

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

	)	
In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (CTG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Ref. Docket No. 16</b>

**ORDER (A) APPROVING BIDDING  
PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY  
ALL OF THE DEBTORS’ ASSETS, (B) AUTHORIZING AND APPROVING ENTRY  
INTO THE STALKING HORSE APA, (C) APPROVING THE DESIGNATION OF  
THE STALKING HORSE BIDDER, (D) SCHEDULING A SALE HEARING AND  
OBJECTION DEADLINES WITH RESPECT TO THE SALE, (E) SCHEDULING  
AN AUCTION, (F) APPROVING THE FORM AND MANNER OF NOTICE OF  
THE SALE HEARING AND AUCTION, (G) APPROVING CONTRACT ASSUMPTION  
AND ASSIGNMENT PROCEDURES, AND (H) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”) of Avadim Health, Inc. and its debtor affiliates in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), as debtors and debtors in possession (collectively, the “Debtors”), for the entry of an order (i) approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”)<sup>2</sup> in connection with the sale of all or substantially all of the Debtors’ assets (referred to herein and the Bidding Procedures as the “Company Assets”, and such sale, the “Sale”); (ii) authorizing and approving the Debtors’ entry into the Stalking Horse APA; (iii) scheduling a virtual auction of the Company Assets

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<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> All capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion, the Bidding Procedures, or the *Interim Order: (I) Authorizing Debtors to (A) Obtain Postpetition Senior Secured Financing And (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Liens And Superpriority Claims, (IV) Modifying The Automatic Stay, (V) Scheduling A Final Hearing, And (VI) Granting Related Relief* [ECF No. 51] (the “Interim DIP Order”), as applicable.

(the “Auction”) and a hearing for the approval of the proposed Sale (the “Sale Hearing”); (iv) establishing the procedures (as set forth herein, the “Assignment Procedures”) for the assumption and assignment of the Debtors’ executory contracts or unexpired leases (the “Available Contracts”) in connection with the Sale and the fixing of cure amounts required to be paid pursuant to Bankruptcy Code section 365(b) (the “Cure Amounts”); (v) authorizing and approving the form and manner of the notice of the Sale of the Company Assets, the Auction, and the Sale Hearing, the form of which notice is attached hereto as **Exhibit 2** (the “Notice of Auction and Sale Hearing”) and **Exhibit 3** (the “Publication Notice”); (vi) authorizing and approving the form and manner of notice of (a) the potential assumption and assignment by the Debtors of Contracts and (b) proposed Cure Amounts, the form of which notice is attached hereto as **Exhibit 4** (the “Assumption Notice”); and (vii) granting related relief; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction, the Sale Hearing, and the potential assumption and assignment of Available Contracts; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties-in-interest pursuant to Bankruptcy Rule 6004(a); and this Court having considered the First Day Declaration and the other evidence adduced in support

of entry of this Order; and upon the record of the hearing, if any, as to the relief requested in the Motion as to the Bidding Procedures and all of the proceedings had before this Court; and all of the informal and formal objections to such relief having been considered and withdrawn, resolved, or overruled; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and this Court having found that the legal and factual bases set forth in the Motion and at the hearing, if any, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

- A. The Bidding Procedures, in the form attached hereto as **Exhibit 1**, are fair, reasonable and appropriate, and are designed to maximize the value to be achieved from the Sale.
- B. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).
- C. The Assignment Procedures provided for herein are fair, reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code.
- D. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, including the scheduling of bid deadlines, auction, and sale hearing with respect to the proposed Sale and the form and manner of notices related thereto; (ii) the establishment of procedures to assume and assign the Contracts and fix the Cure Amounts and the form and manner of notices related thereto; and (iii) the Debtors' entry into the Stalking

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<sup>3</sup> The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Horse APA with the Stalking Horse Bidder, subject to higher or otherwise better offers as set forth in the Bidding Procedures.

E. The Stalking Horse APA was negotiated in good faith and at arm's-length among the Debtors and the Stalking Horse Bidder. The process for selecting the Stalking Horse Bidder was fair and appropriate under the circumstances, and in the best interests of the Debtors' estates. The Stalking Horse APA represents a fair and adequate baseline price for the Company Assets, and will provide a benefit to the Debtors' estates.

F. The form and manner of service of the Notice of Auction and Sale Hearing, and the Debtors' proposed publication of the Notice of Auction and Sale Hearing, as proposed in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, and the Bidding Procedures to be employed in connection therewith, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bidding Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Company Assets, including the sale of certain of the Debtors' or their estates' causes of actions, including those arising under chapter 5 of the Bankruptcy Code; and (v) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

G. The Assumption Notice is appropriate and reasonably calculated to provide each non-debtor party to any Contracts (such parties, collectively, the "Non-Debtor Counterparties") with proper notice of the potential assumption and assignment of the applicable Contract, the proposed Cure Amount, and the Assignment Procedures. The inclusion of any particular contract

or lease on an Assumption Notice shall not be deemed to be an admission that such contract or lease is an executory contract or unexpired lease of property or require or guarantee that such contract or lease will be assumed and/or assigned, and all rights of the Debtors with respect to the foregoing are reserved.

H. No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale.

I. The entry of this order (this “Order” or the “Bidding Procedures Order”) is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein, as they pertain to the entry of this Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

**The Bidding Procedures**

3. The Bidding Procedures are incorporated herein and approved, and shall apply with respect to the Sale. The Debtors are authorized to take all actions reasonable and necessary or appropriate to implement the Bidding Procedures.

4. The Debtors are authorized to conduct the process for soliciting bids for the Sale, responding to Qualified Bids, conducting the Auction, and designating one or more Successful Bids, Successful Bidders, Backup Bids, and Backup Bidders, all in accordance with the Bidding Procedures.

5. Potential Bidders or Qualified Bidders must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of

compensation. For the avoidance of doubt, no Qualified Bidder will be permitted to request at any time, whether as part of the Auction, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

6. By submitting a Bid, each Qualified Bidder knowingly and voluntarily agrees, and shall be deemed to have knowingly and voluntarily agreed, to submit to the jurisdiction of the Bankruptcy Court and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.

7. The Stalking Horse Bidder, the Administrative Agent and the DIP Agent shall each be deemed a Qualified Bidder for all purposes, and at all times, under this Order and the Bidding Procedures.

8. At the Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor"), whether or not such liens remain subject to any challenge period as set forth in any DIP Order, shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's claims (a "Credit Bid"). The Stalking Horse Bidder shall be permitted to increase its Credit Bid up to the full amount of its applicable outstanding secured obligations. For purposes of valuing Competing Qualified Bids and determining the Successful Bid, the full face amount of a Credit Bid satisfying the requirements set forth in the Bidding Procedures and this Order shall be deemed to have the same value as the equivalent amount of cash. Subject to each Bid and Qualified Bid satisfying the requirements of these Bidding Procedures, the Debtors shall treat comparable Credit

Bids and cash bids as equivalent and no Credit Bid shall be considered inferior to a cash bid merely because it is a Credit Bid. Notwithstanding anything to the contrary contained herein, but subject in all respects to the challenge period as set forth in the Interim DIP Order or, if and once entered, the Final Order (as defined in the interim DIP Order), the Administrative Agent and the DIP Agent shall each have the right to Credit Bid all or any portion of the aggregate amount of their applicable outstanding secured obligations, notwithstanding any earlier or lower Credit Bid of any portion of their applicable outstanding secured obligations. For the avoidance of doubt, nothing in this Order alters or modifies any of the Committee's rights under paragraph 12 of the Interim DIP Order or, if and once entered, the corresponding paragraph of the Final Order.

9. For the avoidance of doubt, each Qualified Bid must be for all or substantially of the Company Assets and must include cash consideration no less than the Minimum Cash Bid Amount.

#### **Assignment Procedures**

10. The following Assignment Procedures shall govern the assumption and assignment of the Available Contracts in connection with the Sale, and any objections related thereto:

- a. No later than three (3) business days after entry of this Order, the Debtors shall file with this Court and serve the Assumption Notice on each Non-Debtor Counterparty to each of the Available Contracts.
- b. In the event that the Debtors identify any Non-Debtor Counterparties which were not served with the Assumption Notice, the Debtors may subsequently serve (by overnight mail) such Non-Debtor Counterparty with an Assumption Notice, and the following procedures will nevertheless apply to such Non-Debtor Counterparty; *provided, however*, that, absent further order of the Court, the deadline to object with respect to such Non-Debtor Counterparty shall be on the date that is ten (10) calendar days following service of the Assumption Notice.
- c. The Assumption Notice served on each Non-Debtor Counterparty shall (i) identify each Available Contract; (ii) list the Cure Amount the Debtors believe is required to be paid pursuant to the Bankruptcy Code in order to effectuate the assumption and assignment of the Available Contract; (iii) include a statement that the

assumption and assignment of such Available Contract is neither required nor guaranteed; and (iv) inform such Non-Debtor Counterparty of the requirement to file any Cure/Assignment Objections (defined below) by the Sale Objection Deadline (defined below). Service of an Assumption Notice does not (x) constitute, and shall not be deemed, an admission that a particular Available Contract is an executory contract or unexpired lease of property, or (y) confirm that the Debtors are required to assume and/or assign such Available Contract.

- d. Objections (a “Cure/Assignment Objection”), if any, to one or more of (i) a scheduled Cure Amount, (ii) the ability of the Stalking Horse Bidder to provide adequate assurance of future performance, and (iii) the proposed assumption, assignment and/or transfer of such Available Contract (including the transfer of any related rights or benefits thereunder), other than objections that relate specifically to the identity of any Successful Bidder (other than the Stalking Horse Bidder), must (x) be in writing; (y) state with specificity the nature of such objection, including the amount of Cure Amount in dispute; and (z) be filed with this Court and properly served on the Notice Parties (as defined below) by no later than Sale Objection Deadline.
- e. Objections of any Non-Debtor Counterparty related solely to the identity of, and adequate assurance of future performance by, the Successful Bidder (should the Successful Bidder be any party other than the Stalking Horse Bidder) must (x) be in writing; (y) state with specificity the nature of such objection, and (z) be filed with this Court and properly served on the Notice Parties by no later than the Post-Auction Objection Deadline (defined below) and shall be heard at the Sale Hearing unless otherwise ordered by the Court or agreed to by the Debtors and the Successful Bidder.
- f. Any Cure/Assignment Objection must state the basis for such objection and start with specificity what Cure Amount the party to the Available Contract believes is required (in all cases with appropriate documentation in support thereof). If no Cure/Assignment Objection is timely filed and served by the Sale Objection Deadline, the Cure Amount set forth in the Assumption Notice shall be controlling and binding on the Non-Debtor Counterparty for all purposes, notwithstanding anything to the contrary in the Available Contract or other related documents as of the date of the Assumption Notice. The Assumption Notice shall also provide that the Cure/Assignment Objection to any Cure Amount or assumption and assignment of a Contract will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors and the applicable counterparty in consultation with the Stalking Horse Bidder.
- g. Any Non-Debtor Counterparty to an Available Contract that fails to timely file and properly serve a Cure/Assignment Objection or Post-Auction Objection (as applicable) by the Sale Objection Deadline or the Post-Auction Objection Deadline (as applicable) as provided herein will: (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Available Contract in the event it is assumed and/or assigned by the

Debtors, and the Debtors and the assignee of the Available Contract shall be entitled to rely solely upon the Cure Amounts scheduled on the Assumption Notice; and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Available Contract (including the transfer of any related rights and benefits thereunder) to the relevant assignee and shall be forever barred and estopped from asserting or claiming against the Debtors or the assignee that any additional pre-assignment amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Available Contract, that any related right or benefit under such Available Contract cannot or will not be available to the relevant assignee, or that the assignee failed to provide such Non-Debtor Counterparty with adequate assurance of future performance.

- h. Unless a Non-Debtor Counterparty to any Available Contract files a timely Cure/Assignment Objection by the Sale Objection Deadline to the assumption and assignment of the applicable Available Contract by the Stalking Horse Bidder or the other Successful Bidder, then such Non-Debtor Counterparty shall be deemed to have (i) consented to the assumption and assignment of the applicable Available Contract to the Stalking Horse Bidder or the other Successful Bidder with the Cure Amount set forth in the Assumption Notice and (ii) waived and released any and all other rights to object to the Cure Amount or the assumption and assignment of the Available Contract to the Stalking Horse Bidder or the other Successful Bidder.
- i. If a Non-Debtor Counterparty files an objection satisfying the requirements of these Assignment Procedures that is not consensually resolved by the Sale Hearing, such unresolved objection will be considered at the Sale Hearing, *provided, however*, that any Available Contract that is the subject of a Cure/Assignment Objection with respect solely to the amount of the Cure Amount may be assumed and assigned prior to resolution of such objection, so long as the Debtors or assignee, as applicable, (i) pay any undisputed Cure Amount on or before (x) the Closing Date (as defined in the Stalking Horse APA) or, (y) in the event the Successful Bidder is a party other than the Stalking Horse Bidder, the date designated for consummating the Sale under such Successful Bidder's Purchase Agreement, or (ii) appropriately reserve funding for the disputed portion of the Cure Amount pending resolution of the dispute.
- j. By the date that is two (2) business days prior to the Closing (such date, the "Determination Date"), the Stalking Horse Bidder shall designate in writing (each such writing, a "Designation Notice") which Available Contracts that the Stalking Horse Bidder wishes for Sellers to assume and assign to the Stalking Horse Bidder at the Closing. Upon delivery of written notice to the Debtors, the Stalking Horse Bidder shall have the right to extend the Determination Date with respect to any Available Contract in its sole discretion.
- k. On the date of the Closing, with respect to Cure Amounts not disputed as of the Closing, the Debtors shall pay all Cure Amounts to the applicable counterparty and the Successful Bidder shall have no liability therefor. Upon the resolution of any disputed Cure Amounts (with the consent of the Successful Bidder) following the

Closing, the Debtors shall pay such Cure Amount promptly, and in no event later than five (5) business days following such resolution.

- l. Upon payment by the Debtors of a Cure Amount (if any) (through resolution of a Cure/Assignment Objection or otherwise), all defaults under the Assumed Contracts (as defined in the Stalking Horse APA) (monetary or otherwise) and all actual or pecuniary losses that have or may have resulted from such defaults shall be deemed cured, including any Tax, rental obligation, common area maintenance, percentage rent, base rent or utility payments, whether or not such obligation became due, or accrued, after the effective date of the assignment of such Assumed Contracts, as the case may be. The Stalking Horse Bidder shall have no liability for any Cure Amounts.
- m. The Debtors' assumption and/or assignment of an Available Contract is subject to approval by this Court and consummation of the Sale. Absent entry of a Sale Order approving the assumption and/or assignment of the Available Contracts and consummation of the Sale, the Available Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

#### **Notice Procedures**

11. The forms of Notice of Auction and Sale Hearing and Publication Notice, in the forms attached hereto as **Exhibit 2** and **Exhibit 3**, respectively, are approved, and the Debtors are authorized to make non-substantive or immaterial changes to the Notice of Auction and Sale Hearing and Publication Notice or to fill in missing information, in each case to the extent not inconsistent with this Order, prior to service or publication of the Notice of Auction and Sale Hearing and the Publication Notice.

12. On or before three (3) business days after entry of this Order, the Debtors will cause the Notice of Auction and Sale Hearing to be sent by first-class mail postage prepaid, to the following: (a) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter (richard.schepacarter@usdoj.gov)); (b) counsel for the DIP Agent and the Administrative Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David

N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com)) and (ii) Richards, Layton & Finger, P.A., 920 N. King St., Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); (c) counsel for the Committee, (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Robert M. Hirsh, Esq. (rhirsh@lowenstein.com) and Eric S. Chafetz, Esq. (echafetz@lowenstein.com)) and (ii) Fox Rothschild LLP, 919 North Market Street, Suite 300, Wilmington, Delaware 19899 (Attn: Seth A. Niederman, Esq. (sneiderman@foxrothschild.com), Michael A. Sweet, Esq. (msweet@foxrothschild.com), and Gordon E. Gouveia, Esq. (ggouveia@foxrothschild.com)); (d) all persons known or reasonably believed to have asserted an interest in the Company Assets; (e) the Non-Debtor Counterparties to the Available Contracts; (f) the Attorneys General in the State(s) where the Company Assets are located; (g) all state and local taxing authorities in the State(s) where the Company Assets are located; (h) the Internal Revenue Service; (i) all parties that have asserted liens against the Company Assets; (j) the United States Attorney for the District of Delaware and the district(s) where the Company Assets are located; and (k) all parties that are entitled to notice pursuant to Bankruptcy Rule 2002.

13. In addition to the foregoing, on or before five (5) business days after entry of this Order, the Debtors shall post the Notice of Auction and Sale Hearing and the Bidding Procedures Order on the website of the Debtors' claims and noticing agent.

14. No other or further notice of the sale of the Company Assets, the Auction, the Sale Hearing, or the Sale Objection Deadline shall be required. Service and publication of the Notice of Auction and Sale Hearing and the Publication Notice as set forth herein is deemed to satisfy the notice requirements under Bankruptcy Rules 2002, 6004 and 6006, as well as Local Rule 6004-1,

and to otherwise comply in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

15. As soon as reasonably practicable following conclusion of the Auction (if any), the Debtors shall file a notice on this Court's docket identifying the Successful Bidder(s) and any applicable Backup Bidder(s).

16. The form of Assumption Notice and the Assignment Procedures set forth herein are approved and are deemed to be sufficient to provide effective notice to the Non-Debtor Counterparties of the Debtors' intent to potentially assume and assign some or all of the Available Contracts and the Debtors' proposed Cure Amounts. Such notice is deemed to satisfy the notice requirements under Bankruptcy Rules 2002, 6004 and 6006, and to otherwise comply in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

#### **Auction and Sale Hearing**

17. **Bid Deadline**. As further described in the Bidding Procedures, the deadline for Potential Bidders to submit bids (the "Bid Deadline") shall be **July 26, 2021 at 11:59 a.m. (prevailing Eastern Time)**. No bid shall be deemed to be a Qualified Bid unless such bid meets the requirements set forth in the Bidding Procedures, in consultation with the Consultation Parties.

18. **Auction; Cancellation of Auction**. Depending on the Bids received in accordance with the Bidding Procedures, the Debtors may conduct an Auction for the sale of the Company Assets. If at least one Qualified Bid is received in accordance with the Bidding Procedures with regard to the Company Assets, the Debtors shall be permitted to hold the Auction in accordance with the Bidding Procedures, which Auction shall take place virtually on **July 28, 2021 at 10:00 a.m. (prevailing Eastern Time)**, or such later time or such other place as the Debtors shall designate. In the event the Debtors designate a later time or place for the Auction, they shall

(i) notify all Qualified Bidders (as defined in the Bidding Procedures) who have submitted Qualified Bids, and (ii) file notice of such change with this Court.

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

20. If the Auction is cancelled, the Debtors shall promptly file a notice of cancellation of the Auction and designation of the Stalking Horse Bid as the Successful Bid.

21. Each Qualified Bidder participating in the Auction will be required to confirm on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Procedures and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (c) the Qualified Bidder agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

22. If the Successful Bid at the Auction is not consummated, the Debtors shall file a notice with the Court designating the Backup Bid as the Successful Bid, and such Backup Bid shall be deemed the Successful Bid for all purposes. The Debtors will be authorized to consummate all transactions contemplated by the Backup Bid without further order of the Bankruptcy Court or further notice to any party.

23. **Post-Auction Notice for Non-Debtor Counterparties.** If the Auction occurs and the Stalking Horse Bidder is not the Successful Bidder, the Debtors shall file with the Court, post on the Debtors' case website and provide by e-mail to any Non-Debtor Counterparty that is

implicated by the Successful Bid or Backup Bid, a notice containing (a) the identities of the Successful Bidder and Backup Bidder, and (b) instructions for accessing adequate assurance information for such parties.

24. **Sale Hearing.** Whether or not an Auction is held, the Sale Hearing shall be held before this Court on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)**. At the Sale Hearing, the Debtors will seek the entry of a Sale Order approving and authorizing the Sale to the Stalking Horse Bidder or the other Successful Bidder(s). The Sale Hearing (or any portion thereof) may be adjourned by this Court or the Debtors from time to time without further notice other than by announcement in open court or through the filing of a notice or other document on this Court's docket.

25. **Sale Objection Deadline.** Subject to paragraph 26, the deadline to object to the relief requested in the Motion with respect to the Sale, including entry of the proposed Sale Order and the Sale to the Stalking Horse Bidder (a "Sale Objection") is **July 9, 2021 at 5:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). A Sale Objection must be filed with this Court and served in the manner set forth below by no later than the Sale Objection Deadline.

26. **Post-Auction Objection Deadline.** The deadline to object only to (i) the conduct at the Auction (if held) or (ii) solely with respect to the Non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not the Stalking Horse Bidder) (such a limited objection, a "Post-Auction Objection") is **5:00 p.m. (prevailing Eastern Time) on July 29, 2021** (the "Post-Auction Objection Deadline"). A Post-Auction Objection must be filed with this Court and served in the manner set forth below by no later than the Post-Auction Objection Deadline.

**Objection Procedures**

27. Any party that seeks to object to the relief requested in the Motion or the relief granted herein, or to any actions taken in accordance herewith, shall file a formal written objection that complies with the objection procedures set forth herein.

28. Objections, if any, must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with this Court; and (vi) served on the following parties (the “Notice Parties”): (a) counsel for the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq., ljones@pszjlaw.com), and (ii) Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Larry G. Halperin, Esq., halperin@chapman.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter, Esq., richard.schepacarter@usdoj.gov); (c) counsel for the Administrative Agent and the DIP Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: David N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com)) and (ii) Richards, Layton & Finger, P.A., 920 N. King St., Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); and (d) counsel for the Committee, (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Robert M. Hirsh, Esq. (rhirsh@lowenstein.com) and Eric S. Chafetz, Esq. (echafetz@lowenstein.com)) and (ii) Fox Rothschild LLP, 919 North Market Street, Suite 300, Wilmington, Delaware 19899 (Attn: Seth A. Niederman, Esq. (sneiderman@foxrothschild.com), Michael A. Sweet, Esq.

(msweet@foxrothschild.com), and Gordon E. Gouveia, Esq. (ggouveia@foxrothschild.com)), by no later than the Sale Objection Deadline, or Post-Auction Objection Deadline, as applicable.

29. Failure to file a Sale Objection or Post-Auction Objection on or before the Sale Objection Deadline or Post-Auction Objection Deadline, as applicable, (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto free and clear of any interest in the Company Assets.

**Approval of Designation of Stalking Horse Bidder**

30. The Debtors’ designation of the Stalking Horse Bidder as the stalking horse purchaser is hereby approved. The Debtors are authorized to proceed with the Sale in accordance with the Bidding Procedures and are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures and, in accordance therewith, the Stalking Horse APA.

31. The Debtors’ entry into the Stalking Horse APA is authorized and approved; *provided that*, for the avoidance of doubt, approval of the Stalking Horse APA and each provision therein and consummation of the Transactions contemplated by the Stalking Horse APA shall be subject to the Court’s entry of the Sale Order and the satisfaction or waiver of the other conditions precedent to Closing (as defined in the Stalking Horse APA) on the terms set forth in the Stalking Horse APA.

32. Notwithstanding the Court's approval of the Stalking Horse APA pursuant to the terms of this Order, the Committee reserves the right to object to any specific provision in the Stalking Horse APA in advance of the Sale Objection Deadline.

**Other Relief Granted**

33. In accordance with section 6.11 of the Stalking Horse APA, no personally identifiable information (as defined in section 101(41A) of the Bankruptcy Code) shall be sold, leased, or otherwise transferred to the Stalking Horse Bidder pursuant to the Stalking Horse APA or otherwise in connection with the Sale. In the event that the Successful Bid provides for the sale, lease, or other transfer of personally identifiable information, the United States Trustee shall appoint a consumer privacy ombudsman in connection with the Sale in accordance with section 332 of the Bankruptcy Code. Promptly upon determining a Successful Bid, the Debtors shall notify the United States Trustee in writing whether such Successful Bid provides for the sale, lease, or other transfer of personally identifiable information. Pursuant to section 332 of the Bankruptcy Code, and notwithstanding any other provision of this Order to the contrary, the sale hearing shall be held not less than seven days after the appointment of any consumer privacy ombudsman.

34. Notwithstanding anything in this Order to the contrary, unless Cigna (as defined in the objection of Cigna to the Motion [ECF No. 76] (the "Cigna Objection")), the Debtors, and the Stalking Horse Bidder or the Successful Bidder (if the Successful Bidder is not the Stalking Horse Bidder) agree otherwise, the Debtors shall, not later than noon, two (2) business days prior to the Sale Hearing, provide to Cigna, through its counsel of record: (i) written notice of the Debtors' irrevocable (subject to closing of the Sale) decision as to whether or not they propose to assume and assign the Employee Benefits Agreements (as defined in the Cigna Objection) to a Successful Bidder as part of the Sale; (ii) the identity of any proposed assignee of the Employment Benefits

Agreements; and (iii) adequate assurance information for the Successful Bidder, including a good faith estimate as to the number of employees of the Debtors who will become employees of the Successful Bidder. This resolves the Cigna Objection.

35. Notwithstanding anything in this Order to the contrary, unless LINA (as defined in the objection of LINA to the Motion [ECF No. 77] (the “LINA Objection”)), the Debtors, and the Stalking Horse Bidder or the Successful Bidder (if the Successful Bidder is not the Stalking Horse Bidder) agree otherwise, the Debtors shall, not later than noon, two (2) business days prior to the Sale Hearing, provide to LINA, through its counsel of record: (i) written notice of the Debtors’ irrevocable (subject to closing of the Sale) decision as to whether or not they propose to assume and assign the Employee Benefits Agreements (as defined in the Cigna Objection) to a Successful Bidder as part of the Sale; (ii) the identity of any proposed assignee of the Employment Benefits Agreements; and (iii) adequate assurance information for the Successful Bidder, including a good faith estimate as to the number of employees of the Debtors who will become employees of the Successful Bidder. This resolves the LINA Objection.

36. Absent a subsequent order of this Court to the contrary, this Order shall be binding in all respects upon any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Debtors’ bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code.

37. Nothing herein shall be deemed to or constitute the assumption, assignment or rejection of any executory contract or unexpired lease.

38. Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and this Order shall be effective immediately and enforceable upon its entry.

39. No party submitting an offer or Bid for the purchase of the Company Assets shall be entitled to any expense reimbursement, break-up, termination or similar fee or payment.

40. Subject to the terms of the Interim DIP Order, the Final DIP Order, and the Stalking Horse APA, the Debtors further reserve their rights, in their reasonable business judgment and after consultation with the Stalking Horse Bidder and the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, to modify or supplement additional customary terms and conditions on the sale of the Company Assets, including through: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction and/or the Sale Hearing, including at the Auction or in open court, without further notice; (c) modifying the Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids.

41. The Debtors' obligations under this Order, the provisions of this Order and the portions of the Stalking Horse APA pertaining to the Bidding Procedures shall survive conversion of these Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code, confirmation of any plan of reorganization or liquidation, or discharge of claims thereunder and shall be binding upon the Debtors, any Chapter 7 trustee, the reorganized or reconstituted debtors, as the case may be, after the effective date of a confirmed plan or plans in the Debtors' cases (including any order entered after any conversion of the cases of the Debtors to cases under Chapter 7 of the Bankruptcy Code).

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

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

44. In the event of any conflict between this Order, the Motion, the Stalking Horse APA and/or the Bidding Procedures, this Order shall govern in all respects.

45. The requirements set forth in Local Rules 6004-1 and 9006-1 are hereby satisfied or waived.

46. This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation of this Order.



**CRAIG T. GOLDBLATT**  
**UNITED STATES BANKRUPTCY JUDGE**

**Dated: June 23rd, 2021**  
**Wilmington, Delaware**

**EXHIBIT 1**

**Bidding Procedures**

**FORM OF BIDDING PROCEDURES**

**BIDDING PROCEDURES FOR THE SALE OF  
SUBSTANTIALLY ALL ASSETS OF AVADIM HEALTH, INC. AND  
CERTAIN DEBTOR SUBSIDIARIES AND AFFILIATES**

On May 31, 2021, (the “Petition Date”), each of Avadim Health, Inc., Avadim Health IP, Inc., Bionome Properties Corp., Quality Assurance Associates, Inc. and Relion Manufacturing, Inc. (collectively, the “Debtors”) filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

On June 1, 2021, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Debtors’ Entry into the Stalking Horse APA with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (II) Approving Bidding Procedures, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling a Hearing to Consider the Transaction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Procedures, and (VII) Granting Related Relief* [ECF No. 16] (the “Bidding Procedures Motion”).

On [June 25], 2021, the Bankruptcy Court entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the Debtors’ Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (E) Scheduling an Auction, (F) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (G) Approving Contract Assumption and Assignment Procedures, and (H) Granting Related Relief* [ECF No. [●]] (the “Bidding Procedures Order”), by which the Bankruptcy Court approved the procedures set forth herein (the “Bidding Procedures”) with respect to the Debtors and their assets.<sup>1</sup>

**I. OVERVIEW**

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties (as defined herein), to conduct an auction (the “Auction”), if any, for the sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Company Assets”).

The Company will consider a proposal, solicitation, or offer for an individual Company Asset, any portion of the Company Assets, or all or substantially all of the Company Assets (each, a “Bid”,

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<sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order or the *Interim Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral; (II) Granting Liens And Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; And (VI) Granting Related Relief* [ECF No. 51], as applicable (the “Interim DIP Order”).

and collectively, the “Bids”), to the extent that the consummation of such Transactions maximizes value for stakeholders and can be accomplished efficiently.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

## **II. THE STALKING HORSE BID**

Midava Holdings 3, Inc. (the “Stalking Horse Bidder”) submitted a Bid for the Company Assets (the “Stalking Horse Bid”) pursuant to that certain Asset Purchase Agreement (the “Stalking Horse APA”) dated as of May 31, 2021, by and among Midava Holdings 3, Inc., as Buyer, Avadim Health, Inc. and the other sellers named therein, as Sellers, and, solely for purposes stated therein, Hayfin Services LLP, to set a floor for the Sale. The Stalking Horse APA and Stalking Horse Bid provide for the Stalking Horse Bidder’s acquisition of substantially all of the Company Assets, subject to the terms and conditions of the Stalking Horse APA.

Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Court pursuant to the Bidding Procedures Order, the Debtors will now conduct an Auction intended to obtain the highest or otherwise best bid for all or substantially all of the Company Assets, which may culminate in an Auction for the Company Assets.

## **III. KEY DATES**

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Company Assets. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until **July 26, 2021 at 11:59 a.m. (prevailing Eastern Time)** (the “Bid Deadline”). Unless expressly indicated, the following Bidding Procedures apply to all bidders, regardless of the phase of the Auction in which the bidder intends to participate.

The key dates for the sale process are as follows:<sup>2</sup>

<b><u>Proposed Date</u></b>	<b><u>Event(s)</u></b>
June 10, 2021 by 5:00 P.M. (prevailing Eastern Time)	Bidding Procedures Objection Deadline

<sup>2</sup> These dates are subject to extension or adjournment.

<u>Proposed Date</u>	<u>Event(s)</u>
July 9, 2021 by 5:00 P.M. (prevailing Eastern Time)	Sale Objection Deadline; Cure/Assignment Objection Deadline
July 26, 2021 by 11:59 A.M. (prevailing Eastern Time)	Bid Deadline
July 27, 2021 by 5:00 P.M. (prevailing Eastern Time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder; Debtors to provide the Stalking Horse Bidder and each Qualified Bidder (i) Notice of No Auction to be Held (if applicable), or (ii) Notification of Baseline Bid (if Auction is to be held)
July 28, 2021 at 10:00 A.M. (prevailing Eastern Time)	Auction (if any), which will be held virtually, subject to the right of the Debtors, in the reasonable exercise of their business judgment, to adjourn the Auction to a later date
July 29, 2021 by 5:00 P.M. (prevailing Eastern Time)	Post-Auction Objection Deadline
July 30, 2021 at 10:00 A.M. (prevailing Eastern Time)	Sale Hearing
August 9, 2021	Deadline to Close the Sale

#### **IV. Bidding Process**

##### **A. Submissions to the Debtors.**

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer

for the Company Assets. The Debtors, in consultation with their advisors and the Consultation Parties, may consider any Bids provided that such Bid complies with the Bidding Procedures.

**B. Potential Bidders.**

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, an entity (other than the Stalking Horse Bidder) interested in consummating a Sale must deliver or have previously delivered the following to the Debtors (any such entity, a "Potential Bidder"):

- (a) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;
- (b) (x) evidence of such entity's financial capability to acquire the applicable Company Assets, which must include financial statements of such entity, the adequacy of which will be assessed by the Debtors with the assistance of their advisors and in consultation with the Consultation Parties, or (y) if such entity has been formed for the purpose of acquiring some or all of the Company Assets, (I) a written commitment from such entity's equity holder(s), sponsor(s), or other financial backer(s) (a "Bid Sponsor") to be responsible for such entity's obligations in connection with participating in the bidding process and acquiring the applicable Company Assets and (II) evidence of the Bid Sponsor's financial capability to acquire the applicable Company Assets, the adequacy of which will be assessed by the Debtors with the assistance of their advisors and in consultation with the Consultation Parties; and
- (c) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate the entity's fitness to participate in the bidding process or ability to timely acquire the Company Assets.

**C. Due Diligence.**

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Company Assets, liabilities of the Debtors, or the Sale to any person or entity except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests

from Potential Bidders for additional information and due diligence access; *provided* that the Debtors may decline to provide (or elect to withdraw access to) due diligence information to any Potential Bidder who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has not established (or there is otherwise a reasonable basis to doubt), that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right, in consultation with the Consultation Parties, to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder that the Debtors determine is (or is affiliated with) a competitor of the Debtors, or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Debtors' exercise of their reasonable business judgment (in consultation with their advisors), may risk unduly placing the Debtors at a competitive disadvantage or subject them to regulatory scrutiny. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any entity that is not determined to be a Potential Bidder.

**All due diligence requests must be directed to SSG Capital Advisors, LLC, Attn: J. Scott Victor, Managing Director, Tel. 610-940-5802, Email [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com).**

1. Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale, or any transaction relating to the Debtors between or amongst Potential Bidders shall be conducted exclusively through the Debtors and the Debtors' advisors. **Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors, in consultation with the Consultation Parties, expressly consent in writing to such communication.**

2. Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding qualification as a Potential Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the applicable Company Assets. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Consultation Parties, to determine that such bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid (a "Non-Qualifying Bid").

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the Bankruptcy Cases, in each case in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of such Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Potential Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

All parties, Potential Bidders, and Qualified Bidders are prohibited from communicating with any of the Debtors' employees, directors, officers, landlords, vendors, suppliers, agents, existing lender(s), interest or equity holders, or with any other Potential Bidder, or Qualified Bidder with respect to any Bid absent the prior written consent (email shall suffice) of the Debtors; *provided* that if such consent is given, a representative of the Debtors shall be present for or party to any such communications (unless otherwise waived by the Debtors in their sole discretion).

#### **D. Qualified Bidders.**

1. A "Qualified Bidder" is a Potential Bidder (i) that provides documentation demonstrating the financial capability to consummate the Sale in the form of cash on hand or unconditional committed financing (as determined by the Debtors after consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within two (2) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder, the Administrative Agent, and the DIP Agent shall each be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.
2. If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Potential Bidder's Deposit within five (5) business days after the Bid Deadline.
3. For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder that its bid is a Non-Qualifying Bid and permit such Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.
4. Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided* that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to

comply with the requirements for Qualified Bids set forth in these Bidding Procedures, and the Debtors expressly reserve the right to request additional diligence information and assurances necessary to assess and ensure continued compliance (including additional information, assurances, or commitments regarding the applicable Qualified Bidder's financial capability to consummate the transactions contemplated by such improved Qualified Bid).

#### **E. Bid Requirements.**

A Bid by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements"), as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid". The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

1. Assets. Each Bid may be for an individual Company Asset, any portion of the Company Assets, or all or substantially all of the Company Assets and which Company Assets (if any) are excluded from the Bid.
2. Assumption of Obligations. Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.
3. Purchase Price. Each Bid must clearly set forth the cash purchase price to be paid for the Company Assets being purchased, including the allocation of responsibility for the payment of any cure costs and otherwise identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the "Bid Purchase Price").
4. Minimum Bid. At a minimum, each Bid must have a cash Bid Purchase Price that is equal to or is greater than the Purchase Price (as defined in the Stalking Horse APA) plus \$250,000 in cash (the "Minimum Cash Bid Amount").
5. Markup of the Stalking Horse APA. Each Bid must be accompanied by a duly authorized and executed asset purchase agreement (each, a "Purchase Agreement"), an electronic copy of such Purchase Agreement in Microsoft Word format, and a redline of such Purchase Agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such Purchase Agreement must provide for (i) payment in cash at closing of the Bid Purchase Price, including an amount no less than the Minimum Cash Bid Amount, and (ii) a representation that the Qualified Bidder will make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable, and submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; *provided, however*, that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid.

6. Deposit. Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate Bid Purchase Price (which shall be no less than the Minimum Cash Bid Amount), to be held in an escrow account to be identified and established by the Debtors (the “Deposit”). The Stalking Horse Bidder shall not be required to submit a Deposit.
7. Qualified Bid Documents. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid and shall include a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the Purchase Agreement clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Bid Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the “Qualified Bid Documents”).
8. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, executed and documented to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Bid Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the applicable Company Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors, in consultation with the Consultation Parties.
9. Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
10. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each Bid Sponsor, if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid, including any employment or compensation arrangements being negotiated or agreed to between the Qualified Bidder and any employee of the Debtors. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors

be associated with any Bid (including any Overbid at the Auction). Each Bid must also include contact information for the specific persons and counsel whom the Debtors and their advisors should contact regarding such Bid.

11. Adequate Assurance of Future Performance. Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale, and (ii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases. To the extent applicable, each Bid must contain evidence that the Bidder has the ability to comply with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code (the "Adequate Assurance Information") with respect to the Assumed Contracts. Such Adequate Assurance Information may include: (i) information about the Bidder's financial condition, such as federal tax returns for two (2) years, a current financial statement, or bank account statements; (ii) information demonstrating (as determined by the Debtors in the reasonable exercise of their business judgment (in consultation with the Consultation Parties)) that the Bidder has the financial capacity to consummate the proposed transaction and perform its obligations under the contracts and leases after consummating the proposed transaction; (iii) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid; (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed transaction; (v) such additional information regarding the Bidder as the Bidder may elect to include; and (vi) such other documentation that the Debtors may request. By submitting a Bid, the Bidder(s) agree that the Debtors may disseminate, following the Auction, their Adequate Assurance Information to affected landlords and contract counterparties in the event that the Debtors determine such Bid to be a Qualified Bid.
12. Affirmative Statement. Each Bid shall be accompanied by an affirmative binding statement in which the Bidder explicitly agrees that: (i) it has had an opportunity to conduct any and all due diligence regarding the Company Assets prior to making its offer; (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or such assets in making its Bid; (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the applicable Company Assets or the completeness of any information provided in connection therewith or the Auction, except those expressly stated in the competing Purchase Agreement; (iv) it has and will continue to comply with these Bidding Procedures; (v) the Bid it submits does not entitle such Bidder (and if it becomes a Qualified Bidder) to any break-up fee, expense reimbursement, termination payment, or similar type of payment or reimbursement; and (vi) it waives any substantial contribution administrative expense claims under Bankruptcy Code section 503(b) related to bidding for the Company Assets.

13. Time Frame for Closing. A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors after consultation with the Consultation Parties, which time frame shall include a closing by no later than August 9, 2021.
14. Binding and Irrevocable. A Qualified Bidder's Bid for the applicable Company Assets shall be irrevocable unless and until the Debtors notify such Qualified Bidder that such Bid has not been approved as a Successful Bid or a Backup Bid at the Sale Hearing.
15. Expenses; Disclaimer of Fees. Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder will be permitted to request at any time, whether as part of the Auction, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
16. Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
17. Adherence to Bid Procedures. By submitting a Bid, each Qualified Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of these Bidding Procedures and after the conclusion of the Auction, if any, agrees not to submit a Bid, or seek to reopen the Auction.
18. Government Approvals. Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.
19. Government Approvals Timeframe. Each Bid must set forth an estimated timeframe for obtaining any required, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
20. Consent to Jurisdiction. By submitting a Bid, each Qualified Bidder agrees and shall be deemed to have agreed, to submit to the jurisdiction of the Bankruptcy Courts and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of bids, the Auction, if any, the construction and

enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.

21. **Bid Deadline.** Each Bid must be transmitted via email (in electronic format) so as to be **actually received** on or before **11:59 a.m. (prevailing Eastern Time) on July 26, 2021** by: (i) the Debtors' Financial Advisors, SSG Capital Advisors, LLC, Attn: J. Scott Victor, Managing Director, Tel. 610-940-5802, Email [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com); and (ii) the Consultation Parties.

#### **F. Right to Credit Bid.**

At the Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor"), whether or not such liens remain subject to any challenge period as set forth in any DIP Order, shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code, as it relates to the Debtors; *provided, however*, that any Secured Creditor, other than the Administrative Agent and the DIP Agent, that intends to participate in the Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a Credit Bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential Credit Bid.

Notwithstanding anything to the contrary contained herein, the Administrative Agent and the DIP Agent shall have the right to Credit Bid all or any portion of the aggregate amount of their respective applicable outstanding secured obligations, notwithstanding any earlier or lower Credit Bid of any portion of their respective applicable outstanding secured obligations. For the avoidance of doubt, nothing in these Bidding Procedures alters or modifies any of the Committee's rights under paragraph 12 of the Interim DIP Order or, if and once entered, the corresponding paragraph of the Final Order.

#### **G. Consultation Parties.**

The term "Consultation Parties" shall mean: (a) counsel to the Committee; (b) the financial advisor to the Committee; (c) the Prepetition Secured Parties and their counsel and financial advisors; and (d) the DIP Agent and the DIP Lenders and their counsel and financial advisors. In the event that a Consultation Party submits a Bid, such party shall no longer be a Consultation Party until such time as such party withdraws from bidding on the Company Assets subject to such Bid; *provided, however*, that, counsel and financial advisors to the Prepetition Secured Parties, the DIP Lenders and/or the DIP Agent (in their respective capacities as such) shall remain Consultation Parties unless and until (x) another Qualified Bid is received and (y) the Stalking Horse Bidder notifies the Debtors prior to the start of the Auction that it intends to actively participate in the Auction as bidder. Notwithstanding the foregoing, in the event that the Debtors determine, in the exercise of their fiduciary duties, that providing information to the Prepetition Secured Parties, the DIP Lenders and/or the DIP Agent would chill bidding, the Debtors may elect not to provide such information to such parties. In addition, counsel to the Prepetition Secured Parties, the DIP Agent and/or the DIP Lenders shall have consultation rights with respect to any

antitrust approval process related to the Sale and to the financial capability of any Qualified Bidders to consummate the Sale.

## **H. Auction.**

### **1. Cancellation of Auction.**

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

If the Auction is cancelled, the Debtors shall promptly file with the Bankruptcy Court a notice of cancellation of the Auction and designation of the Stalking Horse Bid as the Successful Bid.

### **2. Bid Assessment Criteria.**

The Debtors shall evaluate all Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid, or combination of Bids, for the Company Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the Baseline Bid to each Qualified Bidder prior to the Auction. When determining the highest or otherwise best Qualified Bid(s) and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the Debtors deem appropriate:

- (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of assets sought and obligations to be assumed in the Qualified Bid;
- (b) the amount and nature of the total consideration;
- (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof;
- (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents;
- (e) the tax consequences of such Qualified Bid;
- (f) the impact on employees, including the number of employees proposed to be transferred and whether the bid includes an assumption of the Debtors' prepetition collective bargaining agreements, defined benefit and defined contribution pension plans;
- (g) the assumption of liabilities, including obligations under contracts and leases;

(h) the cure amounts to be paid; and

(i) the nature of any regulatory authorizations required (collectively, items (a) through (i) hereof, the “Bid Assessment Criteria”).

3. Auction Time and Location.

The Auction, if any, shall take place virtually at **10:00 a.m. (prevailing Eastern Time) on July 28, 2021**, or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Auction, if any, shall be conducted in a timely fashion according to the procedures set forth herein.

4. The Debtors Shall Conduct the Auction.

The Debtors and their advisors shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the material terms of the Baseline Bid for the Company Assets on the record. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only (A) Qualified Bidders (including the Stalking Horse Bidder) and their legal and financial advisors, (B) the Consultation Parties and their legal and financial advisors, (C) the U.S. Trustee, and (D) actual creditors of the Debtors (*provided* that they give at least two (2) business days’ notice to the Debtors’ counsel of their intention to attend the Auction), shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any.

Subject to the terms of the Interim DIP Order, the Final DIP Order and the Stalking Horse APA, the Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between any Qualified Bidders, the Debtors, and/or the Consultation Parties, as applicable.

Subject to the terms of the Interim DIP Order, the Final DIP Order and the Stalking Horse APA, the Debtors (in consultation with the Consultation Parties and the Stalking Horse Bidder) may announce at the Auction additional or modified rules and procedures that are reasonable under the circumstances (e.g., limitations on the amount of time to make subsequent Overbids, changes in minimum Overbid increments, etc.) for conducting the Auction so long as such rules are not inconsistent with these Bidding Procedures, the Bidding Procedures Order, or the Stalking Horse APA.

5. Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (a) Minimum Overbid Increment. The Overbid(s) for the Company Assets shall provide for total consideration with a value that exceeds the value of the consideration under the Baseline Bid(s) by an incremental amount that is not less than \$250,000 (as applicable, the “Minimum Overbid Increment”), and successive Overbids shall be higher than the Prevailing Highest Bid (as defined below) by at least the Minimum Overbid Increment.

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid or Prevailing Highest Bid may include: (a) cash; (b) assumption of liability, which shall be ascribed a value by the Debtors, in consultation with the Consultation Parties, in determining whether the Minimum Overbid Increment has been met; and (c) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of such Secured Creditor’s allowed secured claim pursuant to section 363(k) of the Bankruptcy Code.

- (b) Conclusion of Each Overbid Round. Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (c) Overbid Alterations. An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid so long as, after giving effect to the same, the terms of the Overbid are no less favorable to the Debtors’ estates than any prior Bid or Overbid of such Qualified Bidder, as determined in the Debtors’ reasonable business judgment after consultation with the Consultation Parties, and shall otherwise comply with the terms of these Bidding Procedures.
- (d) Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors, shall announce whether the Debtors have identified in the applicable Overbid round, an Overbid (or combination of Overbids) as being higher or otherwise better than, in the Overbid round, the Baseline Bid plus the Minimum Overbid Increment, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

6. Consideration of Overbids.

Subject to the terms of the Interim DIP Order, the Final DIP Order, and the Stalking Horse APA, the Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

7. Closing the Auction.

- (a) The Auction, if any, shall continue until there is one Bid (or a combination of Bids) for the Company Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid (or Bids) for the Company Assets. Such Bid(s) shall be declared the “Successful Bid” and such Qualified Bidder(s), the “Successful Bidder,” at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Court of the Successful Bid.
- (b) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consulting with the Consultation Parties.
- (c) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (d) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid, to be filed with the Bankruptcy Court.
- (e) To the extent that any Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder adjust its deposit so that it equals ten percent (10%) of the aggregate cash

portion of the Bid Purchase Price, which for the avoidance of doubt, shall be no less than the Minimum Cash Bid Amount.

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

Each Qualified Bidder participating in the Auction will be required to confirm on the record at the Auction, that (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (c) the Qualified Bidder agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

**I. Backup Bidder.**

1. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Company Assets, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for the applicable Company Asset(s) or the collection of Bids for less than all of the Assets collectively determined to be the next highest or otherwise best, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the "Backup Bid"), shall be required to serve as a backup bidder(s) (the "Backup Bidder(s)") for such Company Assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder(s) if so designated by the Debtors.
2. The identity of the Backup Bidder(s) and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder(s) shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.
3. The Backup Bidder(s) shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Backup Bid. The Backup Bid may not be assigned to any party without the consent of the Debtors after consulting with the Consultation Parties.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Court.

**J. Reservation of Rights.**

Subject to the terms of the Interim DIP Order, the Final DIP Order, and the Stalking Horse APA, the Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will best promote

the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of the Company Assets, including: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, including at the Auction and/or adjourning the Sale Hearing, including in open court, without further notice; (c) modifying the Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders; and (f) rejecting any or all bids or Bids.

**K. Approval of Sale Transaction.**

If an Auction is held, the Sale Hearing to consider approval of the Sale of the Company Assets to the Successful Bidder, and the approval of Backup Bid, is currently scheduled to take place at **10:00 a.m. (prevailing Eastern Time) on July 30, 2021** before the Honorable Judge Craig T. Goldblatt, at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware (the “Sale Hearing”). If no Auction is to be held, Sale Hearing will still take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)**.

**The Sale Hearing may be adjourned or continued to a later date by the Debtors, after consultation with the Consultation Parties, by filing a notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party (including the Stalking Horse Bidder). In the event no Qualified Bid, other than the Stalking Horse Bid, is received, the Debtors reserve the right to request, after consultation with the Consultation Parties, that the Bankruptcy Court advance the date of the Sale Hearing and provide notice of such new date to those parties in interest entitled to notice thereof.**

At the Sale Hearing, the Debtors, in consultation with their advisors and the Consultation Parties, shall present the Successful Bid and any Backup Bid to the Bankruptcy Court for approval. The Sale Order submitted at the Sale Hearing shall provide that: (i) if the Successful Bid is not consummated, the Debtors may file a notice with the Court designating the applicable Backup Bidder(s) as the applicable Successful Bidder(s), and such Backup Bidder(s) shall be deemed the Successful Bidder(s) for all purposes; and (ii) the Debtors will be authorized, but not required, to consummate all transactions contemplated by the applicable Backup Bid, once so designated as the Successful Bid, without further order of the Bankruptcy Court or notice to any party.

**L. Return of Deposits.**

The Deposits of all Qualified Bidders shall be held in one or more non-interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Court; *provided, however*, that the Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) may be forfeited to the Debtors or credited toward the Bid Purchase Price set forth in the Successful Bid, in either case as set forth in these Bidding Procedures. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful

Bidder. If the Successful Bidder (or Backup Bidder, as applicable) timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors as partial compensation for the damages caused to the Debtors and their estates as a result of such breach or failure to perform without prejudice to any claims, rights, or remedies of the Debtors or their estates for additional damages.

**M. Fiduciary Out.**

Nothing in these Bidding Procedures shall restrain the board of directors or such similar governing body of any of the Debtors or their affiliates from taking any action, or refraining from taking any action to the extent that such board of directors or such similar governing body determines, based on the advice of counsel that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties with notice of such action or inaction as soon as practicable.

**EXHIBIT 2**

**Form of Notice of Auction and the Sale Hearing**

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

	)	
In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (CTG)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that Avadim Health, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Company” or the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on May 31, 2021.

**PLEASE TAKE FURTHER NOTICE** that, on May 31, 2021, the Company entered into that certain stalking horse asset purchase agreement (the “Stalking Horse APA”) with Midava Holdings 3, Inc. (the “Stalking Horse Bidder”), as more fully set forth in the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Debtors’ Entry into the Stalking Horse APA with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (II) Approving Bidding Procedures, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling a Hearing to Consider the Transaction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Procedures, and (VII) Granting Related Relief* filed with the Bankruptcy Court on June 1, 2021 [ECF No. 16] (the “Bidding Procedures Motion”).<sup>2</sup> Through the Bidding Procedures Motion, the Debtors seek, among other things, approval of certain procedures (the “Bidding Procedures”) to govern the sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Company Assets”), pursuant to section 363 of the Bankruptcy Code, to the Stalking Horse Bidder or such other Successful Bidder (as defined in the Bidding Procedures) at an auction, free and clear of all claims, liens and encumbrances, as set forth in the Stalking Horse APA or a purchase agreement with such alternative Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that, on [June 25], 2021, the Bankruptcy Court entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the Debtors’ Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving*

<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Motion, Bidding Procedures Order (as defined herein), or Bidding Procedures (each as defined herein), as applicable.

*the Designation of the Stalking Horse Bidder, (D) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (E) Scheduling an Auction, (F) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (G) Approving Contract Assumption and Assignment Procedures, and (H) Granting Related Relief [ECF No. [●]] (the “Bidding Procedures Order”), by which the Bankruptcy Court approved the Bidding Procedures, as set forth therein and attached thereto as Exhibit 1, with respect to the Sale. **All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.***

**PLEASE TAKE FURTHER NOTICE** that the Bidding Procedures provide for the consideration of Qualified Bids to acquire an individual Company Asset, any portion of the Company Assets, or all or substantially all of the Company Assets. All interested parties are invited to provide materials (as described in the Bidding Procedures) to apply to become a Potential Bidder and submit a Bid in accordance with the Bidding Procedures and the Bidding Procedures Order. The Bidding Procedures provide information regarding the requirements for a Potential Bidder to be a “Qualified Bidder” and a Bid to be a “Qualified Bid” for purposes of competing at an Auction (as defined below).

**PLEASE TAKE FURTHER NOTICE** that the deadline to submit a Qualified Bid for the Company Assets (the “Bid Deadline”) is **July 26, 2021 at 11:59 a.m. (prevailing Eastern Time)**. Pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualified Bids other than one from the Stalking Horse Bidder, the Debtors are authorized to conduct an auction (the “Auction”) for the Company Assets in accordance with the Bidding Procedures Order. The Auction, if any, shall take place virtually at **10:00 a.m. (prevailing Eastern Time) on July 28, 2021**. Only (a) Qualified Bidders (including the Stalking Horse Bidder) and their legal and financial advisors, (b) the Consultation Parties and their legal and financial advisors, (c) the U.S. Trustee, and (d) actual creditors of the Debtors (*provided* that they give at least two (2) business days’ notice to the Debtors’ counsel of their intention to attend the Auction), shall be entitled to attend the Auction. If the Auction is cancelled, the Debtors shall file with the Bankruptcy Court a notice of cancellation of the Auction.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Sale (the “Sale Objections”), shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objection party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor and shall be filed and served upon the following parties by **no later than July 9, 2021 at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”): (a) counsel for the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq., ljones@pszjlaw.com), and (ii) Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Larry G. Halperin, Esq., halperin@chapman.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter, Esq., richard.schepacarter@usdoj.gov); (c) counsel to the DIP Agent and Administrative Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan Podzius, Esq. (bryan.podzius@weil.com)) and (ii) Richards, Layton & Finger, P.A., 920 N. King St.,

Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); and (d) counsel for the Committee, (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Robert M. Hirsh, Esq. (rhirsh@lowenstein.com) and Eric S. Chafetz, Esq. (echafetz@lowenstein.com)) and (ii) Fox Rothschild LLP, 919 North Market Street, Suite 300, Wilmington, Delaware 19899 (Attn: Seth A. Niederman, Esq. (sneiderman@foxrothschild.com), Michael A. Sweet, Esq. (msweet@foxrothschild.com), and Gordon E. Gouveia, Esq. (ggouveia@foxrothschild.com)) (collectively, the “Objection Notice Parties”).

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to (i) the conduct at the Auction (if held) or (ii) solely with respect to the Non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not the Stalking Horse Bidder) (such a limited objection, a “Post-Auction Objection”) shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objection party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor and shall be filed and served upon the Objection Notice Parties by no later than **5:00 p.m. (prevailing Eastern Time) on July 29, 2021** (the “Post-Auction Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that failure of any entity to file a Sale Objection or Post-Auction Objection on or before the Sale Objection Deadline or Post-Auction Objection Deadline, as applicable, shall be deemed to constitute consent to the sale of the Company Assets to the Successful Bidder or the Backup Bidder(s) (as defined in the Bidding Procedures) and the other relief requested in the Bidding Procedures Motion, and be a waiver of and an absolute bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Auction, the Sale, or the Debtors’ consummation and performance of the terms of the Stalking Horse APA or the purchase agreement entered into with the Successful Bidder or the Backup Bidder(s).

**PLEASE TAKE FURTHER NOTICE** that a hearing to approve the Sale of the Company Assets to the Successful Bidder (the “Sale Hearing”) is scheduled to take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Judge Craig T. Goldblatt at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware. If no Auction is to be held, the Sale Hearing will still take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)**.

For ease of reference, the following chart has been included to summarize key dates relevant to this notice:<sup>3</sup>

<u>Key Events and Deadlines</u>	<u>Date</u>
Bidding Procedures Objection Deadline	June 10, 2021 by 5:00 P.M. (prevailing Eastern Time)

<sup>3</sup> All dates, times, and deadlines are subject to change or modification in accordance with the Bidding Procedures Order.

Sale Objection Deadline	July 9, 2021 by 5:00 P.M. (prevailing Eastern Time)
Bid Deadline	July 26, 2021 by 11:59 A.M. (prevailing Eastern Time)
Auction (if any)	July 28, 2021 at 10:00 A.M. (prevailing Eastern Time)
Post-Auction Objection Deadline	July 29, 2021 by 5:00 P.M. (prevailing Eastern Time)
Sale Hearing	July 30, 2021 at 10:00 A.M. (prevailing Eastern Time)

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and conditions of the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors urge parties in interest to review such documents in their entirety. Copies of the Stalking Horse APA, the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' noticing and claims agent, Omni Agent Solutions, at <https://cases.omniagentsolutions.com/?clientId=CsgAAncz%252b6amw51nISnxxshdDw4PkhL2LOh4%252boIEaiFy8NkLWddlvFoHTrWvLVAn7yBp7dC1eI%253d>, or (b) the Bankruptcy Court's website: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained from the Debtors' claims and noticing agent, Omni Agent Solutions at (818) 906-8300.

**CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE A SALE OBJECTION**

**ANY PARTY OR ENTITY THAT FAILS TO TIMELY FILE AND SERVE A SALE OBJECTION OR POST-AUCTION OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE OR POST-AUCTION OBJECTION DEADLINE, AS APPLICABLE, IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE COMPANY ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

Dated: [●], 2021  
Wilmington, Delaware

**EXHIBIT 3**

**Form of Publication Notice of Auction and the Sale Hearing**

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

In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (CTG)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that Avadim Health, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Company” or the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on May 31, 2021.

**PLEASE TAKE FURTHER NOTICE** that, on May 31, 2021, the Company entered into that certain stalking horse asset purchase agreement (the “Stalking Horse APA”) with Midava Holdings 3, Inc. (the “Stalking Horse Bidder”), as more fully set forth in the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Debtors’ Entry into the Stalking Horse APA with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (II) Approving Bidding Procedures, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling a Hearing to Consider the Transaction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Procedures, and (VII) Granting Related Relief* filed with the Bankruptcy Court on June 1, 2021 [ECF No. 16] (the “Bidding Procedures Motion”).<sup>2</sup> Through the Bidding Procedures Motion, the Debtors seek, among other things, approval of certain procedures (the “Bidding Procedures”) to govern the sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Company Assets”), pursuant to section 363 of the Bankruptcy Code, to the Stalking Horse Bidder or such other Successful Bidder (as defined in the Bidding Procedures) at an auction, free and clear of all claims, liens and encumbrances, as set forth in the Stalking Horse APA or a purchase agreement with such alternative Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that, on [June 25], 2021, the Bankruptcy Court entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the Debtors’ Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving*

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<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Motion, Bidding Procedures Order or Bidding Procedures (each as defined herein), as applicable.

*the Designation of the Stalking Horse Bidder, (D) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (E) Scheduling an Auction, (F) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (G) Approving Contract Assumption and Assignment Procedures, and (H) Granting Related Relief [ECF No. [●]] (the “Bidding Procedures Order”), by which the Bankruptcy Court approved the Bidding Procedures set forth therein with respect to the Sale. **All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.***

**PLEASE TAKE FURTHER NOTICE** that the Bidding Procedures provide for the consideration of Qualified Bids to acquire an individual Company Asset, any portion of the Company Assets, or all or substantially all of the Company Assets. All interested parties are invited to provide materials (as described in the Bidding Procedures) to apply to become a Potential Bidder and submit a Bid in accordance with the Bidding Procedures and the Bidding Procedures Order. The Bidding Procedures provide information regarding the requirements for a Potential Bidder to be a “Qualified Bidder” and a Bid to be a “Qualified Bid” for purposes of competing at an Auction (as defined below).

**PLEASE TAKE FURTHER NOTICE** that the deadline to submit a Qualified Bid for the Company Assets (the “Bid Deadline”) is **July 26, 2021 at 11:59 a.m. (prevailing Eastern Time)**. Pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualified Bids other than one from the Stalking Horse Bidder, the Debtors are authorized to conduct an auction (the “Auction”) for the Company Assets in accordance with the Bidding Procedures Order. The Auction, if any, shall take place virtually at **10:00 a.m. (prevailing Eastern Time) on July 28, 2021**. Only (a) Qualified Bidders (including the Stalking Horse Bidder) and their legal and financial advisors, (b) the Consultation Parties and their legal and financial advisors, (c) the U.S. Trustee, and (d) actual creditors of the Debtors (*provided* that they give at least two (2) business days’ notice to the Debtors’ counsel of their intention to attend the Auction), shall be entitled to attend the Auction. If the Auction is cancelled, the Debtors shall file with the Bankruptcy Court a notice of cancellation of the Auction.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Sale (the “Sale Objections”), shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objection party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor and shall be filed and served upon the following parties by **no later than July 9, 2021 at 5:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”): (a) counsel for the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq., ljones@pszjlaw.com), and (ii) Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Larry G. Halperin, Esq., halperin@chapman.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter, richard.schepacarter@usdoj.gov); (c) counsel to the DIP Agent and Administrative Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan Podzius, Esq. (bryan.podzius@weil.com)) and (ii) Richards, Layton & Finger, P.A., 920 N. King St., Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); and (d) counsel for the Committee, (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY

10020 (Attn: Robert M. Hirsh, Esq. (rhirsh@lowenstein.com) and Eric S. Chafetz, Esq. (echafetz@lowenstein.com)) and (ii) Fox Rothschild LLP, 919 North Market Street, Suite 300, Wilmington, Delaware 19899 (Attn: Seth A. Niederman, Esq. (sneiderman@foxrothschild.com), Michael A. Sweet, Esq. (msweet@foxrothschild.com), and Gordon E. Gouveia, Esq. (ggouveia@foxrothschild.com)) (collectively, the “Objection Notice Parties”).

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to (i) the conduct at the Auction (if held) or (ii) solely with respect to the Non-Debtor Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder (only if such Successful Bidder is not the Stalking Horse Bidder) (such a limited objection, a “Post-Auction Objection”) shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules, shall set forth the name of the objection party, the nature and amount of any claims or interests held or asserted against the Debtors’ estates or properties, the basis for the objection, and the specific grounds therefor and shall be filed and served upon the Objection Notice Parties by no later than **5:00 p.m. (prevailing Eastern Time) on July 29, 2021** (the “Post-Auction Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that failure of any entity to file a Sale Objection or Post-Auction Objection on or before the Sale Objection Deadline or Post-Auction Objection Deadline, as applicable, shall be deemed to constitute consent to the sale of the Company Assets to the Successful Bidder or the Backup Bidder(s) (as defined in the Bidding Procedures) and the other relief requested in the Bidding Procedures Motion, and be a waiver of and an absolute bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Auction, the Sale, or the Debtors’ consummation and performance of the terms of the Stalking Horse APA or the purchase agreement entered into with the Successful Bidder or the Backup Bidder(s).

**PLEASE TAKE FURTHER NOTICE** that a hearing to approve the Sale of the Company Assets to the Successful Bidder (the “Sale Hearing”) is scheduled to take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Judge Craig T. Goldblatt, at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware. If no Auction is to be held, the Sale Hearing will still take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and conditions of the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors urge parties in interest to review such documents in their entirety. Copies of the Stalking Horse APA, the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors’ noticing and claims agent, Omni Agent Solutions, at <https://cases.omniagentsolutions.com/?clientId=CsgAAncz%252b6amw51nISnxxshdDw4PkhL2LOh4%252boIEaiFy8NkLWddlvFoHTrWvLVAn7yBp7dC1eI%253d>, or (b) the Bankruptcy Court’s website: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained from the Debtors’ claims and noticing agent, Omni Agent Solutions at (818) 906-8300.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE A SALE OBJECTION

**ANY PARTY OR ENTITY THAT FAILS TO TIMELY FILE AND SERVE A SALE OBJECTION OR POST-AUCTION OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE OR POST-AUCTION OBJECTION DEADLINE, AS APPLICABLE, IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE COMPANY ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AFFECTED THEREUNDER.**

**EXHIBIT 4**

**Assumption Notice**

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

	)		
In re:	)	Chapter 11	
	)		
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (CTG)	
	)		
Debtors.	)	(Joint Administration Requested)	
	)		

**NOTICE OF POTENTIAL ASSUMPTION AND  
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND PROPOSED CURE AMOUNTS**

**PLEASE TAKE NOTICE** that Avadim Health, Inc. and its affiliated debtors, as debtors and debtors in possession (collectively, the “Company” or the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on May 31, 2021.

**PLEASE TAKE FURTHER NOTICE** that, on May 31, 2021, the Company entered into that certain stalking horse asset purchase agreement (the “Stalking Horse APA”) with Midava Holdings 3, Inc. (the “Stalking Horse Bidder”), as more fully set forth in the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving the Debtors’ Entry into the Stalking Horse APA with the Stalking Horse Bidder, Subject to the Bidding Procedures and the Sale Hearing, (II) Approving Bidding Procedures, (III) Scheduling the Bid Deadlines and the Auction, (IV) Scheduling a Hearing to Consider the Transaction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Procedures, and (VII) Granting Related Relief* filed with the Bankruptcy Court on June 1, 2021 [ECF No. 16] (the “Bidding Procedures Motion”).<sup>2</sup> Through the Bidding Procedures Motion, the Debtors seek, among other things, approval of certain procedures (the “Bidding Procedures”) to govern the sale (the “Sale”) of all or substantially all of the Debtors’ assets (the “Company Assets”), pursuant to section 363 of the Bankruptcy Code, to the Stalking Horse Bidder or such other Successful Bidder (as defined in the Bidding Procedures) at an auction, free and clear of all claims, liens and encumbrances, as set forth in the Stalking Horse APA or a purchase agreement with such alternative Successful Bidder.

**PLEASE TAKE FURTHER NOTICE** that, on [June 25], 2021, the Bankruptcy Court entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the*

<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Motion or Bidding Procedures Order (as defined herein), as applicable.

*Debtors' Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (E) Scheduling an Auction, (F) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (G) Approving Contract Assumption and Assignment Procedures, and (H) Granting Related Relief [ECF No. [●]] (the "Bidding Procedures Order")*, by which the Bankruptcy Court approved the Bidding Procedures, as set forth therein and attached thereto as Exhibit 1, with respect to the Sale. **All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.**

**PLEASE TAKE FURTHER NOTICE** that a hearing to approve the Sale of the Company Assets to the Successful Bidder (the "Sale Hearing") is scheduled to take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Judge Craig T. Goldblatt at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware. If no Auction is to be held, the Sale Hearing will still take place on **July 30, 2021 at 10:00 a.m. (prevailing Eastern Time)**.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY TO ONE OR MORE CONTRACT(S) OR LEASE(S) THAT MAY BE EXECUTORY CONTRACT(S) OR UNEXPIRED LEASE(S) WITH ONE OR MORE OF THE DEBTORS AS SET FORTH ON EXHIBIT A, ATTACHED HERETO.**<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that the Debtors may assume and assign to the Stalking Horse Bidder, or a Successful Bidder other than the Stalking Horse Bidder, the executory contract(s) or unexpired lease(s) listed on Exhibit A attached hereto (each, an "Available Contract") to which you are a counterparty. The Debtors have conducted a review of their books and records and have determined that the cure amounts required to be paid pursuant to Bankruptcy Code section 365(b) in respect of such Available Contract(s) (the "Cure Amount") is as set forth on Exhibit A attached hereto. **If you disagree with the proposed Cure Amount, object to the proposed assumption and assignment of the Available Contract(s) to the Stalking Horse Bidder, or object to the Stalking Horse Bidder's ability to provide adequate assurance of future performance with respect to any Available Contract(s), you must file an objection (a "Cure/Assignment Objection"), stating, with specificity, the nature of your objections with the Bankruptcy Court no later than 5:00 p.m. (prevailing Eastern Time) on July 9, 2021 (the "Sale Objection Deadline").** Cure/Assignment Objections must be filed and served by the Sale Objection Deadline on the following parties: (a) proposed counsel for the Debtors, (i) Pachulski Stang Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq., ljones@pszjlaw.com), and (ii) Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, New York 10020 (Attn: Larry G. Halperin, Esq., halperin@chapman.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Richard L. Schepacarter, richard.schepacarter@usdoj.gov); (c) counsel to the DIP Agent and Administrative Agent, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: David N. Griffiths, Esq. (david.griffiths@weil.com) and Bryan Podzius, Esq. (bryan.podzius@weil.com)) and (ii) Richards, Layton & Finger, P.A., 920 N. King St.,

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<sup>3</sup> This Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Notice is *not* an admission by the Debtors that such contract or lease is executory or unexpired.

Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); and (d) counsel for the Committee, (i) Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 (Attn: Robert M. Hirsh, Esq. (rhirsh@lowenstein.com) and Eric S. Chafetz, Esq. (echafetz@lowenstein.com)) and (ii) Fox Rothschild LLP, 919 North Market Street, Suite 300, Wilmington, Delaware 19899 (Attn: Seth A. Niederman, Esq. (sneiderman@foxrothschild.com), Michael A. Sweet, Esq. (msweet@foxrothschild.com), and Gordon E. Gouveia, Esq. (ggouveia@foxrothschild.com)).

**PLEASE TAKE FURTHER NOTICE** that the Debtors propose that if the counterparty to any Available Contract(s) fails to file an objection by the Sale Objection Deadline to (a) the Cure Amount(s), (b) the proposed assumption and assignment of all or some of the Available Contracts to the Stalking Horse Bidder, or (c) adequate assurance of the Stalking Horse Bidder's ability to perform under the Available Contracts, then, notwithstanding anything in the to the contrary in the Available Contract that counterparty (i) will be deemed to have agreed, consented and stipulated to the accuracy of the Cure Amount(s) set forth on this Exhibit A, (ii) will be deemed to have consented to the assumption and assignment of the Available Contract to the Stalking Horse Bidder (iii) shall be forever barred, estopped, and enjoined from asserting any additional cure amount under or in respect of the Available Contract(s), (iv) will have forever waived and released any and all other rights to object to the Cure Amount or the assumption and assignment of the Available Contract to the Stalking Horse Bidder and (v) that counterparty will be forever barred from objecting to the assumption and assignment of the Available Contract(s) to the Stalking Horse Bidder, including on the basis that there was a failure to provide adequate assurance of future performance.

**PLEASE TAKE FURTHER NOTICE** that by the date that is two (2) business days prior to the Closing (such date, the "Determination Date"), the Stalking Horse Bidder shall designate in writing (each such writing, a "Designation Notice") which Available Contracts that the Stalking Horse Bidder wishes for Sellers to assume and assign to the Stalking Horse Bidder at the Closing. Upon delivery of written notice to the Debtors, the Stalking Horse Bidder shall have the right to extend the Determination Date with respect to any Available Contract in its sole discretion.

**PLEASE TAKE FURTHER NOTICE** that, promptly following the Debtors' selection of the Successful Bidder and the conclusion of the Auction (if any), the Debtors shall file notice of the Successful Bid and Successful Bidder with the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that, in the event the Stalking Horse Bidder is not the Successful Bidder, any counterparty to an Available Contract shall have the right to object to the specific identity of, and adequacy of assurance of future performance provided by, such Successful Bidder on or before **July 29, 2021 at 5:00 p.m. (prevailing Eastern Time)**. To the extent such counterparty does not object in accordance herewith, the Bankruptcy Court may enter an order forever barring such counterparty to such Available Contract(s) from objecting to the assignment to such Successful Bidder including any objection on the basis that there was a failure to provide adequate assurance of future performance.

**PLEASE TAKE FURTHER NOTICE** that with respect to any Available Contract(s) assumed and assigned to the Stalking Horse Bidder or other Successful Bidder (the "Assumed Contracts"),

if a non-Debtor party to an Assumed Contract has objected solely to the proposed Cure Amount, the Debtors may, with the consent of, or at the direction of, the Stalking Horse Bidder or other Successful Bidder, pay the undisputed portion of such Cure Amount and place the disputed amount in a segregated account pending further order of the Court or mutual agreement of the parties. So long as such disputed amounts are held in such segregated account, the Debtors may, without delay, assume and assign such Assumed Contract to the applicable assignee. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in such segregated account.

**PLEASE TAKE FURTHER NOTICE** that that following the payment of the Cure Amount(s) (subject to the preceding paragraph), the Debtors' filing and service of a notice regarding the closing of the Sale shall serve as notice that such Assumed Contracts have actually been assumed and assigned.

**PLEASE TAKE FURTHER NOTICE** that notwithstanding anything herein, this Notice shall not be deemed to be an assumption, assignment, adoption, rejection, termination, or concession to the executory nature of any Available Contract(s). Moreover, the Debtors explicitly reserve their rights, in consultation with the Consultation Parties (as defined in the Bidding Procedures), to reject or assume each Available Contract pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Available Contract(s) or the validity, priority, or amount of any claims of a counterparty to any Available Contract against the Debtors that may arise under such Available Contract, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of an counterparty to an Available Contract against the Debtors that may arise under such Available Contract.

**PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and conditions of the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, which shall control in the event of any conflict, and the Debtors urge parties in interest to review such documents in their entirety. Copies of the Stalking Horse APA, the Bidding Procedures Motion, the Bidding Procedures Order, and the Bidding Procedures, in addition to any related documents that may be filed, may be obtained by accessing (a) the website of the Debtors' noticing and claims agent, Omni Agent Solutions, at <https://cases.omniagentsolutions.com/?clientId=CsgAAncz%252b6amw51nISnxxshdDw4PkhL2LOh4%252boIEaiFy8NkLWddlvFoHTrWvlLVAn7yBp7dC1eI%253d>, or (b) the Bankruptcy Court's website: <https://ecf.deb.uscourts.gov>, for a fee, through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained from the Debtors' claims and noticing agent, Omni Agent Solutions at (818) 906-8300.

Dated: [●], 2021  
Wilmington, Delaware

**Exhibit A to Assumption Notice**

<b>Counterparty Name</b>	<b>Description</b>	<b>Cure Amount</b>