Andrew Zollinger, State Bar No. 24063944
andrew.zollinger@dlapiper.com
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545

Thomas R. Califano (admitted *pro hac vice*)
Dienna Corrado (admitted *pro hac vice*)
thomas.califano@dlapiper.com
dienna.corrado@dlapiper.com
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

Daniel M. Simon (admitted *pro hac vice*)
daniel.simon@dlapiper.com
DLA Piper LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlantic, Georgia 30309
Telephone: (404) 736-7800
Facsimile: (404) 682-7800

PROPOSED COUNSEL FOR THE DEBTORS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
4 West Holdings, Inc. *et al.*,[1]	§	Case No. 18-30777 (HDH)
Debtors.	§	(Jointly Administered)

COMBINED MOTION OF THE DEBTORS FOR ENTRY OF ORDERS (I) APPROVING (A) PLAN FUNDING COMMITMENT AND STOCK PURCHASE AGREEMENT WITH PLAN SPONSOR, (B) STALKING HORSE BID PROTECTIONS, (C) BIDDING AND AUCTION PROCEDURES GOVERNING SUBMISSION AND CONSIDERATION OF COMPETING PLAN SPONSORSHIP PROPOSALS, AND (D) THE FORM AND MANNER OF NOTICE THEREOF, AND (II) APPROVING (A) DISCLOSURE STATEMENT, (B) DETERMINING DATES, PROCEDURES, AND FORMS APPLICABLE TO SOLICITATION PROCESS, (C) ESTABLISHING VOTE TABULATION PROCEDURES, AND (D) ESTABLISHING OBJECTION DEADLINE AND SCHEDULING PLAN CONFIRMATION HEARING

[1] A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as Exhibit A.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 16, 2018 AT 2:30 P.M. (PREVAILING CENTRAL TIME) AT THE UNITED STATES BANKRUPTCY COURT, EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE ST., 14TH FLOOR, COURTROOM 3, DALLAS, TX 75242-1496.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT SO THAT IT IS RECEIVED NOT LESS THAN SEVEN (7) DAYS BEFORE THE DATE OF THE HEARING REGARDING THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

The above-captioned debtors (collectively the "Debtors"), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the "Motion") for entry of (a) an order, substantially in the form attached hereto as **Exhibit B** (the "Bidding Procedures Order"), pursuant to sections 105(a), 363(b), 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and Appendix G of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules"), approving (i) the Debtors' entry into that certain Plan Funding Commitment and Stock Purchase Agreement, dated March 15, 2018, a copy of which is attached hereto as **Exhibit C** (the "SPA"), between the Debtors and SC-GA 2018 Partners, LLC (the "Plan Sponsor" or the "Stalking Horse"), (ii) certain Bid Protections (as defined herein) in connection with the Plan Sponsor serving as Stalking Horse, (iii) bidding and auction procedures in the form attached to the Bidding Procedures Order as **Exhibit 1** (the "Bidding Procedures"), which govern the submission and consideration of competing plan sponsorship proposals (individually, a "Competing Transaction" and collectively, the "Competing Transactions"), and (iv) the form and manner of notice thereof, and (b) an order, substantially in the form attached hereto as **Exhibit D**

(the "Disclosure Statement Order"), pursuant to sections 105(a), 1125, 1126 of the Bankruptcy Code and Bankruptcy Rule 2002, 3017, 3018 and 3020, (i) approving the Disclosure Statement (as defined below), (ii) determining dates, procedures, and forms applicable to solicitation process, (iii) establishing vote tabulation procedures, and (iv) establishing objection deadline and scheduling a hearing to consider confirmation of the Plan (as defined below). In support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

GENERAL BACKGROUND

3. On March 6, 2018 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' chapter 11 cases.

5. On March 7, 2018, the Debtors filed the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 21] (the "Plan") and the *Disclosure Statement for the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 22] (the "Disclosure Statement").

6. On March 13, 2018, the Debtors filed the *Motion of the Debtors for Entry of an Order (I) Approving the Settlement and Compromise or Certain Claims Pursuant to a Settlement Agreement; and (II) Granting Related Relief* [Docket No. 101] (the "Settlement Motion"), seeking approval of a Settlement Agreement entered into among certain of the Debtors and OHI Asset RO, LLC ("Omega") and certain of its affiliates (together, the "Omega Parties").

7. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of Louis E. Robichaux IV in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 19] (the "First Day Declaration").

PRELIMINARY STATEMENT

8. In the weeks leading up to the Petition Date, the Debtors, the Omega Parties, and the Plan Sponsor engaged in extensive and sometimes protracted confidential negotiations regarding a good faith resolution of their legal and financial issues. In doing so, the parties' discussions paved the way to a prompt and efficient transfer of twenty-two of the Debtors' skilled nursing facilities to a new operator to be designated by the Omega Parties, with the remaining twenty properties[2] to be treated as owned by the Debtors, thereby creating a liquidity event that could be used to pay existing debt. These negotiations resulted in the entry into a Restructuring Support Agreement dated March 6, 2018 [Docket No. 19-2] (the "RSA") entered into among the Debtors, certain of the Omega Parties, and the Plan Sponsor. The RSA contemplates two separate transactions:

a. under the RSA and the Settlement Agreement, the parties agreed to

[2] In addition to the twenty properties, Palladium Hospice and Pallative Care, LLC is included within the Restructuring Portfolio (as defined below).

consensually transition 22 facilities, and all of the assets relating to or necessary to operate such facilities to new operators designated by the Omega Parties (the "Transfer Transaction"); and

b. under the RSA, the parties agreed that the remaining 20 facilities (those not subject to the Transfer Transaction) (the "Restructuring Portfolio"), will be transferred from the Omega Parties to the Plan Sponsor (or its designee) pursuant to a chapter 11 plan in exchange for cash consideration of $195 million to be paid to the Debtors and the issuance of a subordinated term note of $30 million to the Omega Parties, each upon the Effective Date of the Plan (the "Restructuring Transaction").

9. Because there exists some overlap of indirect beneficial ownership of the Debtors and the Plan Sponsor, and, in accordance with the Supreme Court's decision in *Bank of America Nat'l Trust and Savings Assoc. v. 203 North LaSalle Partnership*, 526 U.S. 434 (1999), the Plan Sponsor may not have the sole right to sponsor the Plan. Through implementation of the proposed Bidding Procedures, the Debtors may determine whether a third party can provide a greater recovery to the Debtors' estates in exchange for the rights and assets that the Plan Sponsor is receiving under the Restructuring Transaction. Accordingly, in an exercise of their fiduciary duties, the Debtors seek to solicit bids pursuant to the proposed Bidding Procedures to ensure that they obtain the highest and best offer for the Restructuring Portfolio. The Debtors propose that the Disclosure Statement and solicitation procedures be approved prior to the Bid Deadline and Auction (each as defined below) so that potential bidders have a definitive version of the Plan against which to submit a bid. To the extent the winning bidder is not the Stalking Horse, the Debtors will supplement the Disclosure Statement accordingly and serve such supplement on all parties that received a copy of the Disclosure Statement.

10. For the convenience of the Court and all parties in interest, the following is a summary timeline identifying each of the relevant dates and deadlines proposed by this Motion:

Event	Days from Petition Date	Modified Date
Deadline to Serve Bidding Procedures Notice	42	Within one (1) business day following entry of the Bidding Procedures Order (expected on or around April 16, 2018)
Disclosure Statement Objection Deadline	58	May 3, 2018
Disclosure Statement Hearing	65	May 10, 2018
Voting Record Date	65	May 10, 2018
Solicitation Commencement Date	At least 68	Within three (3) business days following entry of the Disclosure Statement Order
Bid Deadline	76	May 21, 2018
Auction	79	May 24, 2018
Rule 3018(a) Motion Deadline	91	June 5, 2018
Voting Deadline	98	June 12, 2018
Plan Objection Deadline	98	June 12, 2018
Deadline to File Plan Supplement	101	June 15, 2018
Deadline to File Confirmation Brief	104	June 18, 2018
Deadline to File Voting Report	104	June 18, 2018
Confirmation Hearing	106	June 20, 2018

RELIEF REQUESTED

11. By this Motion, the Debtors respectfully request entry of two proposed orders:

a. Bidding Procedures Order, pursuant to sections 105(a), 363(b), 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, and Appendix G of the Local Rules, approving:

i. the Debtors' entry into the SPA with the Plan Sponsor;

ii. the Break-Up Fee and Expense Reimbursement (the "Bid Protections");

iii. Bidding Procedures, in the form attached to the Bidding Procedures Order as Exhibit 1, governing the submission

and consideration of Competing Transactions; and

iv. the form and manner of notice thereof, including the Bidding Procedures Notice (as defined herein) attached to the Bidding Procedures Order as Exhibit 2.

b. Disclosure Statement Order, pursuant to sections 105(a), 1125, 1126 of the Bankruptcy Code and Bankruptcy Rule 2002, 3017, 3018 and 3020:

i. approving the Disclosure Statement;

ii. determining dates, procedures, and forms applicable to solicitation process;

iii. establishing certain vote tabulation procedures; and

iv. establishing the Plan objection deadline and scheduling a hearing to consider confirmation of the Plan.

THE PROPOSED BIDDING PROCEDURES

12. In an exercise of their business judgment, the Debtors seek to subject the Restructuring Transaction with the Plan Sponsor to a competitive process to determine whether another party would pay more for the rights provided under the Plan. To that end, the Debtors seek approval of the Bidding Procedures, in the form attached to the Bidding Procedures Order as Exhibit 1, which would enable them to solicit competing offers. The Bidding Procedures benefit the Debtors' estates by creating a bidding process that ensures: (a) structure and logistical integrity to the process; (b) the ability of the Debtors to compare the relative values of competing offers, if any; and (c) that potential purchasers have the financial wherewithal to timely consummate a transaction to be implemented under the Plan.

13. The Bidding Procedures prescribe the requirements for prospective purchasers to participate in the bidding process, the availability and conduct of due diligence, the bid deadline and submission requirements, the method and criteria for bids to become "Qualified," the manner in which qualified bids will be negotiated, clarified, and improved, and the criteria for selecting winning bidders, including, if necessary, through a public auction.

14. The following is a summary of the proposed Bidding Procedures:[3]

	Summary of Bidding Procedures
Bid Requirements	To participate in the bidding process, a person interested in submitting a Competing Transaction (each, a "Bid") must, on or before May 21, 2018 at 5:00 p.m. (prevailing Central Time) (the "Bid Deadline"), deliver (unless previously delivered) the following documents (the "Bid Documents"): a. an executed confidentiality agreement on terms reasonably acceptable to the Debtors and their advisors (the "Confidentiality Agreement"), which will provide that all non-public information about the Debtors and the Restructuring Portfolio received by a potential bidder will be kept strictly confidential in accordance therewith and used only in connection with analyzing a Competing Transaction; b. proof by the bidder (the "Bidder") of its financial capacity to close a Competing Transaction, including payment of any cure amount with respect to any contract that may be assigned, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Bidder, the adequacy of which the Debtors and their advisors will determine in consultation with the Omega Parties and any official committee of unsecured creditors appointed in these chapter 11 cases (the "Committee"); c. submission of a binding proposal in the form of an executed SPA, together with all exhibits and schedules thereto, along with a redline against the Stalking Horse SPA and relevant exhibits and schedules; d. a marked copy of the Debtors' Plan of Reorganization dated March 6, 2018, showing any proposed modification to the Plan; e. a good faith deposit of $4,000,000 to be wired to a segregated account that will be specified by the Debtors; and f. the Bidder shall identify, on or before the Bid Deadline, those executory contracts and unexpired leases to be assumed and assigned to the Bidder but shall have until the deadline to file the Plan Supplement to add executory contracts to said list.
Access to Due Diligence	Only Bidders who have signed a Confidentiality Agreement and provided preliminary proof of its financial capacity to close a proposed transaction, the adequacy of which the Debtors and its advisors will determine, shall be eligible to receive due diligence and access to additional non-public information. Potential bidders interested in conducting due diligence should contact the Debtors' investment banker, Houlihan Lokey ("Houlihan"): • Andrew Turnbull by telephone (312-456-4719) or by e-mail, aturnbull@hl.com; and • Matthew Ryan by telephone (312-456-4707) or by e-mail mryan@hl.com.

[3] Capitalized terms used in the summary but not defined have the meanings ascribed to them in the Bidding Procedures. This is a summary only and is not a full recitation of the Bidding Procedures. Interested parties are encouraged to read the Bidding Procedures in their entirety and not rely on this summary. To the extent that the Motion and Bidding Procedures are inconsistent, the Bidding Procedures shall control.

	Any potential bidder wishing to conduct due diligence concerning a Competing Transaction shall be granted access to all relevant information regarding the Bidding Procedures and the business of the Debtors reasonably necessary to enable a potential bidder to evaluate the Competing Transaction. The Debtors shall make such document access available to potential bidders through an electronic data room as soon as reasonably practicable following execution of the Confidentiality Agreement. The Debtors reserve the right to provide information in stages (e.g., after a Bidder has demonstrated wherewithal and indicative valuation or interest in a transaction). All due diligence must be completed before the Bid Deadline. No condition(s) allowing or regarding further due diligence will be accepted after the Bid Deadline unless otherwise determined by the Debtors and their advisors. Notwithstanding the foregoing, Houlihan is not required to provide confidential, business-sensitive or proprietary information to any potential bidder if the Debtors reasonably believe that, after consultation with the Special Restructuring Committee, (i) such disclosure would be detrimental to the interests of the Debtors' estates, or (ii) such potential bidder does not intend in good faith, or the capacity, to consummate their bid. To the greatest extent possible, Houlihan and the Debtors shall ensure that any material due diligence provided to the Plan Sponsor or any other Bidder must be made available to all other Bidders or the Plan Sponsor.
Auction	If one or more Qualified Bids has been submitted for a Competing Transaction in accordance with these Bidding Procedures, the Debtors will conduct an auction (the "Auction") commencing on **May 24, 2018 at 10:00 a.m. (prevailing Central Time),** or such later time as the Debtors shall timely notify the Qualified Bidders. The Auction shall be organized and conducted by the Debtors at the offices of its counsel, DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, Texas 75201-4629 or such other location as may be announced prior to the Auction to the Qualified Bidders. The Auction will be recorded by stenographic means by an authorized court reporter. The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"): a. only the Qualified Bidders shall be entitled to bid at the Auction; b. subject to the terms in the RSA, Omega is a Qualified Bidder and hereby maintains the right to credit bid in an amount sufficient to be the Back-Up Bid or the back-up to the Back-Up Bid, provided however, that such credit bid shall, to the extent necessary, include a cash component necessary to fund all cash payments in the Plan; c. the Debtors will announce the starting bid at the commencement of the Auction; c. the Debtors will announce what the bidding increments are at the Auction, after consultation with the Omega Parties and the Committee, which may be modified as necessary to the extent the Debtors deem appropriate; e. each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Restructuring Transaction; and

	f. absent irregularities in the conduct of the Auction, the Bankruptcy Court will not consider Bids made after the Auction is closed; and the Auction shall be governed by such other Auction Procedures as may be announced by the Debtors after consultation with its advisors from time to time on the record at the Auction.
Selection of Successful Bid	Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, after consultation with the Omega Parties and the Committee, in the exercise of their reasonable, good-faith business judgment, shall identify the highest or otherwise best Qualified Bid that in the exercise of their fiduciary duties the Debtors in good faith believe is in the best interests of the Debtors' estates and stakeholders, which will be determined by considering, among other things: a. the total expected consideration to be received by the Debtors; b. the likelihood of the bidder's ability to close a transaction and the timing thereof; c. whether any proposed modification of the Plan require re-solicitation of ballots; d. the ability of the bidder to satisfy necessary regulatory approvals and the timing for obtaining such; and e. the expected net benefit to the estates, including enhanced treatment of Creditors. The Qualified Bidder having submitted the successful bid (the "Successful Bid") will be deemed the "Successful Bidder". The Debtors may also designate the Back-Up Bid (as defined below). The Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which such Successful Bid was made. The Debtors will present the results of the Auction to the Bankruptcy Court at the Confirmation Hearing (as defined below), at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder was selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, (c) the Successful Bid was a Qualified Bid as defined in these Bidding Procedures and (d) consummation of the Successful Bid will provide the highest or otherwise best value for the Debtors' assets and is in the best interests of the Debtors' estates.
Designation of Back-Up Bidder	If the Successful Bidder fails to consummate the Successful Bid, then the Qualified Bidder with the second highest or otherwise best Bid (the "Back-Up Bidder"), as determined by the Debtors after consultation with their advisors, the Omega Parties and the Committee, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid (the "Back-Up Bid"); provided however, the Debtors' ability to designate the Plan Sponsor as a Back-Up Bidder is subject to the Plan Sponsor's rights under the SPA to terminate. The Debtors will be authorized to consummate the transaction pursuant to the Back-Up Bid as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least twenty-four (24) hours advance notice, which

	notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder at the Auction, the Back-Up Bid shall remain open until 21 days after the Confirmation Hearing.
Return of Good Faith Deposit	The Good Faith Deposit of the Successful Bidder shall, upon consummation of the Successful Bid, be credited to the purchase price paid for Debtors' Assets. If the Successful Bidder fails to consummate the Successful Bid, then the Good Faith Deposit shall be forfeited to, and retained irrevocably by, the Debtors, in accordance with the SPA.
Reservation of Rights	Notwithstanding anything herein to the contrary, the Debtors, after consultation with the Omega Parties and the Committee, reserve their rights to modify these Bidding Procedures in any manner that will best promote the goals of the bidding process or impose, at or prior to the Auction, additional customary terms and conditions on the Restructuring Transaction.

PROPOSED NOTICE PROCEDURES

15. The Debtors propose to serve by first-class mail the Bidding Procedures Order and a notice of the Bidding Procedures and Auction (the "Bidding Procedures Notice"), substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**, within one (1) business day after entry of the Bidding Procedures Order, on (a) the Office of the U.S. Trustee; (b) the Office of the Attorney General of the states in which the Debtors operate the facilities in the Restructuring Portfolio; (c) counsel to official committee of unsecured creditors, and if one is not formed, to the Debtors' forty (40) largest unsecured creditors on a consolidated basis; (d) counsel to the Plan Sponsor; (e) counsel to the DIP Lender; and (f) any party known or reasonably believed to have expressed an interest in acquiring the Restructuring Portfolio.

THE PROPOSED DISCLOSURE STATEMENT SOLICITATION PROCEDURES

16. The Plan classifies all claims against and interests in the Debtors, other than Administrative Claims, DIP Facility Claims, Priority Tax Claims, and Other Priority Claims:

Class	Claim/Equity Interest	Status	Voting Rights
1.	Omega Secured Claim	Impaired	***Entitled to Vote***
2.	Secured Tax Claims	Unimpaired	Deemed to Accept

Class	Claim/Equity Interest	Status	Voting Rights
3.	Other Secured Claims	Unimpaired	Deemed to Accept
4.	General Unsecured Claims	Impaired	***Entitled to Vote***
5.	Intercompany Claims	Impaired	Deemed to Reject
6.	Subordinated Claims	Impaired	Deemed to Reject
7.	Old Parent Interests	Impaired	Deemed to Reject
8.	Old Intercompany Interests	Unimpaired	Deemed to Accept

17. Based on the foregoing, the Debtors propose to solicit votes only from holders of claims in those classes listed above as entitled to vote. Holders of claims in other classes are either (a) unimpaired under the Plan and, therefore, will be conclusively presumed to have accepted the Plan (*see* 11 U.S.C. § 1126(f)), or (b) not receiving any distribution under the Plan and, therefore, will be deemed to have rejected the Plan (*see* 11 U.S.C. § 1126(g)).

A. Voting Record Date

18. The Debtors propose May 10, 2018 as the voting record date (the "Voting Record Date") for purposes of determining which creditors may vote on the Plan and which non-voting creditors and interest holders are entitled to receive a Non-Voting Notice (as defined herein).

B. Solicitation Package

19. Upon approval of the Disclosure Statement, the Debtors seek to distribute the following materials (collectively, the "Solicitation Package") to each record and beneficial holder of a claim and/or interest entitled to vote on the Plan:

a. a cover letter describing the contents of the Solicitation Package;
b. the Disclosure Statement, together with all exhibits thereto (which exhibits include the Plan);[4]

[4] The Debtors, in their discretion, may distribute either hard copies of the Disclosure Statement or a CD-ROM containing the Disclosure Statement.

c. the order approving the Disclosure Statement;
d. the Confirmation Hearing Notice (as defined below);
e. an appropriate ballot, including voting instructions;
f. a pre-addressed stamped return envelope; and
g. such other materials as the Court may direct.

20. The Debtors expect that they will be able to commence distribution of the Solicitation Packages no later than three (3) business days after the date on which the Disclosure Statement Order is entered (the "Solicitation Commencement Date").

21. To the extent the winning bidder is not the Stalking Horse, then the Debtors propose to supplement the Disclosure Statement accordingly and serve such supplement on all parties that received a Solicitation Package.

C. Form of Ballots

22. Holders of claims in Class 1 (Omega Secured Claim) and Class 4 (General Unsecured Claims) are entitled to vote on the Plan. The Debtors propose to distribute ballots, substantially in the forms attached as **Exhibits 1-A and 1-B** to the Disclosure Statement Order, to such creditors.

D. Notices of Non-Voting Status

23. For those classes of claims that are unimpaired and deemed to accept the Plan or impaired and deemed to reject the Plan and, thus, not entitled to vote to accept or reject the Plan, the Debtors propose to distribute to each member of such class the notice of non-voting status (the "Non-Voting Notice") attached as **Exhibits 2-A and 2-B** to the Disclosure Statement Order. The Non-Voting Notice informs such members of the status of their claims (*i.e.*, unimpaired or impaired) and contains, among other things, (a) information regarding the Confirmation Hearing, (b) the deadline for objecting to the Plan, and (c) instructions on how to obtain a copy of the Plan and Disclosure Statement.

PROPOSED VOTING DEADLINE AND TABULATION PROCEDURES

A. Voting Deadline

24. The Debtors request that the Court enter an order requiring that, in order to be counted as a vote to accept or reject the Plan, any ballot accepting or rejecting the Plan be properly executed, completed and delivered so as to be actually received by Rust Consulting/Omni Bankruptcy, as the Debtors' agent for soliciting votes to accept or reject the Plan and proving related services (the "Voting Agent"), not later than 5:00 p.m. (prevailing Central Time) on June 12, 2018 (the "Voting Deadline").

B. Voting Tabulation Procedures

25. The Debtors propose, solely for purposes of voting to accept or reject the Plan and not for purposes of allowance or distribution on account of a claim and without prejudice to the rights of the Debtors in any other context, that the amount of a claim or interest used to tabulate acceptance or rejection of the Plan be either:

a. the claim amount listed in the Debtors' schedules of liabilities, provided that such claim is not scheduled as contingent, disputed, or unliquidated and that the creditor has not filed a proof of claim or interest;

b. the liquidated amount specified in a proof of claim or interest timely filed with the Court (or otherwise deemed timely filed by the Court under applicable law), to the extent that the proof of claim or interest is not the subject of an objection; or

c. the amount temporarily allowed by the Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), after notice and a hearing at or before the Confirmation Hearing.

26. If a claim holder casts a ballot and the entirety of such creditor's claim is the subject of an objection to said claim filed before the Voting Deadline, the Debtors request that such voter's ballot not be counted. If a voter casts a ballot and part of such voter's claim is the subject of an objection filed before the Voting Deadline, the Debtors request that such voter's ballot be treated as a claim for voting purposes only to the extent of the remaining amount of the

claim not subject to any objection. In either case, if a voter desires to vote in a higher amount, the voter may seek authority from the Court to do so following notice and a hearing, pursuant to Bankruptcy Rule 3018(a).

27. The Debtors request that ballots cast by voters who have filed proofs of claim in contingent, wholly unliquidated**,** or unknown amounts that are not the subject of an objection filed before the Voting Deadline, be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, in the amount of $1.00 each.

28. The Debtors propose that any holder of a claim for which an objection is pending on the Rule 3018(a) Motion Deadline, whether such objection relates to the entire Claim or a portion thereof, shall not be entitled to vote on the Plan and shall not be counted in determining whether the requirements of Bankruptcy Code Section 1126(c) have been met with respect to the Plan (except to the extent and in the manner as may be set forth in the objection) unless (a) the Claim has been temporarily allowed for voting purposes pursuant to Bankruptcy Rule 3018(a) and in accordance with this Order or (b) at or prior to the Confirmation Hearing, the objection to such Claim has been withdrawn or resolved in favor of the creditor asserting the Claim.

29. The Debtors propose June 5, 2018 at 5:00 p.m. (prevailing Central Time) (the "Rule 3018(a) Motion Deadline") as the deadline for the filing and serving of any motion requesting temporary allowance of a Claim for purposes of voting pursuant to Bankruptcy Rule 3018(a) (the "Rule 3018(a) Motion(s)"). Rule 3018(a) Motions must be filed with the Court and served on the Notice Parties (as defined herein) so as to be **actually received** not later than the Rule 3018(a) Motion Deadline; provided however, that if an objection to a Claim is filed on or after the date that is seven (7) days before the original Rule 3018(a) Motion Deadline, then the

Rule 3018(a) Motion Deadline shall be extended as to such Claim such that the holder thereof shall have at least seven (7) days to file a Rule 3018(a) Motion.

30. The Debtors propose that any party timely filing and serving a Rule 3018(a) Motion shall be provided a Ballot and be permitted to cast a provisional vote to accept or reject the Plan, if such party is in a Voting Class. If, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Rule 3018(a) Motion prior to the Confirmation Hearing, then at the Confirmation Hearing this Court shall determine whether the provisional Ballot should be counted as a vote on the Plan.

31. The Debtors propose that any holder of a claim for which an objection is pending on the Rule 3018(a) Motion Deadline, whether such objection relates to the entire Claim or a portion thereof, shall not be entitled to vote on the Plan and shall not be counted in determining whether the requirements of Bankruptcy Code Section 1126(c) have been met with respect to the Plan (except to the extent and in the manner as may be set forth in the objection) unless (a) the Claim has been temporarily allowed for voting purposes pursuant to Bankruptcy Rule 3018(a) and in accordance with this Order or (b) at or prior to the Confirmation Hearing, the objection to such Claim has been withdrawn or resolved in favor of the creditor asserting the Claim.

32. The Debtors further request that claims filed for zero dollars ($0.00) be disallowed for voting purposes only and not entitled to vote.

33. Notwithstanding anything herein to the contrary, any claimant/creditor who files a claim that is duplicative of another claim(s) within the same voting class, as determined by the Debtors, shall be provided with only one Solicitation Package and one ballot for voting a single claim in such class, regardless of whether the Debtors have objected to the duplicate claim(s).

34. Any creditor who holds multiple claims within a single class shall have such claims aggregated, for purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, as if such creditor held one claim in such class and the creditor will receive a single ballot with respect to all of its claims in such class.

35. In addition, the Debtors request that the following voting procedures and standard assumptions ("Tabulation Rules") be used in tabulating ballots:

a. Whenever a creditor casts more than one ballot voting the same claim prior to the Voting Deadline, the last properly completed ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and to supersede any prior ballots;

b. A creditor must vote all of its claims within a class either to accept or reject the Plan and may not split its vote. Accordingly, a ballot that partially rejects and partially accepts the Plan will not be counted;

c. If a ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or another acting in a fiduciary or representative capacity when signing, then unless otherwise determined by the Debtors, on request of the Debtors and prior to the ballot being counted, such signatory must submit proper evidence satisfactory to the Debtors of its authority to act on behalf of a holder of claims;

d. The Debtors in their discretion, subject to contrary order of the Court, may waive any defect in any ballot at any time, either before or after the close of voting, and without notice. Except as provided below, unless the ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may, in their discretion, reject such ballot as invalid and, therefore, decline to utilize it in connection with confirmation of the Plan by the Court;

e. Unless otherwise ordered by the Court, all questions as to the validity, form, eligibility (including time of receipt), and revocation or withdrawal of ballots will be determined by the Debtors in their discretion, which determination shall be final and binding;

f. Subject to contrary order of the Court, the Debtors reserve the absolute right to reject any and all ballots not proper in form, the acceptance of which would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code;

g. Any ballot that is executed but that does not indicate an acceptance or rejection of the Plan, or that indicates both an acceptance and rejection of the Plan, shall not be counted;

h. Any ballot transmitted to the Voting Agent by facsimile or other electronic means, except in the Debtors' sole discretion, will not be counted;

i. Any ballot that is ineligible, contains insufficient information to permit the identification of the claimant or is unsigned or without an original signature will not be counted;

j. Unless waived, any defects or irregularities in connection with deliveries of ballots must be cured within such time as the Debtors or the Court determine. Neither the Debtors nor any other person or entity will be under any duty to provide notification of defects or irregularities with respect to deliveries of ballots, nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will not be counted; and

k. Any vote purportedly cast on behalf of a class of creditors will not count for voting purposes unless and until the class is certified by the Court pursuant to a class proof of claim to which no objection has been filed, or if an objection has been filed to such a proof of claim, which has been temporarily certified in an allowed amount for purposes of voting.

CONFIRMATION HEARING AND NOTICE AND OBJECTION PROCEDURES

A. Confirmation Hearing

36. The Debtors request that the hearing to consider confirmation of the Plan (the "Confirmation Hearing") be scheduled for June 20, 2018 at 10:00 a.m. (prevailing Central Time) or such other time as may be convenient for the Court. The Confirmation Hearing may be continued from time-to-time by the Court or the Debtors without further notice other than adjournments announced in open court or through a filing on the Court's docket. The proposed timing for the Confirmation Hearing complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and will enable the Debtors to pursue timely confirmation of the Plan.

B. Proposed Noticing Procedures

37. The Debtors propose to serve by first class mail to all creditors and interest holders notice substantially in the form annexed to the Disclosure Statement Order as **Exhibit 3** (the "Confirmation Hearing Notice"). The Confirmation Hearing Notice contains, *inter alia*, (a) the date of approval of the Disclosure Statement, (b) the deadline for filing objections to confirmation of the Plan, (c) the deadline for voting on the Plan, and (d) the time, date and place of the Confirmation Hearing.

38. The Debtors also propose to publish the form of Confirmation Hearing Notice (or a form substantially similar thereto) at least once in *The Wall Street Journal* or *The Dallas Morning News* at least twenty-eight (28) days prior to the Confirmation Hearing.

C. Proposed Plan Objection Procedures

39. The Debtors request that the Court direct that objections to confirmation of the Plan or proposed modifications to the Plan, if any, (i) be in writing; (ii) state the name and address of the responding party and the amount and nature of the claim or interest of such party; (iii) state with particularity the legal and factual basis of any response; (iv) conform to the Bankruptcy Rules and Local Rules; and (v) be filed with the Bankruptcy Court, together with proof of service, electronically, in accordance with the Administrative Procedures for the Filing, Signing, and Verifying of Documents by Electronic Means (the "Administrative Procedures") (the Administrative Procedures can be found at the Bankruptcy Court's official website (http://www.txnb.uscourts.gov)), by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest without legal representation, in paper form, and served in accordance with the Administrative Procedures and the Local Rules, so as to be actually received not later than 5:00 p.m. (prevailing Central Time) on June 12, 2018 (the "Objection

Deadline") and, such service shall be completed and actually received by the following parties on or prior to the Objection Deadline: (a) proposed counsel for the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020 (Attn: Thomas R. Califano, Esq. and Dienna Corrado, Esq.), One Atlantic Center, 1201 West Peachtree Street, Suite 2800, Atlanta, GA 30309 (Attn: Daniel Simon, Esq.), 1717 Main Street, Suite 4600, Dallas, TX 75201 (Attn: Andrew Zollinger, Esq.), (b) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Lisa L. Lambert), (c) counsel to OHI Assets RO, LLC and the DIP Lender, Bryan Cave, LLP, One Atlantic Center, 1201 West Peachtree Street, Suite 1400, Atlanta, GA 30309 (Attn: Mark Duedall, Esq.), JP Morgan Chase Tower, 2200 Ross Avenue, Suite 3300, Dallas, TX 75201 (Attn: Keith Aurzada, Esq.), and One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102 (Attn: David Unseth, Esq.), (d) counsel to the Plan Sponsor, Neligan LLP, 325 N. St. Paul Street, Suite 3600, Dallas, Texas 75201 (Attn: Patrick J. Neligan, Esq. and James P. Muenker, Esq.), and (e) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases.

BASIS FOR RELIEF

A. The Proposed Bidding Procedures Are Reasonable, Appropriate and in the Best Interests of the Debtors' Estates.

40. As set forth in *Bank of America Nat'l Trust and Savings Assoc. v. 203 North LaSalle Partnership*, it is the province of the marketplace and the creditors to determine whether, in a plan of reorganization sponsored by pre-petition equity holders, the consideration offered is satisfactory and sufficient. 526 U.S. 434 (1999). The Supreme Court noted that "[u]nder a plan granting an exclusive right, making no provision for competing bids or competing plans, any

determination that the price was top dollar would necessarily be made by a judge in bankruptcy court, whereas the best way to determine value is exposure to a market." *Id.* at 457.

41. In *203 North LaSalle*, the Supreme Court stated that the debtor's plan was doomed "by its provision for vesting equity in the reorganized business in the Debtor's partners without extending an opportunity to anyone else either to compete for that equity or to propose a competing reorganization plan." *Id.* at 452. Thus, the Supreme Court emphasized the need to expose the opportunity to acquire the debtor's assets to the market. Accordingly, the Debtors seek approval of bidding procedures to solicit bids for the Restructuring Portfolio and obtain the highest and best value for such assets. *See In re Montco Offshore, Inc.*, Case No. 17-31646 (MI) (Bankr. S.D. Tex. Aug. 10, 2017) (approval of procedures and auction for competing transactions to act as sponsor of debtor's chapter 11 plan); *In re PJ Finance Company, LLC*, Case No. 11-10688 (BLS) (Bankr. D. Del. Oct. 26, 2011) (establishing procedures which, among other things, authorized an auction for interested parties to become plan sponsor).

42. The paramount goal of a chapter 11 process is to maximize the proceeds received by the estate. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),* 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . debtor's duty . . . is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *Cello Bag Co. v. Champion Int'l Corp. (In re Atlanta Packaging Prods., Inc.),* 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)); *In re Summit Global Logistics, Inc.*, No. 08-11566, 2008 WL 819934, at *14 (Bankr. D.N.J. Mar. 26, 2008) (describing a proposed transaction as one that "maximize[d] value and return to interested parties"). To that end, courts have recognized that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate of a debtor

and, therefore, are appropriate. *See Integrated*, 147 B.R. at 659 (such procedures "encourage bidding and to maximize the value of the debtor's assets"); *In re Fin. News Network Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) ("[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 estate.").

43. With this in mind, courts defer to a debtor's business judgment in the context of bidding and auction procedures, *In re Trans World Airlines Inc.*, No. 01-0056, 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001) ("It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor . . . .").

44. In this case, the Plan Sponsor does not own, either directly or indirectly, the existing equity interests of any of the Debtors. However, there is some overlap between the indirect, beneficial ownership of the Debtors and the Plan Sponsor. Regardless, the Restructuring Transaction with the Plan Sponsor sets forth a bidding floor which, in conjunction with the Bidding Procedures, provides an appropriate and efficient means for encouraging bidders to submit bids for a Competing Transaction that would increase recoveries to the Debtors' creditors and ensure that the consideration offered pursuant to the SPA is the highest and best offer available to the Debtors.

45. The Bidding Procedures provide a framework for the Debtors to entertain bids for a Competing Transaction, and if competing bids are received, conduct an auction in an orderly, yet competitive, fashion, with the ultimate goal of maximizing the net value available to the Debtors' estates. The Bidding Procedures contemplate an open and fair auction process with

reasonable barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

46. The Bidding Procedures provide the Debtors with a reasonable opportunity to consider bids for Competing Transactions and allow the Debtors an appropriate process to select the highest and best offer for the Restructuring Transaction thereby maximizing recovery to their estates and creditors under the Plan. Accordingly, the Debtors and their stakeholders can be assured that the consideration obtained will be fair and reasonable.

47. In sum, the Debtors believe that the proposed Bidding Procedures create an appropriate framework for expeditiously establishing the best and highest offer for the Restructuring Transaction. Accordingly, the Debtors submit that the proposed Bidding Procedures are reasonable, appropriate, and within the Debtors' sound business judgment.

B. The Bid Protections are Appropriate and Should be Approved.

48. To induce the Plan Sponsor to serve as Stalking Horse, the Debtors agree, subject to Court approval, to certain bid protections, including the Break-Up Fee and Expense Reimbursement. Specifically, in consideration for and as an inducement to the Plan Sponsor to enter into the Restructuring Transaction on the terms set forth in the SPA, the Debtors seek to provide (a) a Break-Up Fee, in cash, equal to $4,000,000; and (b) Expense Reimbursement to the Plan Sponsor for its reasonable out-of-pocket costs, fees and expenses (including reasonable legal, financial advisory, accounting and other similar costs, fees and expenses) incurred in connection with the SPA or the Restructuring Transaction, subject to an aggregate cap of $500,000. The Break-Up Fee and Expense Reimbursement shall be payable only in the event that (x) an Alternative Transaction (as defined in the SPA) closes, or (y) the Stalking Horse

validly terminates the SPA pursuant to Section 7.01(c)(i) *(i.e.* Debtors' material breach or failure to perform) or Section 7.01(c)(ii) (*i.e.* closing conditions not met) of the SPA.

49. Bankruptcy courts have long recognized, break-up fees and other termination fees are a reasonable, normal and, in many cases, necessary component of significant sales conducted under the Bankruptcy Code:

> Breakup fees are important tools to encourage bidding and to maximize the value of the debtor's assets .... In fact, because the ... corporation ha[s] a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize values.

Integrated, 147 B.R. at 659-60.

50. Break-up fees are appropriate where they "provide some benefit to the debtor's estate," including (a) "induc[ing] a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely" and (b) promoting more competitive bidding "by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Calpine Corp. v. O'Brien Envt'l. Energy. Inc. (In re O'Brien Envt'l Energy. Inc.),* 181 F.3d 527, 536-37 (3d Cir. 1999). In connection therewith, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.* at 537.

51. In addition, "[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break-up fees are generally permissible." *Integrated,* 147 B.R. at 662. Nor is there a prohibition on break-up fees and expense reimbursements in the context of insider sale transactions. Courts have approved bid protections where the purchaser was an insider. *See, e.g., In re DirectBuy Holdings, Inc.*, Case No. 16-12435 (CSS) (Bankr. D. Del.

Dec. 1, 2016) (D.I. 126) (approving expense reimbursement of 3% of purchase price for 100% equity owner of debtor parent); *In re BPS US Holdings Inc.*, Case No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) (D.I. 233) (approving break-up fee of 3% of purchase price plus expense reimbursement of 0.6% of the purchase price for stalking horse bidder comprising the largest shareholder of the debtor).

52. Although bidding incentives in favor of a stalking horse are measured against a business judgment standard, to receive administrative expense priority pursuant to section 503(b) of the Bankruptcy Code, the bidding incentive must provide some post-petition benefit to the estate. *See In re O'Brien Envtl. 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*. at 535 ("We . . . conclude that the determination whether break-up fees or expenses are allowable under §503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate. Therefore, we conclude that the business judgment rule should not be applied as such in the bankruptcy context. Nonetheless, the considerations that underlie the debtor's judgment may be relevant to the Bankruptcy Court's determination on a request for break-up fees and expenses.").

53. The Bid Protections are the product of extensive, good faith, arm's-length negotiations between the Debtors and the Plan Sponsor. Significantly, because there exists some overlap in the indirect beneficial ownership of the Debtors and the Plan Sponsor, the Debtors negotiated the Bid Protections to ensure that they reflect the most favorable terms achievable by the Debtors under the circumstances and will serve their intended purpose to compensate the Plan Sponsor for the risk and expense of serving as Stalking Horse.

54. The Plan Sponsor would not have entered into the SPA without the Bid Protections. Indeed, the Bid Protections were used by the Debtors to induce the Plan Sponsor to both evaluate the value of Restructuring Portfolio and convert that value to a dollar figure on which other bidders could rely, and submit a bid without which bidding for a Restructuring Transaction might be more limited or non-existent. *See, e.g., Integrated,* 147 B.R. 650; *In re* 995 *Fifth Ave. Assocs. L.P.,* 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989). The Bid Protections will compensate the Plan Sponsor for the benefit it provides to the Debtors' estates in the event the SPA and corresponding Bidding Procedures elicits one or more additional qualified bids.

55. Finally, the Bid Protections will permit the Debtors to insist that competing bids for a Restructuring Transaction be materially higher or otherwise better than the Stalking Horse's bid. The Debtors believe that the proposed Bid Protections will increase the likelihood that they will receive the greatest possible consideration pursuant to the Restructuring Transaction. Moreover, the Bidding Procedures allow for an orderly and comprehensive marketing and plan process, thereby maximizing value and avoiding a prolonged stay in bankruptcy.

56. Accordingly, the Debtors submit that the Bid Protections are reasonable, appropriate, and necessary to preserve and enhance the value of the Restructuring Portfolio for the benefit of their estates and creditors and therefore, should be approved.

C. The Proposed Form and Manner of Notice are Appropriate.

57. A debtor is required to notify its creditors of any proposed sale of its assets, including a disclosure of the time and place of an auction, the terms and conditions of the sale, and the deadline for filing any objections. The Debtors submit that the Bidding Procedures Notice fully complies with Bankruptcy Rule 2002 and other applicable Bankruptcy Rules, and includes information regarding the Bidding Procedures necessary to enable interested parties to participate in the Auction (as defined in the Bidding Procedures).

58. The Debtors further submit that the notice to be provided through the Bidding Procedures Notice and the method of service proposed herein constitutes good and adequate notice of the Bidding Procedures and the other components of the Debtors' receipt and consideration of competing bids for the Restructuring Transaction. Therefore, the Debtors respectfully request that this Court approve the foregoing notice procedures.

D. The Disclosure Statement Should be Approved.

59. Pursuant to section 1125(b) of the Bankruptcy Code, a plan proponent must provide holders of impaired claims and interests entitled to vote with "adequate information" regarding the proposed chapter 11 plan. *See* 11 U.S.C. § 1125(b). The Debtors respectfully submit that the Disclosure Statement contains "adequate information" within the meaning of section 1125(a)(1) of the Bankruptcy Code and, thus, should be approved by this Court.

60. Section 1125(a)(1) defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, . . . that would enable [a] hypothetical investor of the relevant class to make an informed judgment about the plan . . . ." 11 U.S.C. § 1125(a)(1).

61. A debtor's disclosure statement must, as a whole, provide information that is "reasonably practicable" to permit an "informed judgment" by creditors and interest holders entitled to vote on that debtor's plan of reorganization. *See In re Ionosphere Clubs, Inc.*, 179 B.R. 24, 29 (S.D.N.Y. 1995); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) ("The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan."); *In re BSL Operating Corp.*, 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986) ("A disclosure statement . . . is evaluated only in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests.").

62. The Court has broad discretion in determining whether a disclosure statement contains adequate information. *See Mabey v. Sw. Elec. Power Co. (In re Cajun Elec. Power Coop.)*, 150 F.3d 503, 518 (5th Cir. 1998) ("[I]n determining what constitutes 'adequate information' with respect to a particular disclosure statement, 'both the kind and form of information are left essentially to the judicial discretion of the court . . . the information required will necessarily be governed by the circumstances of the case.'") (quoting S. REP. NO. 95- 989, at 121 (1978)), *cert. denied*, 119 S. Ct. 2019 (1999); *Unichem*, 72 B.R. at 97 ("Determination of the adequacy of a disclosure statement, and therefore, approval of it, is within the sound discretion of the bankruptcy court and is to be determined on a case by case basis.").

63. Accordingly, the determination of the adequacy of information in a disclosure statement must be made on a case-by-case basis, focusing on the unique facts and circumstances of the relevant case. In that regard, courts generally examine whether a disclosure statement contains, if applicable, the following types of information:

(a) the circumstances that gave rise to the filing of the bankruptcy petition;
(b) a description of the available assets and their value;

(c) the anticipated future of the debtor;
(d) the sources of information provided in the disclosure statement;
(e) the condition and performance of the debtor while in chapter 11;
(f) information regarding claims against the estate;
(g) a liquidation analysis setting forth the estimated return that creditors would receive if the debtor's bankruptcy case were a case under chapter 7 of the Bankruptcy Code;
(h) the accounting and valuation methods used to produce the financial information in the disclosure statement;
(i) information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors or officers of the debtor;
(j) a summary of the chapter 11 plan;
(k) an estimate of all administrative expenses, including attorneys' fees and accountants' fees;
(l) financial information that would be relevant to creditors' determinations of whether to accept or reject the plan;
(m) information relevant to the risks being taken by the creditors and interest holders;
(n) the tax consequences of the plan; and
(o) the relationship of the debtor with its affiliates.

See, e.g., In re Scioto Valley Mortg. Co., 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) (adequacy of disclosure statement evaluated in light of the factors set forth in *Scioto Valley Mortg.)*. This list is not meant to be exclusive, nor must a debtor include in its disclosure statement all of the information on the list. Rather, the court must decide what information is appropriate in each case. *See In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (making use of similar list but cautioning that "no one list of categories will apply in every case").

64. The Disclosure Statement contains ample information with respect to the topics identified above, including descriptions and summaries of, among other things (a) the terms of the Plan, (b) various events preceding the commencement of these chapter 11 cases, (c) detailed descriptions of the sales or transfers of various assets of the Debtors, (d) the nature of known claims against the Debtors' estates, (e) risk factors affecting the Plan, (f) financial information

that would be relevant to creditors' determinations of whether to accept or reject the Plan, (g) various tax consequences of the Plan, and (h) information relevant to the risks being taken by creditors and interest holders. Thus, the Disclosure Statement submitted in these chapter 11 cases provide an extensive and comprehensive overview of the Plan and its ramifications sufficient to constitute adequate information within the meaning of section 1125 of the Bankruptcy Code.

65. The Disclosure Statement also (a) provides a narrative summarizing the nature of the Plan, (b) identifies each class of creditors and its composition, the amount of claims, the proposed recovery for each class and related timing, and all sources and amounts of funding, and (c) provides a hypothetical liquidation analysis under chapter 7. Accordingly, the Debtors submit that the Disclosure Statement contains "adequate information" and should be approved.

66. The Debtors will continue to review the Disclosure Statement, and, based upon their ongoing review and further developments in these chapter 11 cases, may make additional changes and/or disclosures prior to the Disclosure Statement hearing. Any additional disclosure will increase the amount of information being provided to holders of claims, and will consequently enhance the adequacy of information in the Disclosure Statement.

E. The Solicitation Procedures Should be Approved.

i. Establishment of Voting Record Date.

67. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a plan, "creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after

notice and a hearing." FED. R. BANKR. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

68. Accordingly, the Debtors request that this Court establish May 10, 2018, as the Voting Record Date for purposes of determining which creditors are entitled to vote on the Plan and which non-voting creditors and interest holders are entitled to receive a Non-Voting Notice.

ii. Approving Solicitation Package.

69. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests entitled to vote for the purpose of soliciting their votes and providing adequate notice of the confirmation hearing. The Debtors submit that the Solicitation Package complies with Bankruptcy Rule 3017(d) and should be approved.

iii. Approving Form of Ballots.

70. Bankruptcy Rule 3017(d) requires that a debtor mail a form of ballot to "creditors and equity security holders entitled to vote on the plan." FED. R. BANKR. P. 3017(d). The Debtors propose to distribute to creditors entitled to vote on the Plan one or more ballots, substantially in the forms attached as **Exhibits 1-A and 1-B** to the Disclosure Statement Order. The forms for these ballots are based on Official Form No. B-314, but have been modified to address the particular aspects of this chapter 11 case, and to include certain additional information that the Debtors believe to be relevant and appropriate to each class of claims that is entitled to vote to accept or reject the Plan.

F. Establishment of Voting Deadline and Approval of Tabulation Procedures.

71. Bankruptcy Rule 3017(c) provides that, in connection with or before approval of a disclosure statement, a court shall fix a time within which the holders of claims or equity security interests may accept or reject the relevant chapter 11 plan. *See* FED. R. BANKR. P. 3017(c).

Accordingly, the Debtors request that the Court enter an order requiring that, in order to be counted as a vote to accept or reject the Plan, any ballot accepting or rejecting the Plan be properly executed, completed and delivered so as to be actually received by the Voting Agent no later than the Voting Deadline. The Debtors submit that a solicitation period of not less than 30 days provides sufficient time for creditors to make informed decisions to accept or reject the Plan and submit timely ballots. Therefore, the Voting Deadline should be approved.

72. Section 1126(c) of the Bankruptcy Code provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." FED. R. BANKR. P. 3018(a).

73. The Debtors submit that the proposed Tabulation Rules and other related vote tabulation procedures set forth above will establish a fair and equitable voting process and, therefore, should be approved.

I. The Confirmation Procedures Should be Approved.

i. Confirmation Hearing

74. Bankruptcy Rule 3017(c) provides that "[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation." FED. R. BANKR. P. 3017(c). The proposed timing for the Confirmation Hearing is in compliance with the

Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

ii. Establishing Confirmation Notice Procedures.

75. Bankruptcy Rule 2002 requires not less than twenty-eight (28) days' notice to all creditors and equity security holders of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. In accordance with Bankruptcy Rules 2002 and 3017(d), the Debtors propose to serve all creditors and equity security holders the Confirmation Hearing Notice. The Debtors submit that the Confirmation Hearing Notice complies with the notice requirements of Bankruptcy Rules 2002 and 3017.

76. The Debtors submit that the notice procedures described herein will provide parties in interest adequate notice of the Confirmation Hearing and, accordingly, requests that the Court approve such notice as adequate and sufficient.

iii. Establishing Objection Procedures.

77. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served "within a time fixed by the court." FED. R. BANKR. P. 3020(b)(1).

78. The Debtors submit that the proposed timing for filing and service of objections and proposed modifications to the Plan, if any, will afford the Court, the Debtors, and other parties in interest sufficient time to consider the objections and proposed modifications to the Plan prior to the Confirmation Hearing.

RESERVATION OF RIGHTS

79. To the extent that circumstances arise requiring a modification or amendment of the Solicitation Procedures and/or the Confirmation Procedures, the Debtors hereby reserve the right to supplement and/or amend the Solicitation Procedures and the Confirmation Procedures as appropriate to better facilitate the solicitation and/or confirmation process.

NOTICE

80. Notice of this Motion shall be provided to: (a) U.S. Trustee; (b) the Office of the Attorney General of the states in which the Debtors operate Facilities; (c) the Debtors' forty (40) largest unsecured creditors on a consolidated basis; (d) counsel for OHI Asset RO, LLC and the DIP Lender; (e) the Internal Revenue Service; (f) the Department of Medicaid, Department of Health, and Division of Health Services Regulation in each state in which the Debtors operate Facilities, and (g) those parties who have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that such notice is sufficient and that no further notice is required.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and the Disclosure Statement Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

[*remainder of page left intentionally blank*]

Dated: March 16, 2018
Dallas, Texas

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Andrew Zollinger

Andrew Zollinger, State Bar No. 24063944
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545
Email: andrew.zollinger@dlapiper.com

-and-

Thomas R. Califano (admitted *pro hac vice*)
Dienna Corrado (admitted *pro hac vice*)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
Facsimile: (212) 335-4501
Email: thomas.califano@dlapiper.com
dienna.corrado@dlapiper.com
-and-

Daniel M. Simon (admitted *pro hac vice*)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 736-7800
Facsimile: (404) 682-7800
Email: daniel.simon@dlapiper.com

Proposed Counsel for the Debtors