

Document Page 1 of 42  
**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE NORTHERN DISTRICT OF ILLINOIS**  
**EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
FRIENDSHIP VILLAGE OF	§	Case No.: 17-12470
MILL CREEK, NFP, d/b/a	§	
GREENFIELDS OF GENEVA,	§	
	§	Hearing: April 26, 2017
FEIN: 20-3300991,	§	1:30 p.m.
	§	
Debtor.	§	Hon. LaShonda A. Hunt

**NOTICE OF MOTION AND MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING  
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (B)  
APPROVING BIDDING PROCEDURES AND OVERBID PROTECTIONS IN  
CONNECTION THEREWITH; (C) APPROVING THE FORM AND MANNER OF  
NOTICE; AND (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES  
WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Please take notice that on Wednesday, April 26, 2017 at 1:30 p.m., we will appear before the Honorable LaShonda A. Hunt, Judge of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, at the Everett McKinley Dirksen United States Courthouse, 219 S. Dearborn Street, Courtroom 719, Chicago, IL 60604, or such other judge as may be sitting in Judge LaShonda Hunt's place and stead, and then and there present the "MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (B) APPROVING BIDDING PROCEDURES AND OVERBID PROTECTIONS IN CONNECTION THEREWITH; (C) APPROVING THE FORM AND MANNER OF NOTICE; AND (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES", a copy of which is attached hereto and is hereby served upon you.

Dated: April 21, 2017

**Friendship Village of Mill Creek, NFP, d/b/a  
GreenFields of Geneva**

By: /s/ Bruce Dopke  
Proposed counsel to the Debtor

Bruce Dopke, Member (ARDC # 3127052)  
Ronald A. Damashek (ARDC # 6183820)  
Kevin V. Hunt (ARDC# 6283126)  
Melissa J. Lettiere (ARDC # 6291738)  
Stahl Cowen Crowley Addis LLC  
55 W. Monroe Street, Suite 1200  
Chicago, IL 60603  
Tel: 312-641-0060  
Fax: 312-423-8188  
email: bdopke@stahlcowen.com  
email: rdamashek@stahlcowen.com  
email: khunt@stahlcowen.com  
email: mlettieri@stahlcowen.com

**CERTIFICATE OF SERVICE**

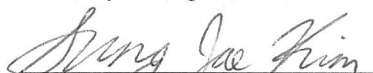
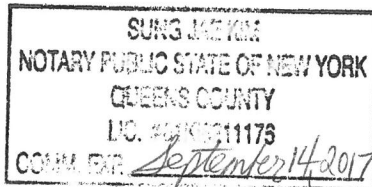
I, Robert Rotman, being over the age of 18 yrs, and an employee of Donlin Recano & Company, Inc. hereby certify that I caused to be served a complete and accurate copy of the **“MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (B) APPROVING BIDDING PROCEDURES AND OVERBID PROTECTIONS IN CONNECTION THEREWITH; (C) APPROVING THE FORM AND MANNER OF NOTICE; AND (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES”** via Federal Express Priority Overnight delivery upon the parties as set forth in Exhibit 1; and via USPS Express Mail Overnight upon the parties as set forth in Exhibit 2.

By



Robert Rotman

Sworn before me this  
21<sup>st</sup> day of April, 2017

  
Notary Public

## **EXHIBIT 1**

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04/20/2017 12:44:52 PM

000037P001-1366S-010  
CENTERPOINT ENERGY  
23968 NETWORK PLACE  
CHICAGO IL 60673-1239

000023P001-1366S-010  
DUANE MORRIS  
PAYMENT PROCESSING CHARLIE LEWIS  
30 SOUTH 17TH ST  
PHILADELPHIA PA 19103-4196

000022P001-1366S-010  
GREYSTONE DEVELOPMENT CO  
BRAD STRAUB  
225 E JOHN CARPENTER FWY  
STE 700  
IRVING TX 75062

000019P001-1366S-010  
Mintz, Levin, Cohn, Ferris, et al.  
Attn: Daniel S. Bleck, Esq  
One Financial Center  
Boston MA 02111

000029P001-1366S-010  
NAME INTENTIONALLY OMITTED  
507 BRADBURY  
GENEVA IL 60134

000030P001-1366S-010  
NAME INTENTIONALLY OMITTED  
623 INDEPENDENCE AVE  
ELBURN IL 60119

000031P001-1366S-010  
NAME INTENTIONALLY OMITTED  
43W950 KENMAR DRIVE  
ELBURN IL 60119

000032P001-1366S-010  
NAME INTENTIONALLY OMITTED  
1S316 REVERE HOUSE LANE  
GENEVA IL 60134-4806

000007P001-1366S-010  
OFFICE OF THE UNITED STATES TRUSTEE  
ADAM BRIEF  
219 S. DEARBORN ST.  
ROOM 873  
CHICAGO IL 60604

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04/20/2017 12:48:26 PM

000010P001-1366S-008  
ILLINOIS DEPARTMENT OF REVENUE  
JAMES R. THOMPSON CTR. CONCOURSE LEVEL  
100 WEST RANDOLPH ST.  
CHICAGO IL 60601-3274

000013P001-1366S-008  
ILLINOIS FINANCE AUTHORITY  
CHRISTOPHER B. MEISTER, EXECUTIVE DIR.  
160 N. LASALLE ST.  
SUITE S-1000  
CHICAGO IL 60601

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**Friendship Village of Mill Creek, NFP**  
**Federal Express**  
**Exhibit Page**

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04/20/2017 12:33:46 PM

000320P002-1366A-002  
DUANE MORRIS  
PAYMENT PROCESSING CHARLIE LEWIS  
30 SOUTH 17TH ST  
PHILADELPHIA PA 19103-4196

000004P001-1366A-002  
KANE COUNTY TREASURER  
DAVID J RICKERT  
719 SOUTH BATAVIA AVE  
GENEVA IL 60134

000004S001-1366A-002  
KANE COUNTY TREASURER  
Kane County State's Attorney's office  
37W777 Route 38  
SUITE 300  
ST. CHARLES IL 60175

000004S002-1366A-002  
KANE COUNTY TREASURER  
Illinois Attorney General  
Lisa Madigan  
100 West Randolph Street  
CHICAGO IL 60601

000005P001-1366A-002  
UMB BANK NA  
VIRGINIA A HOUSUM  
SENIOR VICE PRESIDENT  
120 SIXTH ST SOUTH  
STE 1400  
MINNEAPOLIS MN 55403

## **EXHIBIT 2**

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04/20/2017 12:45:19 PM

000039P001-1366S-010  
AT&T  
BILL PAYMENT CENTER  
PO BOX 5080  
CAROL STREAM IL 60197

000035P001-1366S-010  
MEDIACOM LLC  
PO BOX 5744  
CAROL STREAM IL 60197

000033P001-1366S-010  
MIDAMERICAN ENERGY COMPANY  
PO BOX 8019  
DAVENPORT IA 52808

000034P001-1366S-010  
MILL CREEK WATER DIST  
PO BOX 4290  
CAROL STREAM IL 60197

000036P001-1366S-010  
REPUBLIC  
PO BOX 9001154  
LOUISVILLE KY 40290

000038P001-1366S-010  
VERIZON WIRELESS  
PO BOX 25505  
LEHIGH VALLEY PA 18002



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000003P001-1366S-008  
Department of the Treasury  
Internal Revenue Service  
PO Box 7346  
Philadelphia PA 19101

000002P001-1366S-008  
Illinois Department of Revenue  
Bankruptcy Unit  
PO Box 19035  
Springfield IL 62794

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

IN RE:	§	Chapter 11
	§	
FRIENDSHIP VILLAGE OF	§	Case No.: 17-12470
MILL CREEK, NFP, d/b/a	§	
GREENFIELDS OF GENEVA,	§	Hearing: April 7, 2017
	§	10:00 a.m.
FEIN: 20-3300991,	§	
	§	
Debtor.	§	Hon. LaShonda A. Hunt

**MOTION FOR ENTRY OF ORDERS (A) AUTHORIZING  
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S  
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS;  
(B) APPROVING BIDDING PROCEDURES AND OVERBID  
PROTECTIONS IN CONNECTION THEREWITH; (C) APPROVING THE FORM  
AND MANNER OF NOTICE; AND (D) APPROVING ASSUMPTION  
AND ASSIGNMENT PROCEDURES WITH RESPECT TO  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Friendship Village of Mill Creek, NFP, d/b/a GreenFields of Geneva, debtor and debtor in possession herein (the öDebtorö), for its öMotion For Entry Of Orders (A) Authorizing The Sale Of Substantially All Of The Debtorø Assets Free And Clear Of Liens, Claims And Interests; (B) Approving Bidding Procedures And Overbid Protections In Connection Therewith; (C) Approving The Form And Manner Of Notice; and (D) Approving Assumption And Assignment Procedures With Respect To Executory Contracts And Unexpired Leasesö (the öMotionö), respectfully states as follows:

**Preliminary Statement**

The Motion seeks entry of two orders:

- an order (the öBid Procedures Orderö) (A) approving the proposed bid procedures (the öBid Proceduresö) attached as Exhibit 1 to the Bid Procedures Order, and (B) providing certain limited bid protections to Friendship Senior Options (öFSOö or the öInitial Bidderö) in connection with its proposed plan sponsor term sheet (the

Term Sheet), a copy of which is attached hereto as Exhibit A, pursuant to which FSO will fund a proposed plan of reorganization in the cash amount of Fifty-Two Million, Eight Hundred Thousand Dollars (\$52,800,000) (the Initial Bid); and

- an order authorizing the sale of substantially all of the Debtor's assets (a Sale Order).

In the event FSO is the successful bidder at the auction (or another bidder submitting a plan structure is the successful bidder), the Debtor will notify the Court of such, and move to consummate such winning bid pursuant to a plan of reorganization, in which case the need for a Sale Order will be moot. In the event the winning bidder at the auction proposes to acquire the Debtor's assets pursuant to a sale, the Debtor will move forward with the Sale Order, as amended to reflect the terms of the winning bid.

The Debtor believes that the selection of FSO's Term Sheet as the Initial Bid and the proposed Bid Procedures are reasonable and necessary to maximize the return to the Debtor's creditors and other parties in interest. An auction and sale of substantially all of the Debtor's assets is the most efficient way to maximize the return to creditors and to protect the interests of the residents of the Campus. Accordingly, the Debtor respectfully requests entry of the proposed orders.

### **Introduction, Jurisdiction, and Venue**

1. The Debtor owns and operates a continuing care retirement community (CCRC), located in Geneva, Illinois, known as GreenFields of Geneva (the Campus). The Campus is improved with a building which includes (i) 147 independent living units, (ii) 51 assisted living units, (iii) 26 memory support assisted living units, (iv) 43 nursing beds, and (v) related common areas and parking. Approximately 270 senior citizens reside at the Campus.

2. The Debtor filed this case (the Case) on April 20, 2017 (the Petition Date). The Debtor is continuing in possession of the Campus and is operating and managing its

business as a debtor-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this Case, and no committees have been appointed or designated.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

**The Debtor's Pre-Petition Efforts to Market the Campus**

4. The Campus was built with proceeds received in the connection with the issuance of certain bonds (the öBondsö) issued by the Illinois Finance Authority. UMB Bank, N.A. (the öBond Trusteeö), is successor master trustee and successor trustee for the Bonds, and is owed approximately \$97,675,000.00 principal, plus interest, costs and expenses which is due to the Bond Trustee under the terms of the agreements related to the Bonds (the öBond Claimö). The Bond Claim is secured by substantially all of the Debtor's assets.

5. The Debtor failed to make the required debt service payments to the Bond Trustee under the terms of the relevant bond documents, and in the Fall of 2016, the Debtor and the Bond Trustee entered into an agreement (the öForbearance Agreementö) which reflected, among other things, the parties' agreement that the Campus and certain of the Debtor's other assets (collectively, the öAssetsö) should be marketed and offered for sale under a process which was specifically described in that agreement (including the sale process to be conducted in this Case, the öSale Processö).

6. The Forbearance Agreement required the Debtor to retain an investment banking or brokerage firm to implement the Sale Process. On October 25, 2016, the Debtor selected

Aaron Rulnick and H.J. Sims & Co., Inc. (Sims) to perform this service, from a list of three firms provided by the Bond Trustee.

7. Sims prepared an initial offering document and established a data room for third parties to conduct due diligence concerning the Assets. After completing the marketing materials and assembling the data room, Sims went out to market on November 22, 2016 and contacted more than 90 potential parties as potential acquirers of the Assets. The Sale Process contemplated that Sims would encourage all interested parties to submit an initial bid for the Assets in December of 2016. Parties who submitted contending bids, after additional due diligence, would have an opportunity to submit a second bid. That second bid would have the potential to be designated as a “stalking horse” bid which would be presented to this court (after the commencement of the present Case) as an initial bid in a public auction conducted pursuant to 11 U.S.C. §363.

#### **Selection of FSO’s Term Sheet as the Initial Bid**

8. FSO indicated very early in this process that it intended to participate in the Sale Process. Given FSO’s interest, a special committee of the Debtor’s board was formed and given exclusive authority to oversee the Sale Process for the Debtor (the “Special Committee”).<sup>1</sup> Ultimately, FSO submitted a Term Sheet describing its bid, which the Special Committee designated as the Initial Bid. The key terms of the Initial Bid are as follows:

- **Structure:** FSO proposes to consummate its Initial Bid through a plan of reorganization. Under such plan, FSO would pay the Bond Trustee a total of \$52,800,000 on account of the Bond Claim, and assume substantially all executory contracts with current trade vendors. The entrance fee obligations owed to the residents of the Campus would be assumed.

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<sup>1</sup> The Special Committee was created from members of the Debtor’s board who did not serve on the corporate boards of FSO or any affiliate of FSO.

- **Financing:** The plan would be funded from financing obtained through the issuance of new bonds and an equity contribution from FSO in the amount of \$5,000,000.
- **Excluded Liabilities:** (i) cash, cash equivalents and deposits; (ii) choses in action which arise under 11 U.S.C. §§544, 545, 547, 548, 549 and 550; and (iii) executory contracts and leases which are **not** assumed by FSO.
- **Contingencies:** FSO's bid is contingent on issuance of a new series of bonds.
- **Expense Reimbursement:** In the event a higher and better bid is ultimately chosen, FSO is entitled to reimbursement of its actual, out-of-pocket expenses, payable solely from the proceeds of another transaction up to a maximum sum of \$750,000 (the Expense Reimbursement).

FSO's Initial Bid is subject to higher and better bids presented to the Debtor under the proposed Bid Procedures. To ensure that other parties have a sufficient opportunity to submit a bid, the Debtor has proposed an extended marketing process during the Case. Specifically, the deadline set forth in the Bid Procedures for potential bidders to submit proposed bids to participate in an auction is July 19, 2017. Bidders may structure proposed transactions in any manner, including but not limited to an acquisition of the Debtor's membership interest, a restructuring of the amounts owed to the Bond Trustee, or a purchase of the Assets.

### **The Proposed Bid Procedures**

9. This section summarizes key provisions of the procedures for the auction the Debtor proposes to hold in connection with the sale of its Assets. Capitalized terms used, but not defined in this section, shall have the meanings provided in the Bid Procedures. The description of the Bid Procedures herein is qualified in their entirety by reference to the Bid Procedures attached to the Bid Procedures Order as Exhibit 1. The Bid Procedures provide as follows:

Set forth below are the bid procedures (the Bid Procedures) to be employed with respect to (i) the transfer of substantially all of the assets of Friendship Village of Mill Creek NFP d/b/a GreenFields of Geneva (GreenFields), a debtor and debtor-in-possession in the chapter 11 case (the Bankruptcy Case) pending in the United States Bankruptcy Court for the Northern District of Illinois (the Bankruptcy Court), Case No.

17-12470 or (ii) the ability of a third party to act as a plan sponsor (or co-sponsor) in connection with the restructuring of the obligations of GreenFields.

GreenFields has entered into a plan sponsor term sheet (the Term Sheet) with Friendship Senior Options (the Initial Bidder) pursuant to which the Initial Bidder will fund GreenFields's proposed plan in the cash amount of Fifty-Two Million, Eight Hundred Thousand Dollars (\$52,800,000) (the Initial Bidder Proposal). The Initial Bidder Proposal is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to section 363 of title 11 of the United States Code (the Bankruptcy Code) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), or alternatively through a plan of reorganization. Potential bidders may structure competing bids in any manner, including but not limited to that proposed in the Term Sheet by the Initial Bidder or as a restructuring or a cash bid for the purchase of the assets (each a proposed Transfer Transaction).

### **Participation Requirements**

Any person desiring to submit a competing bid in connection with a Transfer Transaction (a Potential Bidder) will be required to deliver the following (the Participation Requirements) to H.J. Sims & Co. (HJ Sims), the proposed investment banker for GreenFields: (1) an executed confidentiality agreement; and (2) written evidence of available funds or a firm commitment for financing sufficient for the Potential Bidder to consummate the Transfer Transaction. Each of (1) and (2) shall be in form and substance satisfactory to GreenFields and UMB Bank, N.A., in its capacity as successor bond trustee and successor master trustee (the Bond Trustee). The financial information and credit-quality support of any Potential Bidder must demonstrate the financial capability of the Potential Bidder to timely consummate the Transfer Transaction pursuant to a Qualified Bid (as defined below).

### **Due Diligence**

Any Potential Bidder who satisfies the Participation Requirements, will be afforded due diligence access and additional information through access to an on-line data room (the Data Room). Interested bidders requesting information about the Participation Requirements, and Qualified Bidders (as defined below) requesting information in connection with their due diligence, should contact Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 ([arulnick@hjsims.com](mailto:arulnick@hjsims.com)).

### **Bid Deadline**

The deadline for submitting bids relating to a Transfer Transaction shall be July 19, 2017 at 4:00 p.m. (prevailing Central Time) (the Bid Deadline). Such bids must be received on or before that date and time by (1) counsel for GreenFields, Bruce Dopke, Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Ste. 1200, Chicago, IL 60603 ([bdopke@stahlcowen.com](mailto:bdopke@stahlcowen.com)); (2) Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 ([arulnick@hjsims.com](mailto:arulnick@hjsims.com)); (3) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 ([david.fields@rbccm.com](mailto:david.fields@rbccm.com)); (4) Counsel to the Bond Trustee, Daniel Bleck, Mintz Levin Cohn Ferris Glovsky and Popeo PC, One Financial

Center, Boston, MA, 02111 (dsbleck@mintz.com); and [(5) Counsel for the Official Committee of Unsecured Creditors (the Committee) , \_\_\_\_\_.]<sup>2</sup>

### **Opening Bid at Auction**

Currently, the Initial Proposal, on the terms set forth in the Term Sheet, is the highest and best bid and shall be the opening bid for the Auction. The bidding at the Auction will start at the Initial Proposal of \$52,800,000 plus \$750,000 to account for an expense reimbursement (Expense Reimbursement) to the Initial Bidder and an initial bid increment of \$150,000 for a total of \$53,700,000 (the Initial Bid Increment). All bidding after Initial Bid Increment shall continue thereafter in subsequent bid increments of at least \$100,000, subject to provisions contained herein.

### **Bid Requirements**

To be eligible to participate in the Auction, each bid and each Potential Bidder submitting such a bid must:

1. offer to consummate the Transfer Transaction in an amount at least equal to the Initial Bid Increment;
2. include either (i) a proposed asset purchase agreement (APA), marked against the form in the Data Room to show any proposed amendments thereto (the Modified Agreement) and a clean and executed Modified Agreement, or (ii) in the case of bids proposing a structure other than an asset purchase, such other proposed documents evidencing the proposed transaction, including but not limited to a restructuring term sheet similar in form to the Term Sheet;
3. indicate that the offer assumes all obligations under the residency agreements with residents of GreenFields.
4. include a statement that there are no conditions precedent to the bidder's authority to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
5. state that such offer is binding and irrevocable until the entry of an order approving the Transfer Transaction;
6. disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
7. include the names and contact information of members of the bidder who will be available to answer questions regarding the offer, including advisors and related parties;

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<sup>2</sup> All references to the Committee herein are reserved in the event an Official Committee of Unsecured Creditors is appointed.



8. include a good-faith deposit in immediately available funds in the amount of two percent (2%) of the proposed consideration under the Transfer Transaction (öEarnest Money Depositö); and
9. provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Transfer Transaction.

Each of the above requirements must be met to the satisfaction of both GreenFields and the Bond Trustee. Bids are not required to adopt the business structure as set forth in the Term Sheet. All bids submitted from Qualified Bidders that confirm with bid requirements will be considered whether or not they conform to the form set forth in the Term Sheet.

### **Credit Bid**

The Bond Trustee shall be entitled to credit bid (subject to payment of the Expense Reimbursement in cash) pursuant to Bankruptcy Code section 363(k) or otherwise. The Bond Trustee shall be considered a Qualified Bidder notwithstanding the requirements for Qualified Bidders set forth herein (provided, however, that any credit bid must (a) contain a provision providing for the assumption of all resident contracts and (b) be at or above the amount of the Initial Bid Increment).

The Bond Trustee agrees that if: (a) no Qualifying Bids are received by the Bid Deadline, the Bond Trustee's deadline to submit a credit bid shall be two (2) business days prior to the date of the Auction; and (b) if at least one Qualifying Bid is received by the Bid Deadline by any party other than the Bond Trustee, the Bond Trustee's deadline to submit a credit bid shall be the close of the Auction. If the Bond Trustee fails to submit a credit bid by the deadlines established in this paragraph, the Bond Trustee agrees that any credit bid rights under Bankruptcy Code section 363(k) are extinguished unless the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction. In the event the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction as contemplated by these Bid Procedures, the Bond Trustee's right to credit bid shall no longer be waived and shall be fully available to the Bond Trustee. For the avoidance of doubt, approval of these Bid Procedures by the Bankruptcy Court shall be a conclusive determination of the Bond Trustee's right to credit bid at the Auction.

### **Qualified Bidders and Bids**

Potential Bidders who have satisfied the Participation Requirements will be deemed öQualified Biddersö. Bids that contain all bid requirements, as set out above, will be deemed öQualified Bidsö. GreenFields, with the consent of the Bond Trustee, may waive noncompliance with any bid requirement.

Following consultation with GreenFields, the Committee (if any), and the Bond Trustee, HJ Sims will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Bond Trustee shall be deemed to be a Qualified Bidder without further action of any kind. The Initial Bidder is deemed a Qualified Bidder and the Initial Proposal is a Qualified Bid in all respects. To the extent not provided directly by Potential Bidders, GreenFields will

provide copies of the Qualified Bids to the Bond Trustee, the Committee and the Initial Bidder.

Nothing shall prevent GreenFields or the Bond Trustee from working with each of the Qualified Bidders to improve their Qualified Bids at any time prior to completion of the Auction, including but not limited to between the Bid Deadline and the Auction.

### **Auction Participation**

Unless otherwise agreed to by GreenFields or ordered by the Bankruptcy Court, only Qualified Bidders, counsel to the Committee, the Bond Trustee, holders of the Bonds, and their respective counsel and financial professionals are eligible to attend or participate at the Auction. Subject to the other provisions of these Bid Procedures, if GreenFields does not receive any Qualified Bids other than the Initial Proposal or if no Qualified Bidder other than the Initial Bidder has indicated its intent to participate in the Auction, GreenFields will not hold an Auction and the Initial Bidder will be named the Successful Bidder, subject to Bond Trustee's right to credit bid as provided for herein. Cancellation of the Auction pursuant to the foregoing sentence shall only be permitted with the written consent of the Bond Trustee.

### **Auction**

If any Qualified Bid other than the Initial Proposal for any of GreenFields' assets has been received and any Qualified Bidder other than the Initial Bidder has indicated its intent to participate in the Auction, GreenFields will conduct an auction (the "Auction") for the sale or other transfer of substantially all of its assets or for becoming the plan sponsor under a proposed restructuring. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transfer Transaction.

The Auction shall take place at 10:00 am (prevailing Central Time) on Wednesday, July 26, 2017 at the offices of Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Suite 1200, Chicago, IL 60603. At the Auction, only the Initial Bidder and other Qualified Bidders (including the Bond Trustee, pursuant to its right to credit bid) will be permitted to increase their bids or make any subsequent bids. HJ Sims, following consultation with GreenFields, the Committee (if any) and the Bond Trustee, may conduct the Auction in the manner it reasonably determines, in its business judgment, will promote the goals of the bid process, will achieve the maximum value for all parties in interest and is not inconsistent with any of the provisions of these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

### **Closing the Auction**

The Auction shall continue until there is only one offer that GreenFields (following consultation with HJ Sims and the Committee (if any) and the express approval of the Bond Trustee) determines, subject to Bankruptcy Court approval, is the highest or best offer from among the Qualified Bidders (including the Initial Bidder) submitted at Auction (the "Successful Bid"). For purposes of valuing any bid in a determination of the Successful Bid (or the Back-Up Bid), GreenFields and the Bond Trustee, in their discretion, may present value or discount any proposed Transfer Transaction

contemplating a restructuring of the debt of the Bond Trustee in order to compare such bids to offers providing the Debtors with cash consideration at closing. The Qualified Bidder submitting such Successful Bid shall become the Successful Bidder and shall have such rights and responsibilities of a purchaser, as set forth in the APA, modified agreement, or other transaction documents, as applicable.

Immediately prior to the conclusion of the Auction, HJ Sims, GreenFields, the Committee (if any) and the Bond Trustee shall (1) review each bid made at the Auction on the basis of financial and contractual terms (including any appropriate present value or discount as set forth above) and such other factors as may be relevant to the process; and (2) identify the Successful Bid.

Greenfields (after consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee) shall also select a back-up bid (the Back-Up Bid), which shall remain open and irrevocable until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder or such later time as agreed to by the Qualified Bidder submitting such Back-Up Bid. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, GreenFields (with the consent of the Bond Trustee) may elect to regard the Back-Up Bid as the highest or best bid for the Debtors' assets, and GreenFields will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

#### **Acceptance of Qualified Bids**

GreenFields' presentation to the Bankruptcy Court for approval of any Successful Bid does not constitute GreenFields' acceptance of such bid. GreenFields will be deemed to have accepted a bid only when it has been approved by the Bankruptcy Court. After conclusion of the Auction, but prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which their Successful Bid was made and make and pay for all necessary filings with all applicable governmental or other authorities.

#### **Assumption of Executory Contracts and Unexpired Leases**

The Term Sheet provides for the assumption and assignment of certain executory contracts and unexpired leases to the Initial Bidder (Assigned Contracts). In all circumstances, the Successful Bidder shall be responsible for all cure amounts relating to the Assigned Contracts under Bankruptcy Code section 365. As indicated above, the Successful Bidder must assume the residency agreements related to GreenFields to become a Qualified Bidder

#### **Modifications**

Greenfields, following consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee, may (1) determine, in its business judgment, which bid or bids, if any, constitute the highest or otherwise best offer for the GreenFields' assets; (2) reject, at any time before entry of an order of the Bankruptcy Court approving any bid as the Successful Bid, any bid that, in its discretion, is (a) inadequate or insufficient, (b)

not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (c) contrary to the best interests of GreenFieldsøstate and creditors; and (3) withdraw, in its business judgment, any motion to approve the Transfer Transaction if contrary to the best interests of GreenFieldsøstate and creditors.

### **Hearings to Approve Transfer Transaction**

In the event the Successful Bidder proposes to acquire GreenFieldsøassets pursuant to an APA, GreenFields will seek entry of an order from the Bankruptcy Court at a hearing (the öSale Hearingö) to begin on [\_\_\_\_\_, 2017] at [\_\_\_\_\_] (prevailing Central Time), to approve and authorize the Transfer Transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures. In the event the Initial Bidder is the Successful Bidder, the hearing on the proposed disclosure statement and plan confirmation shall be scheduled by the Bankruptcy Court in the ordinary course. In the event the Successful Bidder is not the Initial Bidder, and also proposes a plan of reorganization, GreenFields will request new dates from the Bankruptcy Court to approve a disclosure statement and confirmation of a plan of reorganization incorporating the terms of the Successful Bidder. GreenFields shall file a notice with the Bankruptcy Court within two (2) business days of the Auction providing further guidance on transaction proposed by the Successful Bidder, including actual or proposed dates of hearings to seek court approval of the Transfer Transaction.

### **Back-Up Bidder and Return of Earnest Money Deposit**

Except as otherwise provided herein or in the Term Sheet, all Earnest Money Deposits shall be returned to each bidder not selected by GreenFields as the Successful Bidder or the Back-Up Bidder by no later than the tenth (10th) business day following the Auction. The Earnest Money Deposit of the Back-Up Bidder shall be held by GreenFields until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder. Except as otherwise provided herein or in the Term Sheet, all Earnest Money Deposits shall be returned to each bidder not selected by GreenFields as the Successful Bidder or the Back-Up Bidder by no later than the tenth (10th) business day following the Auction. The Earnest Money Deposit of the Back-Up Bidder shall be held by GreenFields until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder.

### **Payment of Expense Reimbursement**

If applicable, and if the Initial Bidder is not the Successful Bidder, GreenFields shall pay an expense reimbursement to the Initial Bidder, as set forth in the Term Sheet between GreenFields and the Initial Bidder to the extent approved by the Bankruptcy Court, but in no event shall payment be any earlier than the time of consummation of the Transfer Transaction and shall only be paid from the proceeds of such sale or other Transfer Transaction (provided, however, if the Bond Trustee acquires the assets of GreenFields pursuant to a credit bid, the Bond Trustee shall provide for payment of such agreed-to and approved expense reimbursement in cash at closing).

### **Reservation of Rights**

GreenFields, after consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee, may modify these Bid Procedures in any manner that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional customary terms and conditions on proposed Transfer Transactions, including without limitation, modifying the requirements for a Qualified Bid, extending the deadlines set forth in these Bid Procedures, adjourning the Auction and/or any hearing to consummate the Transfer Transaction with the Successful Bidder, in each case without further notice.

In connection with negotiation of the Term Sheet which was selected as the Initial Bid, the Debtor agreed to pay the Expense Reimbursement, solely from proceeds received in connection from an alternative transaction. The Expenses Reimbursement is only payable in the event that the Debtor consummates a transaction resulting in a higher and better offer from a party other than FSO.

10. The Debtor proposes to send a notice (the “Auction and Sale Notice”, a copy of which is attached to the Bid Procedures Order as Exhibit 2) to all creditors and parties in interest, including all parties having expressed an interest in acquiring all or part of the Assets.

11. The Debtor and its professionals believe that the Bid Procedures and the proposed transfer of the Debtor's Assets are reasonable under the circumstances of this Case.

### **The Basis for the Requested Relief**

12. The Debtor believes that cause exists to grant both orders being sought by this Motion. The proposed Bid Procedures are reasonable and necessary to effectuate the Sale Process and provide sufficient notice and opportunity to permit other bidders to participate in the Auction process. Upon conclusion of the Auction, the Debtor believes that sufficient cause exists to enter an order approving the proposed sale to the Successful Bidder, if such Successful Bidder seeks to consummate such transaction as a sale.

**A. The Proposed Bid Procedures Should be Approved.**

13. The Debtor believes it is in the best interest of its estate, creditors, residents and employees to commence a process for soliciting potential bidders to participate in the Auction. The Debtor seeks approval of the Bid Procedures in an effort to maximize the likelihood of higher and better bids being made for the Debtor's assets. The Debtor believes that the Bid Procedures will permit interested parties reasonable opportunities, consistent with the financial constraints of the Debtor, to evaluate whether to propose a bid for the Debtor's assets that is higher and better than that reflected in the Term Sheet submitted by FSO, regardless of whether such parties prefer to proceed with a sale or a plan of reorganization. As noted, the Debtor is proposing an extended marketing process of up to ninety (90) days from the Petition Date to solicit competing bids.

14. Under Bankruptcy Rule 6004(f)(1), the Debtor may sell property outside the ordinary course of business by private sale or by public auction. In this case, the Debtor believes that the Sale Process and the Auction will expose the Assets to a broad and diverse market, and will permit all potential bidders with sufficient time to consider submitting an offer, which will ensure a sale for the highest and best offer.

15. The Debtor desires to receive the greatest value for the Assets by testing the public marketplace in the hope that higher and better offers are generated for the Assets.

16. If the Bid Procedures are approved, the Debtor will solicit Qualified Bids for the Assets. The Bid Procedures describe, among other things, the Assets available for sale, the manner in which bidders and bids become "qualified," the receipt, negotiation and qualification

of bids received, the conduct and terms of the Auction, and the selection and approval of the Successful Bidder and the Back-Up Bid.

17. The Bid Procedures were developed consistent with the Debtor's to promote participation and active bidding. Moreover, the Bid Procedures reflect the Debtor's objective of conducting the Auction in a controlled, and fair and open fashion.

18. The Debtor believes that the Auction and the proposed Bid Procedures will promote active bidding from seriously interested parties and will identify the best or highest offer(s) for the Assets. The proposed Bid Procedures will allow the Debtor to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Debtor believes that the Bid Procedures are: (a) sufficient to encourage bidding for the Assets; (b) consistent with other procedures previously approved by the Court; and (c) appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Further, the Bid Procedures are designed to maximize value for the Debtor's estate, while ensuring an orderly Sale Process.

19. Once the Debtor articulates a valid business justification for a sale of substantially all of the Debtor's assets, the business judgment rule 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. See In re S.N.A. Nut Co., 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (citing Smith v. Van Gorkam, 488 A.2d 858 (Del. 1985); In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992); Comm. of Asbestos-Related Litigants v. Johns-Manville (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr.

S.D.N.Y. 1986) (ö[A] presumption of reasonableness attaches to a Debtor's management decisionsö).

20. 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 assets of the estate. See, e.g., In re Integrated Res., 147 B.R. at 656-57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential öbusiness judgmentö standard under which such procedures and arrangements are öpresumptively validö); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989).

21. The paramount goal in any proposed auction of property of the estate is to maximize the proceeds received by the estate. See, e.g., Four B Corp. v. Food Barn Stores (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, öa primary objective of the Code [is] to enhance the value of the estate at handö); In re Integrated Res., 147 B.R. at 659 (öIt is a well-established principle of bankruptcy law that the . . . [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estateö) (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)).

22. 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 are appropriate in the context of bankruptcy transactions. See, e.g., In re Integrated Res., 147 B.R. at 659 (such procedures öencourage bidding and to maximize the value of the debtor's assetsö); In re Fin. News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (ö[C]ourt-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 estatesö).

23. The Debtor has a sound business justification for seeking approval of the Bid Procedures at this juncture. Given the Debtor's current circumstances, the Debtor believes it is in the best interest of its estate, creditors, and parties-in-interest, including the Debtor's residents and employees, to commence bidding procedures immediately to maximize value. Additionally, the sale of the Assets provides a realistic means for the continuation of resident care services for the Debtor's residents with minimal interruption and inconvenience. For these reasons, the Debtor has determined that, based upon its business judgment, the best option for maximizing value is through the sale pursuant to the Bid Procedures. Thus, the Bid Procedures are designed to encourage competitive bidding in an orderly manner to maximize value of the Debtor for the benefit of the Debtor's bankruptcy estate and creditors. The proposed Bid Procedures contain typical terms for a case of this nature and will increase the likelihood that the Debtor will receive the greatest possible consideration by ensuring a competitive and fair bidding process.

24. For these reasons, the Debtor respectfully submits that granting the requested relief is appropriate under the circumstances.

**B. The Proposed Expense Reimbursement Should be Approved.**

25. The Bid Procedures do not include a break-up fee. They do, however, provide for payment of the Expense Reimbursement to FSO, which is repayment of FSO's actual, out-of-pocket expenses incurred in connection with the Initial Bid up to \$750,000. The Expense Reimbursement is payable only in the event the Debtor consummates a transaction for the Assets with a bidder other than FSO, and is only payable from the proceeds received from such transaction.

26. Negotiation of the Expense Reimbursement was a key component of FSO's willingness to serve as the Initial Bidder on the terms set forth in the Term Sheet. The Debtor believes that the Expense Reimbursement is fair and reasonable in view of the time and expense that FSO has undertaken in connection with serving as the Initial Bidder, and the fact that the Expense Reimbursement will only be paid if the Debtor has closed on a higher or otherwise better offer for the Assets, which will be to the benefit of the Debtor's creditors, residents and employees.

27. Although bid protections in favor of an Initial Bidder are measured against a business judgment standard, to receive administrative expense priority pursuant to Bankruptcy Code section 503(b), the bidding incentive must provide some post-petition benefit to the estate. See In re O'Brien Env'tl. Energy, Inc., 181 F.3d 527, 533 (3d Cir. 1999). The O'Brien court identified two instances in which such a benefit to the estate may be found. The first instance is where the incentive promoted a more competitive bidding process, "such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. The second instance is where bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as the floor bid on which other bidders can rely. Id.

28. The amount of the Expense Reimbursement as set forth in the Term Sheet is reasonable and appropriate in light of the size and nature of the proposed transaction. Moreover, the Expense Reimbursement meets the O'Brien test set forth above, in that it induced FSO to serve as the Initial Bidder, and the Term Sheet will now serve as the floor bid on which other bidders can rely.

29. In addition, the amount of the Expense Reimbursement is reasonable. In the event FSO becomes entitled to the full \$750,000 amount of the Reimbursement Expense, it would be

less than 1.5% of proposed value of FSO's offer as set forth in the Term Sheet. This amount is substantially less than bid protections approved in similar cases. See, e.g., In re CWT Liquidation Co. (formerly doing business as The Clare at Water Tower), Case No. 11-46151 (Bankr. N.D. Ill. Mar. 21, 2012) [No. 264] (SPS) (approving break-up fee equal to 4.57% of cash purchase price); In re Fairview Ministries, Case No. 11-04386 (Bankr. N.D. Ill. May 24, 2011) [No. 277] (SPS) (approving break-up fee of 3% of purchase price); In re SK Hand Tool Corp., Case No. 10-28882 (Bankr. N.D. Ill. July 9, 2010) [No. 53] (ERW) (approving break-up fee of 4.4% of purchase price); In re Select Snacks, Inc., Case No. 07-18769 (Bankr. N.D. Ill. Oct. 23, 2007) [No. 93] (PSH) (approving break-up fee equal to 3% of purchase price); In re Hartmarx Corp., Case No. 09-02046 (Bankr. N.D. Ill. June 2, 2009) [No. 482] (BWB) (approving break-up fee equal to 3.1% of purchase price).

30. The Debtor submits that provisions such as the Expense Reimbursement are typical and often times necessary components of sales outside the ordinary course of business under § 363 of the Bankruptcy Code. This is true in cases including CCRCs and other types of businesses. See e.g., In re CWT Liquidation Co. formerly doing business as The Clare at Water Tower, Case No. 11-46151 (Bankr. N.D. Ill. Mar. 21, 2012) [No. 264] (SPS); In re Fairview Ministries, Case No. 11-04386 (Bankr. N.D. Ill. May 24, 2011) [No. 277] (SPS); In re SK Hand Tool Corp., Case No. 10-28882 (Bankr. N.D. Ill. July 9, 2010) [No. 53] (ERW); In re Select Snacks, Inc., Case No. 07-18769 (Bankr. N.D. Ill. Oct. 23, 2007) [No. 93] (PSH); In re Hartmarx Corp., Case No. 09-02046 (Bankr. N.D. Ill. June 2, 2009) [No. 482] (BWB); In re Kmart Corp., Case No. 02-02474 (Bankr. N.D. Ill. May 10, 2002) [No. 3003] (SPS); In re Comdisco, Inc., Case No. 01-24795 (Bankr. N.D. Ill. Aug. 9, 2001) [No. 289] (BWB).

31. In sum, the Debtor's ability to offer the Expense Reimbursement to FSO enables the Debtor to ensure the transfer of the Assets to FSO at a price it believes to be fair while, at the same time, providing the Debtor with potentially even greater benefit to its estate. Thus, the Expense Reimbursement provisions of the Term Sheet should be approved.

32. Moreover, payment of the Expense Reimbursement will not diminish the value of assets available for distribution to creditors, because, as stated above, the Debtor will only be required to make payments in accordance with the Expense Reimbursement if the Debtor consummates a sale with an alternative bidder that exceeds the consideration offered by FSO by an amount sufficient to pay the Expense Reimbursement.

33. For these reasons, the Debtor respectfully submits that granting the requested relief is appropriate under the circumstances.

**C. The Bond Trustee's Right to Credit Bid Should be Approved.**

34. When property subject to a creditor's lien is sold outside the ordinary course pursuant to Bankruptcy Code § 363(b), the lienholder is entitled to credit bid the full amount of its claim. This fundamental creditor right is preserved in bankruptcy by § 363(k):

At a sale under subsection (b) of this section of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim 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). As noted by the United States Supreme Court, the right to credit bid is an important right that protects a secured creditor from having its collateral sold at a below market price (up to the amount of its security interest). See RadLAX Gateway Hotel LLC v. Amalgamated Bank, 132 S. Ct. 2065, 2070 n.2 (2012). If the secured party thinks the collateral is worth more than the debtor is selling it for, it may effectively bid its debt and take title to the

property.ö *Beal Bank, S.S.B. v. Waters Edge Ltd. P'ship*, 248 B.R. 668, 680 (D. Mass. 2000) (quoting 7 COLLIER ON BANKRUPTCY ¶ 1129.05[2][b][ii] (Alan N. Resnick & Henry J. Sommer eds., 15th. ed. rev. 1998)).

35. The right to credit bid is a fundamental protection of the secured creditor's constitutional property rights and cannot be impaired without violating the Fifth Amendment's prohibition against taking private property without compensation. See United States v. Sec. Indus. Bank, 459 U.S. 70, 75 (1982); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 589 (1935) (recognizing the right to credit bid among those rights subject to Fifth Amendment protection). As such, a secured creditor's right to credit bid in a bankruptcy sale has been consistently upheld in districts across the country. See In re SubMicron Sys. Corp., 432 F.3d 448, 460 (3d Cir. 2006) (It is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under 363(k) (collecting cases)); 3 COLLIER ON BANKRUPTCY ¶ 363.09 (Alan N. Resnick & Henry J. Sommer eds., 16th. ed. 2012) (Section 363(k) provides that in a sale not in the ordinary course of business, the holder of a lien securing an allowed claim may bid at the sale and, if it is successful, may offset its claim against the purchase price of the property. The right of a lienholder whose lien was not in *bona fide* dispute to bid at a sale free and clear of liens was generally recognized under prior law, and this right is continued by section 363(k).ö)

36. In cases where property subject to a secured creditor's lien is sold in a bankruptcy sale, the sole exception to a creditor's right to credit bid is where the court finds "cause" exists to deprive the secured creditor of its otherwise fundamental right. The type of "cause" generally required to deny a secured creditor its right to credit bid is misconduct on the part of the creditor or where the creditor's lien is in *bona fide* dispute. See, e.g., In re Daufuskie Island Props., LLC,

441 B.R. 60, 64 (Bankr. D.S.C. 2010) (holding that creditor was not entitled to credit bid when its mortgage was in dispute); In re Aloha Airlines, Inc., 2009 WL 1371950 (Bankr. D. Haw., May 14, 2009) (disallowing a credit bid because the party making it had entered into an agreement with a third party that had engaged in misconduct with respect to the debtors); Morgan Stanley Dean Witter Mortgage Capital, Inc. v. Alon USA L.P., 2001 WL 1568332, at \*3 (N.D. Tex. Dec 4, 2001) (refusing a request to credit bid where the secured creditor's lien was subject to a bona fide dispute that could not be resolved before the sale). The claims and liens of the Bond Trustee are not in dispute (and, in fact, the Debtor has consented to the amount the Bond Trustee's claim and the extent, validity and priority of the Bond Trustee's liens). Thus, the Bond Trustee's right to credit bid should be allowed.

**D. Assumption of the Residency Agreements is Necessary.**

37. The proposed Bidding Procedures require bidders to assume the residency agreements in order to be Qualified Bidders. This requirement is necessary order to ensure that the going concern value of the Campus is preserved and to ensure the equitable treatment and well-being of the Debtor's approximately 270 residents. Moreover, such a requirement is a common feature in many CCRC cases. See, e.g., In re Fairview Ministries, Case No. 11-04386 (Bankr. N. D. Ill. May 24, 2011) [No. 277] (requiring bids to take assignment of and honor all terms of residency agreements, including honoring the refund of entrance fee deposits); In re Lincolnshire Campus, LLC, Case No. 10-34176 (Bankr. N.D. Tex. July 21, 2010 through July 23, 2010) [Nos. 193-194, 204] (SGJ) (requiring bids to accept assignment of and agree to honor all terms of Residence and Care Agreements for each of the residents at debtors' facilities) and Sept. 24, 2010 [No. 316] (sale order approving assumption and assignment of Residence and Care Agreements and delivery of Initial Entrance Fee Deposits to asset Buyer).

38. Given the importance of assumption of the residency agreements to the Campus, the Debtor requests that the Court approve this provision of the Bid Procedures.

**E. The Sale Order Should be Approved.**

39. In the event FSO is the Successful Bidder of the Auction, FSO intends to consummate the Term Sheet through a plan of reorganization. In the event, however, that a different bidder is the Successful Bidder, and that bidder seeks to purchase the Debtor's assets pursuant to a sale, the Debtor intends to move forward with the Sale Order under Section 363 of the Bankruptcy Code. Ample authority exists for the approval the Sale Order in connection with a Section 363 sale. Section 363 of the Bankruptcy Code, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business, provides, in relevant part: "[t]he trustee, 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).

40. Although Bankruptcy Code § 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, courts have held that approval of a proposed sale of property pursuant to § 363(b) is appropriate if the transaction represents the reasonable business judgment of the debtor. See In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991); Grochocinski v. Zeigler (In re Zeigler), 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005); see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983); In re Delaware & Hudson River Co., 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the pre-confirmation sale of assets); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a § 363 sale in a Chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing

the sale and the transaction is in good faith); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 391 (6th Cir. 1986).

41. If a valid business justification exists for the sale, as it does in this case, the Debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company. In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D. N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)). Therefore, parties objecting to the Debtor's proposed sale must make a showing of bad faith, self-interest or gross negligence. Id.; see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) ("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").

42. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. See, e.g., In re Schipper, 933 F.3d 513, 515 (7th Cir. 1991); Grochocinski v. Zeigler (In re Zeigler), 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005); In re Delaware & Hudson River Co., 124 B.R. 169, 176 (D. Del. 1991); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). In the event the Debtor proceeds with the Sale Order, it would satisfy all of these factors.



43. The Debtor seeks to have the flexibility to consummate the transaction proposed by the Successful Bidder either pursuant to a sale under Section 363 of the Bankruptcy Code or through a plan of reorganization. This flexibility was determined to be in the best interest of the estate after thorough consideration of all viable alternatives and following an extensive marketing process conducted by Sims. There are certain tax and other considerations that would require certain parties to consummate a transaction through a plan. On the other hand, other parties may prefer the timing associated with a sale.

44. Accordingly, the Debtor requests that the Court approve the Sale Order in the event the Debtor proceeds with a sale. Such a sale in accordance with the Sale Order would be appropriate under the circumstances as the Successful Bidder at the Auction would be requesting to proceed in such fashion. Accordingly, approval of the Sale Order would be in the best interest of the Debtor, the estate and creditors. In the event the Successful Bidder at the Auction requires a plan, the Sale Order will be moot.

45. For the foregoing reasons, the Debtor submits that approval of the Sale Order and all related transactions (in connection with a sale) are appropriate and warranted under Bankruptcy Code § 363.

**F. The Assets May Be Sold Free and Clear of all Liens, Claims and Encumbrances**

46. The Debtor further submits that, if the Successful Bidder prefers to proceed with a sale under Section 363 of the Bankruptcy Code, that such sale should be free and clear of all encumbrances, pursuant to Bankruptcy Code § 363(f), with any such encumbrances attaching to the net sale proceeds of the assets, as and to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a the sale of a debtor entity's assets free and clear of liens, claims, interests and encumbrances if applicable non-bankruptcy law permits sale of such property free

and clear of such interests, such entity consents, such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property, such interest is in *bona fide* dispute or such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

47. Because Bankruptcy Code § 363(f) is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Debtor's assets free and clear of liens and interests. Grochocinski v. Zeigler (In re Zeigler), 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005); see also Michigan Emp't Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code § 363(f) is written in the disjunctive; holding that the court may approve the sale free and clear provided at least one of the subsections of Bankruptcy Code § 363(f) is met); In re Dundee Equity Corp., No. 89-B-10233, 1992 Bankr. LEXIS 436, at \*12 (Bankr. S.D. N.Y. Mar. 6, 1992) ("Section 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"); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D. N.Y. 1986).

48. The Debtor is prepared at the time of the Sale Hearing to demonstrate that the requirements of Section 363(f) have been met.

**G. Assumption and Assignment of the Assigned Contracts is Authorized by § 365 of the Bankruptcy Code**

49. Bankruptcy Code §§ 365(a) and (b) authorize a debtor-in-possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. 11 U.S.C. §§ 365(a) and (b). See Metro. Airports Comm'n v. Nw. Airlines (Matter of Midway Airlines, Inc.), 6 F.3d 492, 494 (7th Cir. 1993); In re Del Grosso, 115 B.R. 136 (Bankr. N.D. Ill. 1990). See also In re Jamesway Corp., 201 B.R. 73, 76 (Bankr. S.D. N.Y. 1996). Under Bankruptcy

Code § 365(a), a debtor, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a). Bankruptcy Code § 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

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

(A) cures or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

50. Section 365 of the Bankruptcy Code allows a debtor-in-possession to maximize the value of its estate by assuming executory contracts or unexpired leases that benefit the estate and by rejecting those that are burdensome to the estate. See COR Route 5 Co., LLC v. Penn Traffic Co. (In re Penn Traffic Co.), 524 F.3d 373, 382 (2d Cir. 2008); see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (the purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property) (citations omitted).

51. The "business judgment" standard is not a strict standard; it requires only a showing that assumption of the executory contract or unexpired lease will benefit the Debtor's estate. See In re Penn Traffic Co., 524 F.3d at 383 (the business judgment standard rather

obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage . . . ö).

52. The standard applied by a court in determining whether the assumption or rejection of an executory contract or unexpired lease pursuant to § 365(a) should be approved is the "business judgment" test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. See, e.g., In re Group of Institutional Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co., 318 U.S. 523, 550 (1943) ("the question . . . [of assumption] is one of business judgment"); In re Del Grosso, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) (business judgment standard); Software Customizer Inc. v. Bullet Jet Charter, Inc. (In re Bullet Jet Charter, Inc.), 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995) (business judgment rule); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098-99 (2d Cir. 1993) (to decide a motion to assume the court must put itself in the position of the trustee and determine whether such assumption would be a good decision or a bad one).

53. Courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract. See In re Bullet Jet Charter, 177 B.R. at 601 (debtor's discretion to assume or reject an executory contract should only be disturbed where the Court finds the debtor in possession acted in bad faith or grossly abused [its] retained managerial discretion . . . ö); In re Paolo Gucci, 193 B.R. 411, 414 (S.D. N.Y. 1996); see also Sharon Steel Corp. v. Nat'l Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); In re III Enter., Inc., 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) ("Generally, a court will give great deference to a debtor's decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment" a standard which we have concluded many times is not difficult to meetö).

54. In the present case, the Debtor's assumption and assignment of the Assigned Contracts to a Successful Bidder in connection with a sale meets the business judgment standard and satisfies the requirements of § 365 of the Bankruptcy Code. As discussed above, in the event the Successful Bidder at the Auction requests that the Assets be transferred pursuant to the Sale Order, that Successful Bidder will be providing significant benefit to the Debtor's estate. The assumption of the Assigned Contracts would be integral to such a transaction, and thus the assumption of these Assigned Contracts is undoubtedly a sound exercise of the Debtor's business judgment.

55. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with 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).

56. 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).

57. As noted above, any Successful Bidder will assume the residency agreements (since under the Bid Procedures, such assumption is required to be a Qualified Bidder). For any other contracts and leases that the Successful Bidder seeks to assume and assign, the Successful Bidder will pay any cure costs associated with such contracts and leases and perform the obligations of the Debtor thereunder. Accordingly, the Debtor submits that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

58. Pursuant to this Motion, not later than five (5) days after the entry of the Bidding Procedures Order, the Debtor shall serve each holder of a potential Assumed Contract (each a Counterparty), and together, the Counterparties), by express mail or facsimile transmission, with a notice of the cure amount that the Debtor believes is owed under each such potential assumed contract at the time of such notice, according to Debtor's books and records. No such notice need, however, be provided with respect to any residency agreement.<sup>3/</sup>

59. Counterparties shall have until a date and time to be set by the Court (prevailing Central Time) (the Cure Objection Deadline) to file an objection to the proposed cure amounts set forth in such notice. To the extent no objection is filed with regard to a particular cure amount, such cure amount shall be binding on the applicable Counterparty. The payment of the cure amounts specified in the notice to Counterparties (or a different amount either agreed to by the Debtor or resolved by the Court as a result of a timely filed objection filed by a Counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the Counterparties for any pecuniary losses under such contracts or leases pursuant to § 365(b)(1) of the Bankruptcy Code.

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<sup>3/</sup> Certain of the residency agreements are subject to the escrow agreement that residents executed when moving into the Campus and which procedures were approved by this Court. Nothing in this Motion or the Bid Procedures is intended to diminish the rights of the residents under such agreements.

60. To assist in the assumption and assignment of the Assigned Contracts, the Debtor also requests that the Bankruptcy Court enter an order providing that any 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).

61. Section 365(f)(1) of the Bankruptcy Code 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).

62. 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. Circle K Corp. (In re Circle K Corp.), 127 F.3d 904, 910-11 (9th Cir. 1997) (no principle of bankruptcy or contract law precludes us from permitting the Debtor here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365). Section 365(f)(3) goes beyond the scope of § 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) (§ 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).

63. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced. See In re Rickel Home Centers, Inc., 240 B.R. 826, 831 (D. Del. 1998) (In interpreting Section 365(f), 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).

64. Therefore, the Debtor requests that any anti-assignment provisions be deemed not to restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of § 365(f) of the Bankruptcy Code.

#### **Notice**

65. The Debtor has provided copies of this Motion to (a) the Office of the United States Trustee; (b) Daniel S. Bleck, Esq., counsel to UMB, N.A., in its capacity as Bond Trustee under the Bond Indenture; (c) counsel to all known holders of liens on the Assets; (d) the Illinois Finance Authority; (e) the Internal Revenue Service; (f) the Illinois Department of Revenue; (g) counsel for FSO; (h) the Debtor's twenty largest unsecured creditors; and (i) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002 (collectively, the Master Service List).

66. Additionally, the Debtor's noticing and claims agent, Donlin Recano has served by first class mail on all creditors and parties-in-interest not on the Master Service List a detailed notice of hearing on this Motion and provides instructions on how to request  free of charge  a hard copy of this Motion from the Debtor's counsel and/or accessing an electronic copy. The



Debtor therefore respectfully submits that notice of this Motion is sufficient under the circumstances and that no further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially in the form which was electronically filed with the Clerk of Court in connection with this Motion: (i) approving the Bid Procedures; (ii) approving the Expense Reimbursement; (iii) scheduling an Auction and a Sale Hearing to approve the proposed Sale; (iv) approving the form and manner of notice of the Bid Procedures Hearing, Auction and Sale Notice, Notice to Counterparties, and Sale Hearing; and (v) granting such other relief as may be just and proper. Additionally, the Debtor requests that, at the Sale Hearing, the Court enter the Sale Order substantially in the form attached to this Motion as **Exhibit B** (subject to the result of the Auction and to the Bid Procedures): (i) approving and authorizing the Sale; (ii) authorizing the assumption and assignment of the Assigned Contracts; (iii) waiving the requirements of local rules as to form, as they may affect the length of this Motion, and (iv) granting such other and further relief as may be just and proper.

Dated: April 21, 2017

FRIENDSHIP VILLAGE OF MILL CREEK, NFP,  
Debtor and Debtor In Possession

By: /s/Bruce Dopke  
Proposed counsel for the Debtor

Bruce Dopke, Member (ARDC # 3127052)  
Kevin V. Hunt (ARDC# 6283126)  
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## EXHIBIT A

(FSO Term Sheet)

To be provided when available

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

IN RE:	§	Chapter 11
	§	
FRIENDSHIP VILLAGE OF	§	Case No.: 17-12470
MILL CREEK, NFP, d/b/a	§	
GREENFIELDS OF GENEVA,	§	
	§	
FEIN: 20-3300991,	§	
	§	
Debtor.	§	
	§	

**ORDER APPROVING (A) BIDDING PROCEDURES AND OVERBID PROTECTIONS; (B) APPROVING THE FORM AND MANNER OF NOTICE; AND (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon the motion (the öMotionö) of Friendship Village of Mill Creek NFP d/b/a GreenFields of Geneva (the öDebtorö), a debtor and debtor in possession in the above captioned case, pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the öBankruptcy Codeö), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the öBankruptcy Rulesö), for entry of an order approving the Bid Procedures, which are attached hereto as Exhibit 1, in connection with the sale of all or substantially all of the Debtor's assets, including the form and manner of service of the notice attached hereto as Exhibit 2, and granting other relief related thereto; and the Court having reviewed the Motion, and having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the öHearingö); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) notice of the Motion and the Hearing was sufficient under

the circumstances, and no further or other notice is required; and (v) a reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons; after due deliberation the Court having determined that the relief requested in the Motion (x) represents a sound exercise of the Debtor's business judgment, (y) is necessary and essential to maximize the value of the Debtor's estate and (z) is in the best interests of the Debtor, its estate and its creditors; and upon the record herein; and after due deliberation thereon; and good and sufficient cause having been shown;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Debtor has articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court granting certain of the relief requested in the Motion, including approval of: (i) the Bid Procedures in the form attached hereto as Exhibit 1 (the "Bid Procedures"),<sup>2/</sup> (ii) the Expense Reimbursement (as provided for in, and conditioned by, the Motion), (iii) the sale of substantially all of Debtor's assets to the Successful Bidder (if the Successful Bidder elects to proceed with a sale as opposed to a plan of reorganization), subject to entry of a further order approving the terms of such sale, if necessary, and (iv) the form and manner of the Auction and Sale Notice.

B. The Bid Procedures are fair, reasonable and appropriate and are designed to maximize the recovery with respect to the sale or other transfer of the Debtor's Assets.

C. Payment of the Expense Reimbursement to Friendship Senior Options (the "Initial Bidder") on the terms set forth in the Bid Procedures is (i) an actual and necessary cost and expense of preserving Debtor's estate within the meaning of Bankruptcy Code section 503(b), (ii) commensurate to the real and substantial benefits conferred upon Debtor's estate by the

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<sup>2/</sup> Capitalized terms used in this order that are not otherwise defined have the meanings given to them in the Bid Procedures.

Initial Bidder's entry into the Term Sheet, and (iii) reasonable and appropriate in light of the size and nature of the proposed transaction as described in the Term Sheet, the commitments that have been made and the efforts that have been or will be expended by the Initial Bidder.

D. The Debtor has demonstrated a compelling and sound business justification for authorizing the payment, if necessary, of the Expense Reimbursement under the circumstances, timing and procedures set forth in the Bid Procedures and the Motion.

E. The Auction and Sale Notice is appropriate, adequate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the potential sale of the Debtor's assets and the Bid Procedures. No other or further notice is required for the potential sale of the Debtor's assets or the Bid Procedures, as set forth herein and in the Motion.

H. The Debtor has articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court scheduling a subsequent hearing on a potential sale (a "Sale Hearing") to consider granting other relief requested in the Motion, including approval of a sale transaction in the event the Successful Bidder elects to proceed pursuant to a sale (a "Sale") and the transfer of the assets to the Successful Bidder pursuant to a Sale free and clear of all claims and encumbrances pursuant to Bankruptcy Code section 363(f).

I. As demonstrated by the compelling and sound business justifications set forth by Debtor in the Motion and at the Hearing, the entry of this Order is in the best interests of Debtor and its estate, creditors, the residents, and all other parties in interest herein; and therefore **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. The Bid Procedures attached hereto as Exhibit 1 are approved in all respects and shall govern all bids and bid proceedings relating to the process for a Sale or other transfer of Debtor's assets. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.
3. The failure specifically to include or reference any particular provision of the Bid Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Bid Procedures be authorized and approved in their entirety.
4. The form and manner of service of the Auction and Sale Notice described in the Motion, and attached hereto as Exhibit 2, are approved in all respects. The Debtor shall serve the Auction and Sale Notice on all of Debtor's creditors, parties in interest and potentially interested bidders. Service of the Auction and Sale Notice, as set forth herein, constitutes sufficient notice of the Auction and Sale Hearing.
5. The Bid Deadline shall be July 19, 2017, at 4:00 p.m. (prevailing Central Time). All Potential Bidders are required to provide copies of their bids so as to be received by (1) counsel for GreenFields, Bruce Dopke, Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Ste. 1200, Chicago, IL 60603 (bdopke@stahlcowen.com); (2) Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 (arulnick@hjsims.com); (3) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (4) Counsel to the Bond Trustee, Daniel Bleck, Mintz Levin Cohn Ferris Glovsky and Popeo PC, One Financial Center, Boston, MA, 02111 (dsbleck@mintz.com); and [(5) Counsel for the Official Committee of Unsecured Creditors (the Committee) , \_\_\_\_\_] (collectively, the Notice Parties).

6. The Auction, if necessary under the Bid Procedures, will be held at 10:00 am (prevailing Central Time) on \_\_\_\_\_, 2017<sup>3/</sup> at the offices of Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Suite 1200, Chicago, IL 60603. No later than two (2) days following the Auction the Debtor shall file a notice indicating whether the Successful Bidder seeks to proceed with a Sale, in which case the Sale Hearing will go forward, or proceed pursuant to a plan of reorganization in which case the Debtor will request that the Sale Hearing be cancelled.

7. The Bond Trustee shall be entitled to credit bid (subject to payment of the Expense Reimbursement in cash) pursuant to section 363(k) or otherwise. If: (a) no Qualifying Bids are received by the Bid Deadline, the Bond Trustee's deadline to submit a credit bid shall be two (2) business days prior to the date of the Auction; and (b) if at least one Qualifying Bid is received by the Bid Deadline by any party other than the Bond Trustee, the Bond Trustee's deadline to submit a credit bid shall be the close of the Auction. If the Bond Trustee fails to submit a credit bid by the deadlines established in this paragraph, the Bond Trustee's credit bid rights under Bankruptcy Code section 363(k) shall be extinguished unless the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction. In the event the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction as contemplated by these Bid Procedures, the Bond Trustee's right to credit bid shall no longer be waived and shall be fully available to the Bond Trustee. This Order is a conclusive determination of the Bond Trustee's right to credit bid at the Auction, subject to the conditions set forth in this paragraph.

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<sup>3/</sup> The parties are requesting that the date of the Auction be no less than seven (7) days from the Bid Deadline.

8. Objections to a possible Sale shall be in writing, shall state the basis of such objection with specificity and shall be filed with the Court, and served so as to be received on or before \_\_\_\_\_, at 4:00 p.m. (prevailing Central Time) on the Notice Parties.

9. In the event a Sale Hearing is necessary, at which Debtor shall seek approval of the Successful Bid in the event the Successful Bidder seeks to proceed pursuant to a Sale, such Sale Hearing shall be held in this Court on \_\_\_\_\_ at \_\_\_\_\_ (prevailing Central Time). The Sale Hearing may be adjourned or rescheduled without further notice other than an announcement of the adjourned date at the Sale Hearing.

10. In the event the Successful Bidder seeks to proceed with a plan of reorganization the notice referenced in paragraph 6 above shall include actual or proposed dates necessary to proceed with such plan of reorganization.

11. Each of the Initial Bidder and the Bond Trustee shall be deemed a Qualified Bidder for all purposes and in all respects with regard to the Bid Procedures.

12. The Debtor is hereby authorized, in the exercise of its sound business judgment, to pay the Initial Bidder the Expense Reimbursement (as provided for in the Motion), solely from proceeds received in connection from an alternative transaction and otherwise as conditioned in the Motion. The Expense Reimbursement is only payable in the event that the Debtor consummates a transaction resulting in a higher and better offer from a party other than the Initial Bidder. The Expense Reimbursement shall be an administrative expense claim against Debtor's estate under Bankruptcy Code section 503(b) (provided, however, such claim shall be paid solely from the proceeds of an alternative transaction). The Initial Bidder shall be required to provide evidence of any expenses it seeks to include as part of the Expense Reimbursement to the Notice Parties, who shall each have fourteen (14) days to object to any such expenses by



raising such dispute with the Court. Following the expiration of such fourteen (14) day notice period (of if each of the Notice Parties provided the Initial Bidder with an email that they consent to the submitted expenses) the Debtor shall be authorized to pay the Expense Reimbursement without any further order of the Court.

13. The failure of any objecting person or entity to timely file its objection shall be an absolute bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or the consummation and performance of the Sale, if any (including the transfer free and clear of all encumbrances of Debtor's assets pursuant to the proposed Sale Order); provided, however, in the event the Successful Bidder elects to proceed with a plan of reorganization such that the proposed Sale Order is moot, the foregoing bar to objections shall be void and all such parties may object to proposed disclosure statement, plan of reorganization, and any other documents and requests related to such plan by the dates and in manner established by this Court, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court.

14. Debtor is authorized and empowered to take such steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and requirements established and relief granted in this Order.

15. Notwithstanding anything to the contrary in any bid submitted by any party, the Debtor and the Bond Trustee are each authorized to interview, qualify, encourage and negotiate with, any Potential Bidder in addition to the Initial Bidder prior to the completion of the Auction.

16. To the extent, if any, anything contained in this Order conflicts with the Motion, this Order and the provisions of the Bid Procedures attached hereto shall govern and control.

17. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall take effect immediately upon its entry.

18. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

**###End of Order###**

Order submitted by

## **Exhibit 1**

### **Bid Procedures**

Set forth below are the bid procedures (the “Bid Procedures”) to be employed with respect to (i) the transfer of substantially all of the assets of Friendship Village of Mill Creek NFP d/b/a GreenFields of Geneva (“GreenFields”), a debtor and debtor-in-possession in the chapter 11 case (the “Bankruptcy Case”) pending in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”), Case No. 17-12470 or (ii) the ability of a third party to act as a plan sponsor (or co-sponsor) in connection with the restructuring of the obligations of GreenFields.

GreenFields has entered into a plan sponsor term sheet (the “Term Sheet”) with Friendship Senior Options (the “Initial Bidder”) pursuant to which the Initial Bidder will fund GreenFields’s proposed plan in the cash amount of Fifty-Two Million, Eight Hundred Thousand Dollars (\$52,800,000) (the “Initial Bidder Proposal”). The Initial Bidder Proposal is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), or alternatively through a plan of reorganization. Potential bidders may structure competing bids in any manner, including but not limited to that proposed in the Term Sheet by the Initial Bidder or as a restructuring or a cash bid for the purchase of the assets (each a proposed “Transfer Transaction”).

### **Participation Requirements**

Any person desiring to submit a competing bid in connection with a Transfer Transaction (a “Potential Bidder”) will be required to deliver the following (the “Participation Requirements”) to H.J. Sims & Co. (“HJ Sims”), the proposed investment banker for GreenFields: (1) an executed confidentiality agreement; and (2) written evidence of available funds or a firm commitment for financing sufficient for the Potential Bidder to consummate the Transfer Transaction. Each of (1) and (2) shall be in form and substance satisfactory to GreenFields and UMB Bank, N.A., in its capacity as successor bond trustee and successor master trustee (the “Bond Trustee”). The financial information and credit-quality support of any Potential Bidder must demonstrate the financial capability of the Potential Bidder to timely consummate the Transfer Transaction pursuant to a Qualified Bid (as defined below).

### **Due Diligence**

Any Potential Bidder who satisfies the Participation Requirements, will be afforded due diligence access and additional information through access to an on-line data room (the “Data Room”).

Interested bidders requesting information about the Participation Requirements, and Qualified Bidders (as defined below) requesting information in connection with their due diligence, should contact Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 (arulnick@hjsims.com).

### **Bid Deadline**

The deadline for submitting bids relating to a Transfer Transaction shall be July 19, 2017 at 4:00 p.m. (prevailing Central Time) (the öBid Deadlineö). Such bids must be received on or before that date and time by (1) counsel for GreenFields, Bruce Dopke, Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Ste. 1200, Chicago, IL 60603 (bdopke@stahlcowen.com); (2) Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 (arulnick@hjsims.com); (3) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (4) Counsel to the Bond Trustee, Daniel Bleck, Mintz Levin Cohn Ferris Glovsky and Popeo PC, One Financial Center, Boston, MA, 02111 (dsbleck@mintz.com); and [(5) Counsel for the Official Committee of Unsecured Creditors (the öCommitteeö) , \_\_\_\_\_.]<sup>1</sup>

### **Opening Bid at Auction**

Currently, the Initial Proposal, on the terms set forth in the Term Sheet, is the highest and best bid and shall be the opening bid for the Auction. The bidding at the Auction will start at the Initial Proposal of \$52,800,000 plus \$750,000 to account for an expense reimbursement (öExpense Reimbursementö) to the Initial Bidder and an initial bid increment of \$150,000 for a total of \$53,700,000 (the öInitial Bid Incrementö). All bidding after Initial Bid Increment shall continue thereafter in subsequent bid increments of at least \$100,000, subject to provisions contained herein.

### **Bid Requirements**

To be eligible to participate in the Auction, each bid and each Potential Bidder submitting such a bid must:

- (1) offer to consummate the Transfer Transaction in an amount at least equal to the Initial Bid Increment;
- (2) include either (i) a proposed asset purchase agreement (öAPAö), marked against the form in the Data Room to show any proposed amendments thereto (the öModified Agreementö) and a clean and executed Modified Agreement, or (ii) in the case of bids proposing a structure other than an asset purchase, such other proposed documents evidencing the proposed transaction, including but not limited to a restructuring term sheet similar in form to the Term Sheet;
- (3) indicate that the offer assumes all obligations under the residency agreements with residents of GreenFields.
- (4) include a statement that there are no conditions precedent to the bidder's authority to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (5) state that such offer is binding and irrevocable until the entry of an order approving the Transfer Transaction;

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<sup>1</sup> All references to the Committee herein are reserved in the event an Official Committee of Unsecured Creditors is appointed.

- (6) disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (7) include the names and contact information of members of the bidder who will be available to answer questions regarding the offer, including advisors and related parties;
- (8) include a good-faith deposit in immediately available funds in the amount of two percent (2%) of the proposed consideration under the Transfer Transaction (öEarnest Money Depositö); and
- (9) provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Transfer Transaction.

Each of the above requirements must be met to the satisfaction of both GreenFields and the Bond Trustee. Bids are not required to adopt the business structure as set forth in the Term Sheet. All bids submitted from Qualified Bidders that confirm with bid requirements will be considered whether or not they conform to the form set forth in the Term Sheet.

### **Credit Bid**

The Bond Trustee shall be entitled to credit bid (subject to payment of the Expense Reimbursement in cash) pursuant to Bankruptcy Code section 363(k) or otherwise. The Bond Trustee shall be considered a Qualified Bidder notwithstanding the requirements for Qualified Bidders set forth herein (provided, however, that any credit bid must (a) contain a provision providing for the assumption of all resident contracts and (b) be at or above the amount of the Initial Bid Increment).

The Bond Trustee agrees that if: (a) no Qualifying Bids are received by the Bid Deadline, the Bond Trustee's deadline to submit a credit bid shall be two (2) business days prior to the date of the Auction; and (b) if at least one Qualifying Bid is received by the Bid Deadline by any party other than the Bond Trustee, the Bond Trustee's deadline to submit a credit bid shall be the close of the Auction. If the Bond Trustee fails to submit a credit bid by the deadlines established in this paragraph, the Bond Trustee agrees that any credit bid rights under Bankruptcy Code section 363(k) are extinguished unless the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction. In the event the Successful Bidder (or Back-Up Bidder, as appropriate) is unable to close the Transfer Transaction as contemplated by these Bid Procedures, the Bond Trustee's right to credit bid shall no longer be waived and shall be fully available to the Bond Trustee. For the avoidance of doubt, approval of these Bid Procedures by the Bankruptcy Court shall be a conclusive determination of the Bond Trustee's right to credit bid at the Auction.

### **Qualified Bidders and Bids**

Potential Bidders who have satisfied the Participation Requirements will be deemed öQualified Biddersö. Bids that contain all bid requirements, as set out above, will be deemed öQualified Bidsö. GreenFields, with the consent of the Bond Trustee, may waive noncompliance with any bid requirement.

Following consultation with GreenFields, the Committee (if any), and the Bond Trustee, HJ Sims will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Bond Trustee shall be deemed to be a Qualified Bidder without further action of any kind. The Initial Bidder is deemed a Qualified Bidder and the Initial Proposal is a Qualified Bid in all respects. To the extent not provided directly by Potential Bidders, GreenFields will provide copies of the Qualified Bids to the Bond Trustee, the Committee and the Initial Bidder.

Nothing shall prevent GreenFields or the Bond Trustee from working with each of the Qualified Bidders to improve their Qualified Bids at any time prior to completion of the Auction, including but not limited to between the Bid Deadline and the Auction.

### **Auction Participation**

Unless otherwise agreed to by GreenFields or ordered by the Bankruptcy Court, only Qualified Bidders, counsel to the Committee, the Bond Trustee, holders of the Bonds, and their respective counsel and financial professionals are eligible to attend or participate at the Auction. Subject to the other provisions of these Bid Procedures, if GreenFields does not receive any Qualified Bids other than the Initial Proposal or if no Qualified Bidder other than the Initial Bidder has indicated its intent to participate in the Auction, GreenFields will not hold an Auction and the Initial Bidder will be named the Successful Bidder, subject to Bond Trustee's right to credit bid as provided for herein. Cancellation of the Auction pursuant to the foregoing sentence shall only be permitted with the written consent of the Bond Trustee.

### **Auction**

If any Qualified Bid other than the Initial Proposal for any of GreenFields's assets has been received and any Qualified Bidder other than the Initial Bidder has indicated its intent to participate in the Auction, GreenFields will conduct an auction (the "Auction") for the sale or other transfer of substantially all of its assets or for becoming the plan sponsor under a proposed restructuring. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transfer Transaction.

The Auction shall take place at 10:00 am (prevailing Central Time) on July 26, 2017, 2017 at the offices of Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Suite 1200, Chicago, IL 60603. At the Auction, only the Initial Bidder and other Qualified Bidders (including the Bond Trustee, pursuant to its right to credit bid) will be permitted to increase their bids or make any subsequent bids. HJ Sims, following consultation with GreenFields, the Committee (if any) and the Bond Trustee, may conduct the Auction in the manner it reasonably determines, in its business judgment, will promote the goals of the bid process, will achieve the maximum value for all parties in interest and is not inconsistent with any of the provisions of these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

### **Closing the Auction**

The Auction shall continue until there is only one offer that Greenfields (following consultation with HJ Sims and the Committee (if any) and the express approval of the Bond

Trustee) determines, subject to Bankruptcy Court approval, is the highest or best offer from among the Qualified Bidders (including the Initial Bidder) submitted at Auction (the “Successful Bid”). For purposes of valuing any bid in a determination of the Successful Bid (or the Back-Up Bid), GreenFields and the Bond Trustee, in their discretion, may present value or discount any proposed Transfer Transaction contemplating a restructuring of the debt of the Bond Trustee in order to compare such bids to offers providing the Debtors with cash consideration at closing. The Qualified Bidder submitting such Successful Bid shall become the “Successful Bidder” and shall have such rights and responsibilities of a purchaser, as set forth in the APA, modified agreement, or other transaction documents, as applicable.

Immediately prior to the conclusion of the Auction, HJ Sims, GreenFields, the Committee (if any) and the Bond Trustee shall (1) review each bid made at the Auction on the basis of financial and contractual terms (including any appropriate present value or discount as set forth above) and such other factors as may be relevant to the process; and (2) identify the Successful Bid.

GreenFields (after consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee) shall also select a back-up bid (the “Back-Up Bid”), which shall remain open and irrevocable until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder or such later time as agreed to by the Qualified Bidder submitting such Back-Up Bid. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, GreenFields (with the consent of the Bond Trustee) may elect to regard the Back-Up Bid as the highest or best bid for the Debtors’ assets, and GreenFields will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

### **Acceptance of Qualified Bids**

GreenFields’ presentation to the Bankruptcy Court for approval of any Successful Bid does not constitute GreenFields’ acceptance of such bid. GreenFields will be deemed to have accepted a bid only when it has been approved by the Bankruptcy Court. After conclusion of the Auction, but prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which their Successful Bid was made and make and pay for all necessary filings with all applicable governmental or other authorities.

### **Assumption of Executory Contracts and Unexpired Leases**

The Term Sheet provides for the assumption and assignment of certain executory contracts and unexpired leases to the Initial Bidder (“Assigned Contracts”). In all circumstances, the Successful Bidder shall be responsible for all cure amounts relating to the Assigned Contracts under Bankruptcy Code section 365. As indicated above, the Successful Bidder must assume the residency agreements related to GreenFields to become a Qualified Bidder

### **Modifications**

GreenFields, following consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee, may (1) determine, in its business judgment, which bid or bids,

if any, constitute the highest or otherwise best offer for the GreenFields assets; (2) reject, at any time before entry of an order of the Bankruptcy Court approving any bid as the Successful Bid, any bid that, in its discretion, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (c) contrary to the best interests of GreenFields estate and creditors; and (3) withdraw, in its business judgment, any motion to approve the Transfer Transaction if contrary to the best interests of GreenFields estate and creditors.

### **Hearings to Approve Transfer Transaction**

In the event the Successful Bidder proposes to acquire GreenFields assets pursuant to an APA, GreenFields will seek entry of an order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin on [\_\_\_\_\_, 2017] at [\_\_\_\_\_] (prevailing Central Time), to approve and authorize the Transfer Transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures. In the event the Initial Bidder is the Successful Bidder, the hearing on the proposed disclosure statement and plan confirmation shall be scheduled by the Bankruptcy Court in the ordinary course. In the event the Successful Bidder is not the Initial Bidder, and also proposes a plan of reorganization, GreenFields will request new dates from the Bankruptcy Court to approve a disclosure statement and confirmation of a plan of reorganization incorporating the terms of the Successful Bidder. GreenFields shall file a notice with the Bankruptcy Court within two (2) business days of the Auction providing further guidance on transaction proposed by the Successful Bidder, including actual or proposed dates of hearings to seek court approval of the Transfer Transaction.

### **Back-Up Bidder and Return of Earnest Money Deposit**

Except as otherwise provided herein or in the Term Sheet, all Earnest Money Deposits shall be returned to each bidder not selected by GreenFields as the Successful Bidder or the Back-Up Bidder by no later than the tenth (10th) business day following the Auction. The Earnest Money Deposit of the Back-Up Bidder shall be held by GreenFields until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder. Except as otherwise provided herein or in the Term Sheet, all Earnest Money Deposits shall be returned to each bidder not selected by GreenFields as the Successful Bidder or the Back-Up Bidder by no later than the tenth (10th) business day following the Auction. The Earnest Money Deposit of the Back-Up Bidder shall be held by GreenFields until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder.

### **Payment of Expense Reimbursement**

If applicable, and if the Initial Bidder is not the Successful Bidder, GreenFields shall pay an expense reimbursement to the Initial Bidder, as set forth in the Term Sheet between GreenFields and the Initial Bidder to the extent approved by the Bankruptcy Court, but in no event shall payment be any earlier than the time of consummation of the Transfer Transaction and shall only be paid from the proceeds of such sale or other Transfer Transaction (provided, however, if the Bond Trustee acquires the assets of GreenFields pursuant to a credit bid, the Bond Trustee shall provide for payment of such agreed-to and approved expense reimbursement in cash at closing).



### **Reservation of Rights**

GreenFields, after consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee, may modify these Bid Procedures in any manner that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional customary terms and conditions on proposed Transfer Transactions, including without limitation, modifying the requirements for a Qualified Bid, extending the deadlines set forth in these Bid Procedures, adjourning the Auction and/or any hearing to consummate the Transfer Transaction with the Successful Bidder, in each case without further notice.

**Exhibit 2**

**Proposed Auction and Sale Notice**

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

IN RE:	§	Chapter 11
	§	
FRIENDSHIP VILLAGE OF	§	Case No.: 17-12470
MILL CREEK, NFP, d/b/a	§	
GREENFIELDS OF GENEVA,	§	
	§	
FEIN: 20-3300991,	§	
	§	
Debtor.	§	
	§	

**NOTICE OF AUCTION AND SALE**

**PLEASE TAKE NOTICE** that on **April 21, 2017**, Friendship Village of Mill Creek, NFP, d/b/a GreenFields of Geneva, debtor and debtor in possession herein (the "Debtor"), filed its Motion For Entry Of Orders (A) Authorizing The Sale Of Substantially All Of The Debtor's Assets Free And Clear Of Liens, Claims And Interests; (B) Approving Bidding Procedures And Overbid Protections In Connection Therewith; (C) Approving The Form And Manner Of Notice; and (D) Approving Assumption And Assignment Procedures With Respect To Executory Contracts And Unexpired Leases (the "Motion") with the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"). The Debtor is currently soliciting bids from other parties interested in its assets. All parties that may be interested in submitting a bid for substantially all of the Debtor's assets or any portion thereof or taking part in the Auction

must read carefully both the Bid Procedures<sup>1</sup> and the order approving the Bid Procedures (the “Bid Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that on [April [ ], 2017], following a hearing held on [April 27, 2017], the Bankruptcy Court entered the Bid Procedures Order and scheduled a hearing to consider the Sale Motion for [July \_\_\_, 2017] (prevailing Central Time) (the “Sale Hearing”). You may obtain a copy of the Debtor’s proposed Term Sheet negotiated and agreed to with the Initial Bidder by making a written request to Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 ([arulnick@hjsims.com](mailto:arulnick@hjsims.com)) (“H.J. Sims & Co.”).

Only those parties that submit Qualified Bids may participate in the Auction; if you are interested in determining how to submit such a Qualified Bid, you must comply with the terms of the Bid Procedures. Any party in interest wishing to receive a complete set of the Term Sheet, the Motion, and the Bid Procedures Order may do so free of charge by contacting H.J. Sims & Co.

**PLEASE TAKE FURTHER NOTICE** that any party that wishes to take part in this process and submit a bid for the Assets, any portion thereof, or other of the Debtor’s assets, must submit their Qualified Bid prior to **July 19, 2017 at 4:00 p.m. (prevailing Central Time)** (the “Bid Deadline”) such that bids are received on or before that date and time by: (1) counsel for GreenFields, Bruce Dopke, Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Ste. 1200, Chicago, IL 60603 ([bdopke@stahlcowen.com](mailto:bdopke@stahlcowen.com)); (2) Aaron M. Rulnick, H.J. Sims & Co., 11140 Rockville Pike, Suite 550-H, Rockville, MD, 20852 ([arulnick@hjsims.com](mailto:arulnick@hjsims.com)); (3) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street,

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Bid Procedures.

Philadelphia, PA 19103-6933 ([david.fields@rbccm.com](mailto:david.fields@rbccm.com)); (4) Counsel to the Bond Trustee, Daniel Bleck, Mintz Levin Cohn Ferris Glovsky and Popeo PC, One Financial Center, Boston, MA, 02111 ([dsbleck@mintz.com](mailto:dsbleck@mintz.com)); and [(5) Counsel for the Official Committee of Unsecured Creditors (the "Committee"), \_\_\_\_\_]<sup>2</sup> (collectively, the "Notice Parties"). H.J. Sims & Co. shall determine whether a bidder is a Qualified Bidder.

**PLEASE TAKE FURTHER NOTICE** that if more than one Qualified Bid for any of the Debtor's assets is received by the Bid Deadline, an auction (the "Auction") with respect to a contemplated transaction shall take place on **July 26, 2017, at 10:00 a.m.** (prevailing Central Time) at the offices of Stahl Cowen Crowley Addis LLC, 55 West Monroe Street, Suite 1200, Chicago, IL 60603. If, however, if no Qualified Bids are received by the Debtor (other than the bid submitted by the Initial Bidder), then the Auction will not be held. Under such circumstances, the Initial Bidder will be deemed the Successful Bidder, subject to rights of Bond Trustee to credit bid as provided for in the Bid Procedures.

Only a Qualified Bidder who has submitted a Qualified Bid will be eligible to participate at the Auction. As set forth more fully in the Bid Procedures, parties seeking to submit Qualified Bids may structure such bids so that they would acquire the Debtor's assets pursuant to a sale under Section 363 of the Bankruptcy Code, or as a plan of reorganization.

Only Qualified Bidders, counsel to the Committee, the Bond Trustee, holders of the Bonds, and their respective counsel and financial professionals are eligible to attend or participate at the Auction. At the Auction, Qualified Bidders will be permitted to increase their bids. The first initial increased bid at the Auction (other than that submitted by the Initial Bidder) shall be in an amount not less than \$53,700,000 (the "Initial Bid Increment"). All bidding after

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<sup>2</sup> All references to the Committee herein are reserved in the event an Official Committee of Unsecured Creditors is appointed.

Initial Bid Increment shall continue thereafter in subsequent bid increments of at least \$100,000, subject to provisions contained in the Bid Procedures. H.J. Sims & Co., following consultation with GreenFields, the Committee (if any) and the Bond Trustee, may conduct the Auction in the manner it reasonably determines, in its business judgment, will promote the goals of the bid process, will achieve the maximum value for all parties in interest and is not inconsistent with any of the provisions of these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection with the Bid Procedures.

The Successful Bid shall be determined by the Debtor (following consultation with H.J. Sims & Co. and the Committee (if any), and with the express approval of the Bond Trustee) as the highest or best offer from among the Qualified Bidders (including the Initial Bidder) submitted at Auction. Such determination is subject to Bankruptcy Court approval.

The Debtor (after consultation with HJ Sims and the Committee (if any) and with the consent of the Bond Trustee) shall also select a back-up bid (the öBack-Up Bidö), which shall remain open and irrevocable until one (1) business day after the closing of the Transfer Transaction with the Successful Bidder or such later time as agreed to by the Qualified Bidder submitting such Back-Up Bid.

The Debtor will file a notice with the Bankruptcy Court within two (2) business days following the Auction providing further guidance on transaction proposed by the Successful Bidder. In the event the Successful Bidder proposes acquiring the Debtor's assets through a plan of reorganization, the Sale Hearing will be cancelled. In the event the Successful Bidder proposes acquiring the Debtor's assets by way of a sale, the Sale Hearing will go forward as scheduled.

If the Sale Hearing goes forward, the Debtor will present the Successful Bid(s) to the Bankruptcy Court for approval. The Debtor will then sell its assets or any portion thereof to the Successful Bidders. If a Successful Bidder fails to consummate an approved Sale because of a breach or a failure to perform on the part of such Successful Bidder, the Debtor (with the consent of the Bond Trustee) may elect to regard the Back-Up Bid as the highest or best bid for the Debtor's assets, and the Debtor will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court, and shall be served as required by the Motion, the Bankruptcy Rules and the Local Rules [BRUCE ó YOU SHOULD ADD A SPECIFIC DATE HERE, IF APPROPRIATE]. Only those responses that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of orders granting the Motion as requested by The Debtor.

Dated: April \_\_, 2017

FRIENDSHIP VILLAGE OF MILL CREEK, NFP,  
Debtor and Debtor In Possession

By: /s/Bruce Dopke  
Proposed counsel for the Debtor