (c) counterparties to the Contracts (the “**Contract Counterparties**”); (d) all parties who have expressed a written interest in the Assets; (e) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (f) the Internal Revenue Service; (g) all other applicable state and local taxing authorities; (h) all the Debtors’ other creditors; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

G. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

H. The Debtors have articulated good and sufficient reasons for this Court to (i) approve the Bidding Procedures, (ii) schedule the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing, (iii) approve procedures for the assumption and assignment of the Contracts, including notice of the proposed cure amounts, and (iv) authorizing the Debtors to enter into a Stalking Horse Agreement and extend to a Stalking Horse Bidder the Bid Protections in the exercise of their reasonable business judgment.

I. The entry of this Order is in the best interests of the Debtors, their estates, creditors, and other parties in interest.

J. The Debtors have demonstrated a compelling business justification for the allowance and payment of the Expense Reimbursement under the circumstances set forth in the Stalking Horse Agreement.

K. The Expense Reimbursement to be paid to the Stalking Horse Bidder, pursuant to the terms of the Stalking Horse Agreement, on the terms set forth therein: (i) is the product of extensive arm's length negotiations between the Debtors and the Stalking Horse Bidder, (ii) is commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder, (iii) is reasonable and appropriate, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to better and higher offers, (iv) was necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse Agreement, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Assets contemplated by the Stalking Horse Agreement. The Stalking Horse Bidder is unwilling to commit to purchase the Assets under the terms of the Stalking Horse Agreement without approval of the Expense Reimbursement.

L. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Assets for the benefit of the Debtors and their estates. The Bidding Procedures were negotiated in good faith by the Debtors and the Stalking Horse Bidder.

M. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

N. ***Notice of Bidding Procedures.*** The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely

and proper notice of the sale of the Assets, the Auction for the Assets, and the Bidding Procedures to be employed in connection therewith.

O. *Assumption and Assignment Procedures.* The Motion, this Order, and the assumption and assignment procedures (the “**Assignment Procedures**”) set forth herein are reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

P. *Sale Notice.* The Sale Notice is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bidding Procedures, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) reasonably specific identification of the Assets to be sold, (v) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (collectively, “**Interests**”), with all such Interests attaching with the same validity and priority to the Sale proceeds, and (vi) notice of the proposed assumption and assignment of Contracts to the Successful Bidder. No other or further notice of the Sale shall be required.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. All objections to the relief requested in the Motion with respect to the Bidding Procedures that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled and denied on the merits with prejudice.

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

A. Expense Reimbursement

4. The Debtors are authorized to enter into the Stalking Horse Agreement with the Stalking Horse Bidder and offer the Stalking Horse Bidder reimbursement of the Stalking Horse Bidder's reasonable and actual fees and expenses incurred as the Stalking Horse Bidder up to \$325,000 (the "**Expense Reimbursement**").

5. The Expense Reimbursement shall constitute an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b). The Debtors' obligation to pay the Expense Reimbursement shall survive the termination of the Stalking Horse Agreement and shall be payable only by the Debtors upon the closing of a Sale for the Assets with a Successful Bidder other than the Stalking Horse Bidder.

6. The Expense Reimbursement shall be payable by the Debtors from the proceeds of the Sale prior to any other payments or distributions being made from such Sale proceeds (including, for the avoidance of doubt, prior to any payments or distributions to the Prepetition Second Lien Lender, professionals, or administrative claimants). No further or additional order from the Court shall be required in order to give effect to such provisions relating to the terms of payment of the Expense Reimbursement and the Stalking Horse Bidder's professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court

approval of professionals fees payable by the Debtors and included in the Expense Reimbursement.

7. The Stalking Horse Agreement is hereby approved and binding upon the Debtors and their estates. In connection therewith, the Debtors' obligation to pay the Expense Reimbursement, as provided in the Stalking Horse Agreement, is hereby approved and shall survive termination of the Stalking Horse Agreement and shall be payable solely as provided in the Stalking Horse Agreement.

B. The Auction

8. As further described in the Bidding Procedures, if a Qualified Bid, other than the Credit Bid (as defined below), is received by the Bid Deadline, the Debtors will conduct the Auction at 10:00 a.m.. (prevailing Eastern Time) on **June 27, 2018**, at the offices of the Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington DE 19801 or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids, if a Qualified Bid is timely received.

9. If the Debtors do not receive a Qualified Bid (other than from the Stalking Horse Bidder): (i) the Debtors may cancel the Auction, and (ii) the Qualified bid of the Stalking Horse Bidder shall be deemed by the Debtors to be the Successful Bid for the Assets, and (iii) the Debtors shall be authorized to seek approval of the Qualified Bid of Stalking Horse Bidder as the Successful Bid at the Sale Hearing.

10. If the Debtors receive a Qualified Bid (in addition to the Stalking Horse Bid), then the Debtors shall conduct the Auction in accordance with the Bidding Procedures.

11. Pursuant to Local Rule 6004-1(c)(ii): (i) each Qualified Bidder participating at the Auction shall be required to confirm that it is not engaged in any collusion with respect to the

bidding, the Auction, or the Sale, as set forth in the Bidding Procedures, (ii) the Auction shall be conducted openly, and (iii) the Auction shall be transcribed or videotaped.

12. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit nor submit its bid (if any) by the Bid Deadline. The Stalking Horse Bidder (itself and in its additional capacity as both Prepetition First Lien Lender and DIP Lender) may participate in the Auction. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder is authorized to credit bid (at any time up to the conclusion of the Auction, in its sole and absolute discretion) any portion and up to the entire amount of (i) all Obligations owing under the DIP Loan Documents (as defined in the DIP Order) and Prepetition First Lien Obligations (as defined in the DIP Order), each in their respective full amounts of such obligations outstanding as of the Closing Date (defined in the Stalking Horse Agreement) and (ii) all or a portion of its Bid Protections (including as part of any Overbid) at any time on any individual Asset, portion of the Assets, or all Assets constituting the DIP Lender's DIP Collateral (as defined in the DIP Order) and the Prepetition First Lien Lender's Prepetition Senior Secured Collateral (as defined in the DIP Order) in conjunction with the Sale of the Assets (the "**Credit Bid**"). Upon exercise of its Credit Bid, the Stalking Horse Bidder (including in its capacity as Prepetition First Lien Lender and DIP Lender) shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual Asset, portion of the Assets, or all of the Assets that are subject to the Credit Bid.

13. Except for the holders of any Prior Liens (as defined in the DIP Order), no other person may credit bid unless the entire amount of the Prepetition First Lien Lender's and DIP Lender's claims will be indefeasibly paid in full in cash on the closing of the Sale. In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject

to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid will be accepted by the Debtors and be presented for approval to the Bankruptcy Court. The Stalking Horse Bidder will not be a Backup Bidder unless the Stalking Horse Bidder otherwise consents in writing.

14. In the event of a competing Qualified Bid, all Qualified Bidders will be entitled, but not obligated, to submit Overbids.

15. The Debtors may (i) determine which Qualified Bid (including the Stalking Horse Bid) is the highest or otherwise best offer; (ii) reject at any time before the entry of the Sale Order any Bid (other than the Stalking Horse Bid) that, in the discretion of the Debtors, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (c) contrary to the best interest of the Debtors' estates and their creditors; (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualified Bidders (other than the Stalking Horse Bidder) as the Debtors determine to be in the best interest of the Debtors' estates; and (iv) prior to the entry of the Sale Order, may re-open the Auction to consider further Bids, in their reasonable business judgment.

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

C. Assumption and Assignment Notices & Procedures

17. As soon practicable, the Debtors shall serve on all non-Debtor counterparties (each a "**Contract Counterparty**" and, together, the "**Contract Counterparties**") to any

Contract (the “**Cure and Possible Assumption and Assignment Notice Parties**”) that may be assumed by the Debtors and assigned to the Successful Bidder, which notice shall be substantially in the form attached hereto as Exhibit 3 (a “**Cure and Possible Assumption and Assignment Notice**”), setting forth the Debtors’ calculation of the cure amount, if any, that would be due and owing to such Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder.

18. The presence of a Contract on the Cure and Possible Assumption and Assignment Notice does not constitute an admission that such Contract is an executory contract or unexpired lease, and the presence of a Contract on any notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Contract any time before such Contract is actually assumed and assigned pursuant to the Sale Order.

19. No later than **June 4, 2018**, the Debtors shall file with the Court and serve on the Cure and Possible Assumption and Assignment Notice Parties who are parties to a Contract to be assumed and assigned a further notice substantially in the form attached hereto as Exhibit 4 (the “**Assumption Notice**”), stating which Contracts may be assumed and assigned, including cure amounts, and providing such parties with the Qualified Bidders’ assurance of future performance.

20. Any Contract Counterparty that objects to the cure amount set forth on the Cure and Possible Assumption and Assignment Notice or the possible assignment of their executory contract or unexpired lease must file an objection with the Bankruptcy Court (a “**Contract Objection**”) on or before **June 21, 2018** at 4:00 p.m. (prevailing Eastern Time), which Contract Objection must also be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware

Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (ii) counsel for the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), and (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov).

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

D. Notice of the Sale Process

22. The Sale Notice, the Cure and Possible Assumption and Assignment Notice, and the Assumption Notice, in substantially the forms as annexed to this Order as Exhibit 2, Exhibit 3, and Exhibit 4, respectively, and the Creditor Notice and Bidding Procedures Notice, in substantially the forms as annexed to the Motion as Exhibit D and Exhibit E, respectively, are hereby approved.

23. Within one (1) business day after the entry of this Order, the Debtors (or their agents) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) counsel to

the Prepetition First Lien Lender and DIP Lender; (c) the Contract Counterparties; (d) all parties who have expressed a written interest in the Assets; (e) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (f) the Internal Revenue Service; (g) all other applicable state and local taxing authorities; (h) all the Debtors' other creditors; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

24. In addition, the Debtors are authorized to publish Bidding Procedures Notice in *The USA Today (National Edition)* within two (2) business days after entry of this Order.

25. Within one (1) business day after entry of this Order, the Debtors (or their agent) shall serve the Creditor Notice on all of the parties set forth on the Debtors' creditor matrix who were not served with the Sale Notice.

E. The Sale Hearing

26. The Sale Hearing will be conducted on **June 28, 2018** at [] a.m/p.m. (prevailing Eastern Time). The Debtors will seek entry of an order of the Court at the Sale Hearing approving and authorizing the sale of the Assets to the Successful Bidder. Upon entry of this Order, the Debtors are authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be continued from time to time without further notice other than such announcement being made in open court or a notice of adjournment filed with the Court and served on the Notice Parties.

F. Objections to the Sale

27. Objections, if any, to the relief requested in the Motion relating to the Sale (except for any objection that arises at the Auction) must: (i) be in writing and filed with the Court no later than 4:00 p.m. (prevailing Eastern Time) on **June 21, 2018**; and (ii) be served so that it is

actually received no later than 4:00 p.m. (prevailing Eastern Time) on June 21, 2018 by (a) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (b) counsel for the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), and (c) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov). A party's failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Sale, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder pursuant to the applicable purchase agreement, including, without limitation, the assumption and assignment of the Contracts to the Successful Bidder pursuant to the applicable purchase agreement, and shall be deemed to constitute such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation such assumption and assignment.

G. Other Relief Granted

28. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

29. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

30. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

31. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

32. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

34. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2018

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1 to Bidding Procedures Order

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “**Bidding Procedures**”)² to be employed with respect to the proposed sale (the “**Sale**”) of substantially all of the assets and operations (the “**Assets**”) of the above-captioned debtors and debtors in possession (the “**Debtors**”). Pursuant to the Bidding Procedures, the Debtors will determine the highest or otherwise best price for the sale of the Assets described in that certain Asset Purchase Agreement (the “**Stalking Horse Agreement**”) by and among Project Build Behavioral Health, LLC, as purchaser (the “**Stalking Horse Bidder**”), and the Debtors, as sellers, as contemplated in the motion to, among other things, approve the Bidding Procedures (the “**Motion**”). It is anticipated that the Sale will subject to the receipt of higher and better bids at an auction (the “**Auction**”), and the corresponding entry into a definitive sale agreement with a Successful Bidder (as defined below) according to these Bidding Procedures.

A. Important Dates

- (All times are prevailing Eastern Time)
- **June 4, 2018 at 4:00 p.m.:** Debtors to send Cure Notices to All Contract Counterparties and Notice of the Sale

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

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

- **June 21, 2018 at 4:00 p.m.:** Cure Objection Deadline
- **June 26, 2018 at 4:00 p.m.:** Deadline to submit Bid to be considered for the Auction
- **June 27, 2018 at 10:00 a.m.:** Proposed date of Auction
- **June 27, 2018 at 4:00 p.m.:** Debtors to file notice of Successful Bidder and Contract Assignment Notices
- **June 21, 2018 at 4:00 p.m.:** Deadline to file and serve objections to relief requested at Sale Hearing (except for any objection that arises at the Auction)
- **June 28, 2018 at _____ a.m./p.m.:** Proposed date of Sale Hearing

B. Approval of Bidding Procedures

On June __, 2018, the Bankruptcy Court entered an order approving these bidding procedures (these “**Bidding Procedures**” and such order, the “**Bidding Procedures Order**”), in furtherance of the Sale. The Bankruptcy Court has jurisdiction with respect to any dispute that may arise with respect to these Bidding Procedures. These Bidding Procedures set forth the process (the “**Bidding Process**”) by which the Debtors are authorized to conduct the Auction for the Sale of their Assets.

C. Marketing Process

1. Contact Parties

The Debtors and their other advisors developed a list of parties who the Debtors believe may potentially be interested in and who the Debtors reasonably believe would have the financial resources to consummate a Sale, which list includes both potential strategic investors and liquidators (each, individually, a “**Contact Party**”, and collectively, the “**Contact Parties**”). Houlihan Lokey has or will contact the Contact Parties to explore their interest in pursuing a Sale. The Contact Parties may include parties whom the Debtors or their advisors have previously contacted regarding a Sale, regardless of whether such parties expressed any interest, at such time, in pursuing a Sale. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute to each Contact Party an “**Information Package**,” which is comprised of:

- (a) a cover letter;
- (b) a copy of these Bidding Procedures;
- (c) a copy of the confidentiality agreement attached hereto as Attachment A (the “**Confidentiality Agreement**”); and
- (d) a copy of the Stalking Horse Agreement.

2. Access to Diligence Materials

To participate in the Bidding Process and to receive access to any materials relating to the Assets (the “**Diligence Materials**”), a party must submit to the Debtors an executed Confidentiality Agreement (it being understood that any person or entity that previously signed a confidentiality agreement in a form satisfactory to the Debtors shall not be required to execute a new confidentiality agreement). The executed Confidentiality Agreement must be signed and transmitted by the person or entity wishing to have access to the Debtors’ data room (the “**Data Room**”) and any other Diligence Materials.

A party who qualifies for access to the Diligence Materials shall be a “**Preliminarily Interested Investor**.” All due diligence requests must be directed to counsel to the Debtors.

For any Preliminary Interested Investor who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

No due diligence will continue after the Bid Deadline (defined below). The Debtors shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Preliminary Interested Investor that were not previously made available to the Stalking Horse Bidder as soon as reasonably practicable and in no event later than two (2) Business Days after the date that the Debtors made such information available to any Qualified Bidder.

3. Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “**Bid**”), and each party submitting such a Bid (each, a “**Bidder**”), must be determined by the Debtors, to satisfy each of the following conditions:

- (1) **Good Faith Deposit:** Each Bid must be accompanied by a deposit in the amount of ten percent (10%) of the Bid’s proposed purchase price to an interest bearing escrow account to be identified and established by the Debtors (the “**Good Faith Deposit**”).
- (2) **Terms:** A Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse Agreement, as determined by the Debtors, and the Bid must identify which Assets the Bidder intends to purchase and include executed transaction documents (the “**Transaction Documents**”). A Bid shall include (i) an executed asset purchase agreement and (ii) a copy of such asset purchase agreement marked to show all changes requested by the Bidder as compared to the Stalking Horse Agreement. A Bid will not be considered qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse Agreement (it being agreed and understood that such Bid shall modify the Stalking Horse Agreement as needed to comply in all respects with the Bid Procedures Order and will remove

provisions that apply only to the Stalking Horse Bidder (in its capacity as the stalking horse bidder) such as the protections relating to the Expense Reimbursement); (ii) such Bid is not received by the Debtors in writing on or prior to the Bid Deadline, and (iii) such Bid does not contain evidence that the Person submitting it has received unconditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made. The Debtors shall evaluate all Bids to determine whether such Bid(s) maximizes the value of the Debtors' estate as a whole. The Transaction Documents shall also identify any executory contracts and unexpired leases of the Debtors that the Bidder wishes to have assumed and assigned to it pursuant to the Sale (collectively, the "**Assigned Contracts**").

- (3) **Amount of Bid:** Each Bid must be for all of the Assets and shall clearly show the amount of the purchase price. In addition, a Bid (a) must propose a purchase price equal to or greater than the aggregate of the sum of (i) the value of the Bid set forth in the Stalking Horse Agreement, as determined by the Debtors; (ii) the dollar value of the Expense Reimbursement in cash, and (iii) \$100,000 (the initial overbid amount) in cash and (b) must obligate the Bidder to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including any assumed liabilities (as set forth in the Stalking Horse Agreement).
- (4) **Corporate Authority:** Written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to consummate the proposed transaction; *provided, however*, that, if the Bidder is an entity specially formed for the purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the transaction by the equity holder(s) of such Bidder.
- (5) **Proof of Financial Ability to Perform:** Written evidence that the Debtors reasonably conclude demonstrates that the Bidder has the necessary financial ability to close the transaction and provide adequate assurance of future performance under all contracts to be assumed and assigned in such transaction. Such information should include, *inter alia*, the following:
 - (a) contact names and numbers for verification of financing sources,
 - (b) evidence of the Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the transaction;
 - (c) the Bidder's current financial statements (audited if they exist); and
 - (d) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors demonstrating that such Bidder has the ability to close the transaction; *provided, however*, that the Debtors shall determine, in their reasonable

discretion whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Bidder's financial qualifications.

- (6) **Contingencies:** A Bid may not be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects at the closing of specified representations and warranties.
- (7) **Irrevocable:** A Bid must be irrevocable through the Auction; *provided, however*, that if such Bid is accepted as the Successful Bid or the Backup Bid (as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.
- (8) **Disclaimer of Fees.** Each Bid (other than the bid by the Stalking Horse Bidder) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. By submitting its Bid, each Bidder (other than the Stalking Horse Bidder) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including pursuant to Bankruptcy Code section 503(b).
- (9) **Bid Deadline:** Regardless of when a party qualifies as a Preliminarily Interested Investor, the Debtors must receive a Bid in writing, on or before **June 26, 2018** at 4:00 p.m. (prevailing Eastern Time) or such later date as may be agreed to by the Debtors (the "**Bid Deadline**"). Bids must be sent to the following by the Bid Deadline to be considered: counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com).

A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a "**Qualified Bid**," and such Bidder shall constitute a "**Qualified Bidder**."

4. Credit Bid

The Stalking Horse Bidder (for itself and in its capacity as Prepetition First Lien Lender and DIP Lender) shall be deemed to be a Qualified Bidder and is not required to make any Good Faith Deposit. To the fullest extent permissible under Bankruptcy Code section 363(k), the Stalking Horse Bidder (for itself and in its capacity as Prepetition First Lien Lender and DIP Lender) may credit bid, as a Qualified Bid or subsequent Bid, in its sole and absolute discretion, any portion and up to the entire amount of Obligations owing under the DIP Loan Documents (as defined in the DIP Order) and Prepetition First Lien Obligations (as defined in the DIP Order), each in their respective full amounts of such obligations outstanding as of the Closing Date (defined in the Stalking Horse Agreement) and (ii) all or a portion of its Bid Protections

(including as part of any Overbid), at any time on any individual Asset, portion of the Assets, or all Assets constituting the DIP Lender's DIP Collateral (as defined in the DIP Order) and the Prepetition First Lien Lender's Prepetition Senior Secured Collateral (as defined in the DIP Order) in conjunction with the Sale of the Assets (the "**Credit Bid**"). Upon exercise of its Credit Bid, the Prepetition First Lien Lender and DIP Lender shall not be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), any individual Asset, portion of the Assets, or all of the Assets, and the Stalking Horse Bidder (including in its capacity as Prepetition First Lien Lender and DIP Lender) shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual Asset, portion of the Assets, or all of the Assets that are subject to the Credit Bid. Except for the Stalking Horse Bidder, no other person may credit bid unless the entire amount of the Prepetition First Lien Lender's and DIP Lender's claims will be indefeasibly paid in full in cash on the closing of the Sale. In the event the amount of the Credit Bid exceeds the total amount of the highest bids for the Assets subject to the Credit Bid, such Credit Bid will be deemed the highest and best bid and such Credit Bid will be accepted by the Debtors and be presented for approval to the Bankruptcy Court.

D. Auction

If one or more Qualified Bids is received by the Bid Deadline (other than the Stalking Horse Bid), the Debtors will conduct the Auction to determine the highest and best Qualified Bid. This determination shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following: (a) the amount and nature of the consideration; (b) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any; (c) the ability of the Qualified Bidder to close the proposed Transaction; (d) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (e) any purchase price adjustments; (f) the impact of the Transaction on any actual or potential litigation; and (g) the net after-tax consideration to be received by the Debtors' estates (collectively, the "**Bid Assessment Criteria**"). If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Debtors may determine not to conduct the Auction.

The Auction shall take place on **June 27, 2018** at 10:00 a.m. (prevailing Eastern Time) at the offices of Debtors' counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids. Prior to the Auction, the Debtors shall provide copies of all Qualified Bids to all Qualified Bidders, including the Stalking Horse Bidder. Only the Debtors, any official committee of unsecured creditors, the Prepetition Second Lien Lender (as defined in the Motion), the Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their respective representatives, will be entitled to attend the Auction in person. Only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction. The Auction shall be transcribed or videotaped, and shall be conducted according to the following procedures:

1. The Debtors Shall Conduct the Auction

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction the Debtors shall describe the terms of the highest and best Bid(s) received and announce such Qualified Bid(s) (the “**Auction Baseline Bid**”).

All Bids made thereafter shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Auction Baseline Bid and all Overbids.

2. Terms of Overbids

An “**Overbid**” is any Bid made at the Auction subsequent to the Debtors’ announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(1) Minimum Overbid Increment

Any Overbid after the Auction Baseline Bid shall be made in increments of at least \$100,000 (the “**Minimum Overbid Increment**”) for a bid for all of the Assets, and in an amount to be determined by the Debtors; *provided* that the Debtors shall retain the right to modify the bid increment requirements at the Auction. Additional consideration in excess of the amount set forth in the Auction Baseline Bid may include only cash, the assumption of debt or marketable securities, or, with respect to the Stalking Horse Bidder, additional amounts arising under its Credit Bid pursuant to Bankruptcy Code section 363(k) to the extent not already included as part of the Stalking Horse Bid. For purposes of the Overbid, the Stalking Horse Bidder shall be entitled to a credit in the amount of the Expense Reimbursement.

(2) Remaining Terms Are the Same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; *provided, however*, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid.

To the extent not previously provided (which shall be determined by the Debtors), a Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Bidder’s ability to close the transaction proposed by such Overbid; *provided, however*, that this shall not apply to an Overbid by the Stalking Horse Bidder.

(3) Announcing Overbids

The Debtors shall announce at the Auction the material terms of each Overbid, the basis for calculating the total consideration offered in each such Overbid and the resulting benefit to the Debtors’ estates based on, *inter alia*, the Bid Assessment Criteria.

(4) **Consideration of Overbids**

The Debtors reserve the right, in their reasonable business judgment, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Bidders; allow individual Bidders to consider how they wish to proceed; and give Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors in their reasonable business judgment may require, that the Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

3. **No Collusion; Good-Faith *Bona Fide* Offer**

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the Sale or bidding (including that it has no agreement with any other Bidder or Qualified Bidder to control the price) and (ii) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

4. **Backup Bidder**

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid(s) at the Auction, as determined by the Debtors, in the exercise of their business judgment, shall be required to serve as a backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “**Backup Bid**”) open and irrevocable until the earlier of 4:00 p.m. (prevailing Eastern Time) on the date that is twenty five (25) days after the date of the Sale Hearing (the “**Outside Backup Date**”) or the closing of the transaction with the Successful Bidder. Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors may designate the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the transaction with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s deposit, if any, shall be forfeited to the Debtors’ estates, and the Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Backup Bidder shall be no later than the later of twenty five (25) days after the date that the Debtors provide notice to the Backup Bidder that the Successful Bidder failed to consummate a sale and that the Debtors desire to consummate the transaction with the Backup Bidder or five (5) calendar days after necessary regulatory approvals are completed by the Backup Bidder and/or the Debtors. The deposit, if any, of the Backup Bidder shall be held by the Debtors until the earlier of two (2) business days after (a) the closing of the Sale with the Successful Bidder and (b) the Outside Backup Date; *provided, however*, that in the event the Successful Bidder does not consummate the transaction as described above and the Debtors provide notice to the Backup Bidder, the Backup Bidder’s deposit shall be held until the closing of the transaction with the Backup Bidder. In the event that the Debtors fail to consummate a transaction with the backup Bidder as described above, the Backup Bidder’s deposit shall be forfeited to the Debtors’ estates, and the Debtors specifically reserve the right to

seek all available damages from the defaulting Backup Bidder. The Stalking Horse Bidder will not be a Backup Bidder unless the Stalking Horse Bidder otherwise consents in writing.

5. Additional Procedures

The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures.

6. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders, and all Bidders at the Auction, shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction, or the construction and enforcement of any Transaction Documents.

7. Rights of the Prepetition First Lien Lender and DIP Lender /Other Rights to Credit Bid

Pursuant to Bankruptcy Code section 363(k), the Stalking Horse Bidder (itself and in its capacity as the Prepetition First Lien Lender and DIP Lender) shall have the right to Credit Bid as set forth in the Bidding Procedures Order (including as part of any Overbid, to credit bid all or a portion of the value of its Bid Protections).

8. Closing the Auction

The Auction shall continue until there is only one or more Qualified Bid(s) that the Debtors determine in their reasonable business judgment, after consultation with their financial and legal advisors, is the highest and best Qualified Bid(s) at the Auction (the “**Successful Bid**” and the Bidder submitting such Successful Bid, the “**Successful Bidder**”). In making this decision, the Debtors, in consultation with their financial and legal advisors, shall consider the Bid Assessment Criteria. The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid and the Successful Bidder has submitted fully executed Transaction Documents memorializing the terms of the Successful Bid(s).

9. Expense Reimbursement

The Debtors have been authorized to enter into a Stalking Horse Agreement with the Stalking Horse Bidder and the Stalking Horse Bidder is entitled to receive the reimbursement of the reasonable, actual, out-of-pocket costs and expenses paid or incurred by Stalking Horse Bidder directly incident to, under, or in connection with the negotiation, execution and performance under the Stalking Horse Agreement and the transactions contemplated thereunder (including travel expenses and reasonable fees and disbursements of counsel, accountants and financial advisors, excluding any charges for the time or services of the Stalking Horse Bidder’s employees) in an amount not to exceed \$325,000 in the aggregate (the “**Expense Reimbursement**”). The Expense Reimbursement, shall be paid immediately upon consummation of the Sale transaction out of the proceeds of the Sale and shall constitute an

allowed superpriority administrative expense claim against the Debtors' bankruptcy estates pursuant to Bankruptcy Code sections 363, 364(c)(1), 503(b), 507(a)(2), and 507(b).

E. Procedures for Determining Cure Amounts and Adequate Assurance for Contract Counterparties to Assigned Contracts

By **June 4, 2018**, the Debtors shall send a notice to each counterparty to an executory contract or unexpired lease (each a "**Contract Counterparty**") setting forth the Debtors' calculation of the cure amount, if any, that would be owing to such Contract Counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Contract Counterparty that their contract may be assumed and assigned to the Successful Bidder (the "**Cure and Possible Assumption and Assignment Notice**"), a copy of which is attached to the Bidding Procedures Order as Exhibit 3. Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their executory contract or unexpired lease must file an objection (a "**Contract Objection**") on or before 4:00 p.m. prevailing Eastern Time on **June 21, 2018**, which Contract Objection must be served on counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), so that it is actually received no later than 4:00 p.m. prevailing Eastern Time on **June 21, 2018**. If a Contract Counterparty does not timely file and serve a Contract Objection, that party will be forever barred from objecting to (a) the Debtors' proposed cure amount, or (b) the assignment of that party's executory contract or unexpired lease to the Successful Bidder. Where a Contract Counterparty to an Assigned Contract files a timely Contract Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing.

F. Sale Hearing

The Bankruptcy Court has scheduled a hearing (the "**Sale Hearing**") on **June 28, 2018**, at __:__.m. (prevailing Eastern Time), at which hearing the Debtors will seek approval of the Sale with the Successful Bidder. Objections to the sale of the Assets to the Successful Bidder or Back-Up Bidder must be filed and served so that they are actually received by the Debtors no later than 4:00 p.m. (prevailing Eastern Time) on **June 21, 2018** (except for any objection that arises at the Auction) on the following: counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com).

G. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Court. The Good Faith Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder

not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of (i) two (2) business days after the Acquired Assets have been sold pursuant to the closing of a sale approved by the Bankruptcy Court and (ii) twenty (20) days after conclusion of the Sale Hearing. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit shall be credited towards its purchase price.

H. Reservation of Rights

The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customer terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadline set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing (as defined below) in open court without further notice; (c) reopening the Auction to consider further Bids or Overbids; (d) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction (*e.g.*, the amount of time to make subsequent overbids, whether a non-conforming Bid constitutes a Qualified Bid); (e) canceling the Auction; and (f) rejecting any or all Bids or Qualified Bids (excluding the Qualified Bid of the Stalking Horse Bidder).

Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Agreement or the Stalking Horse Bidder's right to credit bid at the Auction.

Notwithstanding anything to the contrary in the Motion, these Bidding Procedures, or the Bidding Procedures Order, the right of the Stalking Horse Bidder (in its capacity as Prepetition First Lien Lender and DIP Lender) to object to any proposed sale of any Assets if the sale proceeds are not sufficient to satisfy the Prepetition First Lien Lender and DIP Lender's obligations and the rights and defenses of the Stalking Horse Bidder (in its capacity as Prepetition First Lien Lender and DIP Lender) with respect to the form and substance of the Sale Order are hereby reserved.

Attachment A to Bidding Procedures

Form of Confidentiality Agreement

[LETTERHEAD]

Date: _____

Re: Confidentiality Agreement Regarding Potential Transaction

Ladies and Gentlemen:

In connection with your consideration of a possible transaction (“**Transaction**”) with EBH Topco, LLC (the “**Company**”), you have requested certain confidential and other information concerning the Company. You agree to treat any information concerning the Company, its affiliates, subsidiaries, management companies, and parent companies, whether furnished to you before or after the date of this letter, together with any and all analyses or other documents prepared by you or any of your directors, employees, advisors, attorneys, accountants, consultants, subcontractors, representatives or lending institutions (collectively, “**Representatives**”) which contain or otherwise reflect such information (collectively, “**Evaluation Material**”), in accordance with this agreement. The term “Evaluation Material” does not include information which (a) was already in your possession prior to the time of disclosure to you by the Company or its Representatives, provided that such information was not furnished to you by a source known by you to be bound by a confidentiality agreement with the Company, or otherwise prohibited from disclosing the information to you, (b) was or becomes generally available to the public other than as a result of a disclosure by you or your Representatives, (c) becomes available to you on a non-confidential basis from a source other than the Company or its Representatives, provided that such source is not known by you to be bound by a confidentiality agreement with the Company, or otherwise prohibited from disclosing the information to you, or (d) which was or is independently developed by you without violating your obligations hereunder.

The Evaluation Material will be used solely for the purpose of evaluating the Transaction between the Company and you, will not be used in any way detrimental to the Company and its Representatives, and will be kept confidential by you and your Representatives, except to the extent that disclosure (a) has been consented to in writing by the Company, or (b) is made to your Representatives who need to know such information for the purpose of evaluating the Transaction (it being understood that such Representatives shall be informed by you of the confidential nature of the Evaluation Material). Nothing in this Agreement is intended to grant any rights to you under any patent, mask work right or copyright of the Company, nor shall this Agreement grant you any rights in or to the Evaluation Material except as expressly set forth herein. You shall be responsible for any breach of this agreement by any of your Representatives as if such Representative had been substituted for “you” as a party and signatory to this letter. You agree that you shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of Evaluation Material. Without limiting the foregoing, you shall take at least those measures that you take to protect your most highly confidential information. You

shall not make any copies of the Evaluation Material unless the Company previously approves the same in writing. You shall reproduce the Company's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in the original.

In the event that you or any of your Representatives are requested or required by law, regulatory authority or other applicable judicial or governmental order to disclose any Evaluation Material, you will provide the Company with prompt notice of any such request or requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this agreement. In the event that such protective order or other remedy is not obtained, or that the Company waives compliance with the terms hereof, you may disclose only that portion of the Evaluation Material which is legally required.

In addition, without the prior written consent of the Company, you will not, and will direct your Representatives not to, disclose to any person (a) that the Evaluation Material has been made available to you or your Representatives, (b) that discussions are taking place concerning a Transaction, or (c) any terms or other facts with respect to the Transaction, including the status thereof.

It is understood and agreed that money damages may not be a sufficient remedy for any breach of this agreement, and that the Company is entitled to seek specific performance and injunctive or other equitable relief. Such remedy shall not be deemed to be the exclusive remedy for breach of this agreement, but shall be in addition to all other remedies available at law or equity to the Company.

The Company shall not be deemed to have made any representations or warranties as to the accuracy or completeness of the Evaluation Material. Only those representations or warranties which are made by the Company in a final definitive agreement regarding a Transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.

Within ten days after being so requested by the Company or its Representatives, except to the extent you are advised by legal counsel that complying with such request would be prohibited by law or regulatory authority, you will return or destroy all Evaluation Material. Any destruction of materials shall be confirmed by you in writing. Any Evaluation Material that cannot be returned or destroyed (such as oral Evaluation Material) shall remain confidential, subject to the terms of this agreement.

This agreement binds the parties only with respect to the matters expressly set forth herein. As such, unless and until a subsequent definitive written agreement regarding a Transaction between the Company and you has been executed, (a) neither the Company nor you will be under any legal obligation of any kind whatsoever to negotiate or consummate a Transaction, and (b) you shall have no claim whatsoever against the Company or any of its respective directors, officers, owners, affiliates or Representatives arising out of or relating to any Transaction or Evaluation Material.

Additionally, you agree not to solicit for employment any Company employees to whom you may be introduced or with whom you otherwise had contact as a result of your consideration of a Transaction for a period of two years after the date of this agreement, provided that you shall not be restricted in any general solicitation for employees (including through the use of employment agencies) not specifically directed at any such persons, and provided further that you shall not be restricted in hiring any such person who responds to any such general solicitation.

You hereby acknowledge that you are aware, and further agree that you will advise your Representatives, that Federal and State securities laws limit the circumstances in which any person who has material, non-public information about a company from purchasing or selling securities of such a company and prohibit any such person from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. Moreover, you agree that you shall not use any of the Evaluation Materials to purchase or attempt to purchase or otherwise engage in trading of claims of the Company (including, without limitation, claims held by trade creditors, bank lenders, other secured and unsecured lenders or any other parties).

This agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. Venue for any action to enforce the provisions of this letter agreement shall be properly laid in any state or federal court sitting in or comprising Los Angeles County, California. This agreement constitutes the entire agreement between the parties hereto regarding the subject matter hereof. No amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties hereto. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by the Company in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder.

Your obligations under this agreement shall remain in effect for a period of two years from the date hereof, except as otherwise stated herein.

Very truly yours,

EBH Topco, LLC:

Name:

Title:

Confirmed and Agreed to:

By: _____
Name:
Title:

Exhibit 2 to Bidding Procedures Order

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

**NOTICE OF BID PROCEDURES,
AUCTION, HEARING AND DEADLINES RELATING
TO THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

PLEASE TAKE NOTICE that on May 23, 2018, EBH Topco, LLC, as debtors and debtors in possession (the “**Debtors**”) in the above-captioned case (the “**Bankruptcy Case**”), filed a *Motion of Debtors for Entry of (I) an Order (A) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Approving the Form and Manner of Notice thereof, (D) Scheduling an Auction and Sale Hearing, (E) Approving Procedures for the Assumption and Assignment of Contracts, and (F) Granting Related Relief; and (II) an Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Successful Bidder, and (B) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief* (the “**Bidding Procedures and Sale Motion**”).² The Debtors seeks to complete a sale (the “**Transaction**”) of substantially all their assets (the “**Transferred Assets**”) to a prevailing bidder or bidders (the “**Successful Bidder**”) at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Bankruptcy Code section 363 (the “**Auction**”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Bidding Procedures and Sale Motion.

PLEASE TAKE FURTHER NOTICE that, on [____], 2018 the Bankruptcy Court entered an order [Docket No. ____] (the “**Bidding Procedures Order**”) approving the bidding procedures set forth in the Bidding Procedures and Sale Motion (the “**Bidding Procedures**”), which set the key dates and times related to the sale of the Debtors’ Transferred Assets under the asset purchase agreement with the Successful Bidder. **All interested bidders should carefully read the Bidding Procedures.** To the extent that there are any inconsistencies between the Bidding Procedures and the summary description of its terms and conditions contained in this notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures, the Debtors must receive a Qualified Bid from interested bidders in writing, on or before **June 26, 2018 at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtors (the “**Bid Deadline**”). To be considered, Qualified Bids must be sent to the following at or before the Bid Deadline: (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com); (ii) investment bankers for the Debtors, Houlihan Lokey [TBD]; and (iii) counsel for the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, if the Debtors receive one or more Qualified Bids (other than the Credit Bid) by the Bid Deadline, the Auction will be conducted on **June 27, 2018 at 10:00 a.m. (prevailing Eastern Time)** at Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, or at such other place, date and time as may be designated by the Debtors.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, the Debtors have designated certain Assigned Contracts that may be assumed or assumed and assigned to the Successful Bidder. By June 4, 2018, the Debtors shall send a notice to each counterparty to an Assigned Contract setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such Assigned Contract, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, any counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their Assigned Contract(s) must file with the Bankruptcy Court and serve an objection (a “**Cure or Assignment Objection**”) so that it is actually received on or before **4:00 p.m. prevailing Eastern Time on June 21, 2018**, by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (ii) counsel to the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov), and (iv) the

Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. Where a counterparty to an Assigned Contract files a timely Cure or Assignment Objection asserting a higher cure amount than the amount listed in the Cure and Possible Assumption and Assignment Notice, or an objection to the possible assignment of that counterparty's Assigned Contract, and the parties are unable to consensually resolve the dispute, the amount to be paid under Bankruptcy Code section 365 (if any) or, as the case may be, the Debtors' ability to assign the Assigned Contract to the Successful Bidder will be determined at the Sale Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Transferred Assets to the Successful Bidder (the "**Sale Hearing**") before the Honorable [____], U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom [____], on **June 28, 2018 at [____] a.m./p.m.** (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or on the agenda for such Sale Hearing. Objections to the sale of the Transferred Assets to the Successful Bidder must be filed and served so that they are received no later than 4:00 p.m. (prevailing Eastern Time) on **June 21, 2018** by (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (ii) counsel to counsel to the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov), and (iv) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801.

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

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. A copy of the Bidding Procedures and Sale Motion, the Bidding Procedures and the Bidding Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), or (ii) for a fee via PACER at <http://www.deb.uscourts.gov>.

Dated: Wilmington, Delaware
[____], 2018

POLSINELLI PC

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)
Shanti M. Katona (Del. Bar No. 5352)
Stephen J. Astringer (Del. Bar No. 6375)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
cward@polsinelli.com
skatona@polsinelli.com
sastringer@polsinelli.com

-and-

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

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit 3 to Bidding Procedures Order

Cure and Possible Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

**NOTICE TO COUNTERPARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES REGARDING CURE
AMOUNTS AND POSSIBLE ASSIGNMENT TO SUCCESSFUL BIDDER AT AUCTION**

PLEASE TAKE NOTICE that on May 23, 2018, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed a motion (the “**Bidding Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on _____, 2018, the Bankruptcy Court entered an order [Docket No. ____] (the “**Bidding Procedures Order**”) approving Bidding Procedures (the “**Bidding Procedures**”), which set key dates, times and procedures related to the sale of substantially of the Debtors’ assets (the “**Acquired Assets**”). To the extent that there are any inconsistencies between the Bidding Procedures and the summary description of the terms and conditions contained in this Notice, the terms of the Bidding Procedures shall control.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE LISTED BELOW WITH THE DEBTORS:²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² This Notice is being sent to counterparties to Executory Contracts and Unexpired Leases. This Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

[Counterparty Name]

[Contract/Lease]

Cure Amount

Pursuant to the Bidding Procedures, the Debtors may assume the Executory Contract(s) or Unexpired Lease(s) listed above to which you are a counterparty. Also pursuant to the Bidding Procedures, the Debtors may assign the Executory Contract(s) or Unexpired Lease(s) to the successful bidder (the “Successful Bidder”) at an auction of substantially all of the Debtors’ assets currently scheduled for June 27, 2018. The Debtors have conducted a review of their books and records and have determined that the cure amount for unpaid monetary obligations under such contract or lease is \$[AMOUNT] (the “**Cure Amount**”). If you (a) object to the proposed assumption or disagree with the proposed Cure Amount, or (b) object to the possible assignment of such Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder, **you must file an objection with the Bankruptcy Court no later than June 21, 2018**, (the “**Objection Deadline**”) and serve such objection on the following parties:

POLSINELLI PC

Christopher A. Ward (Del. Bar No. 3877)
 Shanti M. Katona (Del. Bar No. 5352)
 222 Delaware Avenue, Suite 1101
 Wilmington, Delaware 19801
 Telephone: (302) 252-0920
 Fax: (302) 252-0921

Counsel to the Debtor

MCDONALD HOPKINS LLP

David Agay
 300 North LaSalle Street, Suite 1400
 Chicago, Illinois 60654
 Telephone: (312) 642-2217
 Fax: (312) 280-8232

Counsel to the Prepetition First Lien Lender and DIP Lender

CLERK OF THE BANKRUPTCY COURT
 United States Bankruptcy Court for the District
 of Delaware
 824 North Market Street, 3rd Floor
 Wilmington, DE 19801

OFFICE OF THE UNITED STATES
 TRUSTEE FOR THE DISTRICT OF
 DELAWARE
 J. Caleb Boggs Federal Building
 844 King Street, Suite 2008 – Lockbox #35
 Wilmington, DE 19801

If no objection to the Cure Amount or the assignment of your Executory Contract(s) or Unexpired Lease(s) to the Successful Bidder is filed by the Objection Deadline, **you will be deemed to have stipulated that the Cure Amount as determined by the Debtors and set**

forth above is correct and you shall be forever barred, estopped and enjoined from (a) asserting any additional cure amount under the above-listed Executory Contract(s) and Unexpired Lease(s) or (b) objecting to the assumption and assignment of the above-listed Executory Contract(s) and Unexpired Lease(s) to the Successful Bidder.

Exhibit 4 to Bidding Procedures Order

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

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

PLEASE TAKE NOTICE that on May 23, 2018, the above-captioned debtors and debtors in possession (the “**Debtors**”) filed for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and also filed a motion (the “**Sale Motion**”)² to sell substantially all of their assets (the “**Assets**”) free and clear of all liens, claims, encumbrances, and other interests (the “**Sale**”) and assume and assign certain of their executory contracts and unexpired leases (collectively, the “**Contracts**”) to the purchaser of the Assets.³

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Assets of the Debtors consistent with the bidding procedures (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 EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² *Motion of Debtors for Entry of (I) an Order (A) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Approving Stalking Horse Bid Protections, (C) Approving the Form and Manner of Notice thereof, (D) Scheduling an Auction and Sale Hearing, (E) Approving Procedures for the Assumption and Assignment of Contracts, and (F) Granting Related Relief; and (II) an Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Successful Bidder, and (B) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts, and (D) Granting Related Relief* [Docket No. ____]

³ Capitalized terms used as defined terms but not defined herein shall have all the meanings ascribed to them in the Sale Motion.

Procedures") approved by the Court by the entry of an order on _____, 2018 (the "**Bidding Procedures Order**").⁴ The Bidding Procedures include, among other things, procedures for the assumption and assignment of the Contracts (the "**Assumption Procedures**").

PLEASE TAKE FURTHER NOTICE that, accordingly, pursuant to the Assumption Procedures, and by this written notice, the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that the Contracts and any modifications thereto set forth on Schedule 1 attached hereto (collectively, the "**Assigned Contracts**") shall be assumed and assigned to the Successful Bidder, subject to the Successful Bidder's payment of the cure amount set forth on Schedule 1, or such other cure amounts as are agreed by the parties.

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

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request from the proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward; and (b) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that, except as otherwise provided by the Bidding Procedures order, the time for filing objections to (a) the cure amounts related to the Assigned Contracts, (b) the Debtors' ability to assume and assign the Assigned Contracts, and (c) adequate assurance of future performance of the Assigned Contract by the Successful Bidder has passed and no further notice or action is necessary with respect to such matters.

Dated: Wilmington, Delaware
[____], 2018

⁴ Order (I) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Approving Stalking Horse Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and a Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, and (VI) Granted Related Relief [Docket No. ____].

POLSINELLI PC

/s/ Christopher A. Ward

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Schedule 1 to Assumption Notice**Assigned Contracts¹**

Counterparty	Description of Assigned Contracts or Leases	Cure Amount

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

Exhibit D to Motion

Creditor Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

**NOTICE OF DATES AND DEADLINES RELATING TO THE SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS**

PLEASE TAKE NOTICE that on May 23, 2018, EBH Topco, LLC (the “**Debtors**”) filed a motion (the “**Bidding Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on _____, 2018, the Bankruptcy Court entered an order [Docket No. _____] (the “**Bidding Procedures Order**”) approving Bidding Procedures (the “**Bidding Procedures**”), which set key dates, times, and procedures related to the sale of substantially of the Debtors’ assets (the “**Transferred Assets**”). **All interested bidders should carefully read the Bidding Procedures.** To the extent that there are any inconsistencies between the Bidding Procedures and the summary description of the terms and conditions contained in this notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that the Debtors have been and will continue to market the Transferred Assets in advance of the Auction. To be eligible to participate in the Auction, each Bid and each Bidder must be determined by the Debtors to comply with the conditions set forth in the Bidding Procedures. The deadline to submit a Qualified Bid is **June 26, 2018 at 4:00 p.m. (prevailing Eastern Time)** (the “**Bid Deadline**”). To be considered, any Bid must comply with the requirements set forth in the Bidding Procedures.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures Order, an auction (the “**Auction**”) may be held on **June 27, 2018 at 10:00 a.m.** (prevailing Eastern Time) at the offices of Debtors’ counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids, or at another location as may be timely disclosed by the Debtors to all Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that, by **June 4, 2018**, the Debtors shall send a notice to each Contract Counterparty to an executory contract or unexpired lease setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”). Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their executory contract or unexpired lease to the Successful Bidder must file an objection (a “**Cure or Assignment Objection**”) on or before **4:00 p.m. prevailing Eastern Time on June 21, 2018**, which Cure or Assignment Objection must be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (ii) counsel to the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov), and (iv) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so that it is actually received no later than 4:00 p.m. prevailing Eastern Time on **June 21, 2018**. If a Contract Counterparty does not timely file and serve a Cure or Assignment Objection, that party will be forever barred from objecting to (a) the Debtors’ proposed cure amount, or (b) the assignment of that party’s executory contract or unexpired lease to the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to confirm the results of the Auction and approve the transactions contemplated in the Bidding Procedures and the Bidding Procedures and Sale Motion to the Successful Bidder at the Auction (the “**Sale Hearing**”) before the Honorable _____, **on June 28, 2018 at _____.m.** (prevailing Eastern Time), or at such time thereafter as counsel may be heard. The Sale Hearing may be continued from time to time by the Bankruptcy Court or the Debtors without further notice other than such adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the entities who have filed objections to the Bidding Procedures and Sale Motion, without further notice to other parties in interest. **Objections to the sale of the Transferred Assets to the Successful Bidder or the Backup Bidder must be filed and served so that they are actually received by the Debtors no later than 4:00 p.m. (prevailing Eastern Time) on June 21, 2018.**

PLEASE TAKE FURTHER NOTICE that this notice is subject to the full terms and conditions of the Bidding Procedures and Sale Motion, the Bidding Procedures and the Bidding Procedures Order, which shall control in the event of any conflict with this notice. The Debtors

encourage parties in interest to review such documents in their entirety. A copy of the Bidding Procedures and Sale Motion, the Bidding Procedures and the Bidding Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), or (ii) for a fee via PACER at <http://www.deb.uscourts.gov>.

POLSINELLI PC

/s/ Christopher A. Ward

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*Proposed Counsel to the Debtors and
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Exhibit E to Motion

Bidding Procedures Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

Jointly Administered

NOTICE OF BIDDING PROCEDURES²

PLEASE TAKE NOTICE that on May 23, 2018, EBH Topco, LLC (the “**Debtors**”) filed a motion (the “**Bidding Procedures and Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on _____, 2018, the Bankruptcy Court entered an order [Docket No. _____] (the “**Bidding Procedures Order**”) approving Bidding Procedures (the “**Bidding Procedures**”), which set key dates, times and procedures related to the sale of substantially of the Debtors’ assets (the “**Transferred Assets**”). **All interested bidders should carefully read the Bidding Procedures.** To the extent that there are any inconsistencies between the Bidding Procedures and the summary description of the terms and conditions contained in this Notice, the terms of the Bidding Procedures shall control.

PLEASE TAKE FURTHER NOTICE that the Debtors have been and will continue to market the Transferred Assets in advance of the Auction. To be eligible to participate in the Auction, each Bid and each Bidder must be determined by the Debtors to comply with the conditions set forth in the Bidding Procedures. The deadline to submit a Qualified Bid is **June 26, 2018** (the “**Bid Deadline**”). To be considered, any Bid must comply with the requirements set forth in the Bidding Procedures.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The location of the Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Bidding Procedures or the Bidding Procedures Order, as applicable.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures Order, an auction (the “**Auction**”) will be conducted at the offices of Debtors’ counsel, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 or such later time on such day or other place as the Debtors shall notify all Bidders who have submitted Qualified Bids, or at another location as may be timely disclosed by the Debtors to all Qualified Bidders.

PLEASE TAKE FURTHER NOTICE that, by **June 4, 2018**, the Debtors shall send a notice to each Contract Counterparty to an executory contract or unexpired lease setting forth the Debtors’ calculation of the cure amount, if any, that would be owing to such counterparty if the Debtors decided to assume or assume and assign such executory contract or unexpired lease, and alerting such nondebtor party that their contract may be assumed and assigned to the Successful Bidder (the “**Cure and Possible Assumption and Assignment Notice**”). **Any Contract Counterparty that objects to the cure amount set forth in the Cure and Possible Assumption and Assignment Notice or the possible assignment of their executory contract or unexpired lease to the Successful Bidder must file an objection (a “Cure or Assignment Objection”) on or before 4:00 p.m. prevailing Eastern Time on June 21, 2018, which Cure or Assignment Objection must be served on (i) counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), (ii) counsel to the Prepetition First Lien Lender and DIP Lender, McDonald Hopkins LLP, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: David Agay (dagay@mcdonaldhopkins.com), (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Ste. 2008 – Lockbox #35, Wilmington, DE 19801, Attn: Hannah McCollum (hannah.mccollum@usdoj.gov), and (iv) the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so that it is actually received no later than 4:00 p.m. prevailing Eastern Time on June 21, 2018. If a Contract Counterparty does not timely file and serve a Cure or Assignment Objection, that party will be forever barred from objecting to (a) the Debtors’ proposed cure amount, or (b) the assignment of that party’s executory contract or unexpired lease to the Successful Bidder.**

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PLEASE TAKE FURTHER NOTICE that this Notice is subject to the full terms and conditions of the Bidding Procedures and the Bidding Procedures Order, which shall control in

the event of any conflict with this Notice. The Debtors encourage parties in interest to review such documents in their entirety. A copy of the Bidding Procedures and the Bidding Procedures Order may be obtained (i) by contacting counsel for the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com), or (ii) for a fee via PACER at <http://www.deb.uscourts.gov>.

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