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

In re:	)	Chapter 11
GENESIS HEALTHCARE, INC., et al.,	)	Case No. 25-80185 (SGJ)
Debtors.[1]	)	

[1] The last four digits of Genesis Healthcare, Inc's federal tax identification number are 4755. There are 299 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/Genesis. The location of Genesis Healthcare, Inc.'s corporate headquarters and the Debtors' service address is 101 East State Street, Kennett Square, PA 19348.

OBJECTION OF THE STATUTORY UNSECURED CLAIMHOLDERS' COMMITTEE TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES AND EXPENSE REIMBURSEMENT, (II) APPROVING THE DEBTORS' ENTRY INTO THE STALKING HORSE APA, (III) SCHEDULING CERTAIN DATES AND DEADLINES, (IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (V) ESTABLISHING NOTICE AND PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, (VI) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS, AND (VII) AUTHORIZING THE SALE OF ASSETS

The Statutory Unsecured Claimholders' Committee (the "Committee") of Genesis Healthcare, Inc., *et al.* (the "Debtors"), by and through its undersigned proposed counsel, hereby objects (the "Objection") to the *Debtors' Motion for Entry of an Order (I) Approving Bidding Procedures and Expense Reimbursement, (II) Approving the Debtors' Entry into the Stalking Horse APA, (III) Scheduling Certain Dates and Deadlines, (IV) Approving the Form and Manner of Notice Thereof, (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Assumption and Assignment of Assumed Contracts, and (VII) Authorizing the Sale of Assets* [Docket No. 117] (the "Bidding Procedures Motion")[2] filed by the Debtors in the above-captioned chapter 11 cases (the "Bankruptcy Cases"). In support of this Objection, the Committee relies upon and submits (i) the *Declaration of Andrew Turnbull in Support of the Objections of the Statutory Unsecured Claimholders' Committee to the Debtors' Various Requests for Relief* (the "Turnbull Declaration") and (ii) the *Declaration of Narendra Ganti of FTI Consulting, Inc., Proposed Financial Advisor to the Statutory Unsecured Claimholders' Committee, in Support of Objections of the Statutory Unsecured Claimholders' Committee to the Debtors' Various Requests for Relief* (the "Ganti Declaration"), and respectfully states as follows:

2 Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Motion or the DIP Objection (defined below), as applicable.

PRELIMINARY STATEMENT

1. The Committee supports a robust sale process that will generate maximum interest and value for the estates' assets, and transition the Debtors' businesses to new owners committed to delivering high-quality care while rectifying the failures that caused widespread injury and contributed to the filing of these chapter 11 cases. The proposed Bidding Procedures, however, in concert with the DIP Motion and Stalking Horse Bid, are designed by insiders and incumbent lenders to achieve the opposite. They represent an outcome in search of a process: window dressing to add an artificial gloss of fairness to a compressed sale process calibrated to chill bidding and usher the estates' assets to the insider Stalking Horse. Unless this Court stands in the way, insiders and lenders will walk away with all of the estates' value, including acquiring and burying all actions against themselves for no consideration. Worse still, the vulnerable patient population would see continued deterioration of patient care, as operations would return to the very operators who caused the surge of wrongful death and personal injury liabilities that now burden the Debtors, perpetuating the cycle of harm. Unsecured creditors—including the vulnerable patient population the Debtors purport to protect—would be left with no more than $15 million to wind down their 299 estates and address more than a billion dollars of non-insider unsecured claims arising from gross mismanagement by these very same insiders. The burden is on the Debtors to show that this insider process and result is fair—they cannot.

2. As explained in the Committee's DIP Objection, this is not how the bankruptcy process is intended to function. If insiders can incur massive tort and unsecured liabilities, wash them away through chapter 11, and re-emerge as owners free and clear, they will be incentivized to put profits over people—confident they can "rinse and repeat" when liabilities mount again.

3. A better path exists, and there is no countervailing need for the Court to approve the proposed defective process. These Debtors are not the proverbial "melting ice cube;" their operations are cash-flow positive, with the first four week "budget-to-actuals report" showing actual cash beating projections by [redacted] of the requested DIP facility. There is ample runway through the Debtors' positive cash flow to conduct a fulsome, competitive sales process untainted by artificial constraints and the specter of insiders pulling the strings for a predetermined outcome. The Court should require the Debtors to "clear the underbrush" hampering the current process and approve the Bidding Procedures (and not the Stalking Horse APA, which still has not been filed)[3] as modified by the Committee in the revised proposed order attached hereto as **Exhibit A** (the "Corrected Bidding Procedures").[4]

4. The Debtors' proposed path forward is particularly offensive here where they did not even conduct a prepetition marketing process to attempt to justify an insider Stalking Horse Bid as the cornerstone of a sales process, but instead, used months of time and exhausted considerable liquidity in professional fees to map out their scheme before, with a significant head start, attempting to pressure the Court to speed-run the process towards their preferred solution based on a fabricated sense of urgency.[5] The Debtors' only supposed justification for this inherently unfair sale process is the milestones contained in the DIP Motion—milestones dictated by the same party acting as the Stalking Horse Bidder. The milestones are artificial. They are not justified by any valid business purpose. They exist for the sole purpose of forcing the Court's

[3] Because the Stalking Horse APA remains unfiled, and no party has had an opportunity to review its terms and object to its contents, the Committee bases its statements in this Objection on the representations made in the Stalking Horse Term Sheet and reserves its right to supplement or modify this Objection as necessary prior to or at the hearing to address the Stalking Horse APA.

[4] A redline reflecting the changes to the Bidding Procedures Order is attached hereto as **Exhibit B**.

[5] The Debtors retained Debtors' Counsel more than a year ago to evaluate and pursue strategic alternatives. [ECF No. 246-2].

hand to allow the transfer of all assets for a fraction of their actual value. Worse yet, a substantial portion of the Debtors' assets—the causes of action against affiliates of the Stalking Horse—have not been valued or even disclosed to the Court, the Committee or the U.S. Trustee. The result is a process designed to give the insiders finality before anyone else in this case discovers what it is the Debtors actually sold. This cannot be allowed to pass.

5. The issues with the sale permeate both the Stalking Horse Bid and the Bidding Procedures. The Stalking Horse Bid hinders, rather than promotes, the maximization of value in the sale process. The unfiled Stalking Horse APA is proposed to be entered into between the Debtors and CPE 889988 LLC, an entity under the control of WAX Dynasty Partners LLC ("WAX")—an entity owned (indirectly) by Mr. Landau (as defined below), the individual in ultimate control of the Debtors. Approval of a stalking horse bid with an insider can only be granted after satisfying a heightened level of scrutiny. *Fabricators, Inc. v. Technical Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991). But, the Debtors cannot answer basic questions about the process that would pass muster under any standard. Why did the Debtors select an insider as Stalking Horse Bidder? According to the Debtors, not because it was the best bid received following a fulsome prepetition marketing attempt. Rather, because it was the only party with which the Debtors engaged. Despite hiring Jefferies LLC ("Jefferies") as investment banker, *on May 8, 2025*, to perform a restructuring and sale process, in the two months leading up to the Petition Date, Jefferies negotiated exclusively with the Debtors' insiders and failed to perform a prepetition marketing process with third parties for the sale of the Debtors' businesses in whole or in part. Such conduct demonstrates the sale process, as currently conceived, is not designed to maximize value, but rather, to return the companies to Mr. Landau, free of billions of dollars of tort and trade claims. Notably missing from the mountain of papers filed by the Debtors

since the Petition Date is any declaration or other evidence supporting the Bidding Procedures and the sale process. Nonetheless, the Debtors are requesting this Court enter a finding that the Stalking Horse APA was entered into in good faith, when the Stalking Horse APA remains shrouded in mystery. Such a finding cannot possibly be made absent any evidentiary support, and where all existing evidence countenances against it, let alone when the Stalking Horse APA has not even been filed.

6. Based on the Stalking Horse Term Sheet, the Stalking Horse APA will fail to accomplish the very purpose for which stalking horse agreements are designed: "to set a floor for the value of a debtor's assets and avoid low bids during the auction process."[6] The Stalking Horse Bid is opaque and conditional, it sets no floor. It is devoid not only of information regarding the value of the assets to be purchased, but also the dollar value of the total consideration being offered by the Stalking Horse Bidder. Without knowing the purchased assets or the dollar value ascribed to the overall bid, bidders do not have a clear sense of how to formulate a bid to compete with the Stalking Horse Bidder. Though the Bidding Procedures demand interested parties submit a bid at least 2% above the Stalking Horse Bid and to deposit 10% of the full bid amount (not just the cash component thereof) in cash as a good faith deposit, the Debtors do not disclose the value of the Stalking Horse Bid to be topped. Moreover, the Debtors favor the insider Stalking Horse Bidder by exempting it from making a deposit.

7. While vagueness pervades the Stalking Horse Bid, one of the few clear features is that it would assume only the hundreds of millions of dollars' worth of liabilities purportedly owed to its own insiders and lenders (and those of the Debtors) to enrich Mr. Landau further and entrench his control over these critical healthcare facilities. In the same stroke, the Stalking Horse Bid would

6 *Ogle v. Comcast Corp. (In re Houston Reg'l Sports Network, L.P.)*, 547 B.R. 717, 753 (Bankr. S.D. Tex. 2016).

strip away all the estates' causes of action against Mr. Landau and his entities for no discernible value. Even worse, the Stalking Horse Bid lays the groundwork for substantive consolidation—absent allocation of value among the Debtors' many estates, there is no way to appropriately compensate creditors in accordance with their rights under the Bankruptcy Code.

8. Debtors take no pains to hide the incestuous nature of their proposed transactions, from the DIP Facility to the Stalking Horse Bid. Bidding Procedures Motion, ¶ 8 ("Collectively, the consensual use of Cash Collateral, the DIP Facility, the Bidding Procedures, and the Stalking Horse Term Sheet represent an integrated set of agreements . . . ."). Nonetheless, they ask the Court to rule, at this stage, that this insider transaction is the result of "extensive, good-faith, arm's-length negotiations" (Bidding Procedures Order, ¶ 34) under the deferential business judgment standard, knowing they do not come near meeting the applicable entire fairness standard of review and have proffered no evidence to support the requested finding.

9. A negotiation is not arm's-length when there is no party on the other side of the negotiating table. This is an insider deal, entered into with no attempt to find a third-party purchaser, and which does not disclose the dollar value of the total consideration to be given. It cannot be approved under any standard, and certainly not the entire fairness standard. Perhaps for this reason, after receiving the Committee's issue list concerning the Stalking Horse Bid, counsel to the Debtors wrote that "[redacted]" *See* **Exhibit C**. The Committee agrees that, notwithstanding the plain language of the Bidding Procedures Motion, the Debtors should not seek approval of the Debtors' entry into the Stalking Horse APA concurrent with the Bidding Procedures Motion. The Court should not approve entry into this insider agreement, and certainly not at this early juncture before the Debtors engaged in a robust marketing process to obtain a third party, non-insider bid.

10. Even if the Debtors withdraw their request to approve entry into the Stalking Horse APA, the Bidding Procedures remain flawed and prejudicial, dramatically tilting the playing field in favor of the Debtors' desired purchaser. The 89-day proposed bid deadline is insufficient given the lack of prepetition marketing and the vast scope and complexity of the estates (comprising nearly 300 Debtor entities operating in forty states, with 27,000 employees, ancillary businesses some of which are linked closely to the healthcare facilities while others are not, interests in various JVs, master and individual leases, and a complex debt structure). Moreover, the components of the Bidding Procedures that are intertwined with the Stalking Horse Bid, such as the requirement that the Qualifying Bid exceed 2% of an undefined Stalking Horse Bid amount, should be removed, as they chill, rather than promote, bidding.

11. Properly done, the Bidding Procedures present an opportunity to prioritize and stabilize patient safety, and support a value-maximizing process that opens the Debtors' estates for a fair and balanced auction process (including by selling the assets piecemeal) to determine the optimal path forward. For the foregoing reasons, this Court should condition its approval of the Bidding Procedures on modifying them as set forth in the Corrected Bidding Procedures. Those amendments are designed to ensure a fair and open process that actually will result in the maximization of value for the Debtors' estates.

12. The Debtors must do better. They have a duty to maximize the value of their assets for the benefit of their respective bankruptcy estates and their creditors, not Mr. Landau and the others who seek to benefit from this carefully-orchestrated series of filings. The unsecured creditors in these cases demand a marketing and sale process designed to benefit all creditors—not just the favored insiders. The Court should deny the Debtors' request to approve the Stalking Horse Bid (if such request is even still pending), and only approve the Bidding Procedures on the

condition the Debtors adopt the Committee's proposed changes, thus promoting a true market-tested bidding process for the Debtors' healthcare facilities. If the insiders want to buy back causes of action, they will need to show that the releases they are trying to buy are (1) releases the Debtors can actually give (and not releases that belong solely to their creditors), and (2) purchased for adequate consideration after a genuine, thorough investigation and valuation of the causes of action being released. Creditors deserve nothing less than the Debtors' best efforts. The Bidding Procedures fall far short and should be rejected absent modification.

BACKGROUND

13. The Debtors comprise one of the largest post-acute care providers in the United States. Today, the Debtors operate approximately 175 facilities, employ over 27,000 employees, and treat over 15,000 patients. *See Declaration of Louis E. Robichaux IV in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 18] (the "First Day Declaration"), ¶ 1.

14. Beginning in 2017, the Debtors faced financial strains arising from, among other things, (i) burdensome and escalating rent payments based on a sale-leaseback arrangement the Debtors entered into in 2011, and (ii) an aggressive expansion strategy despite an overleveraged balance sheet. The Debtors' financial situation further deteriorated as a result of the COVID-19 pandemic and its impact on the healthcare industry overall. *See id.* ¶¶ 4, 92. In March 2021, the Debtors attempted an out-of-court restructuring, through which the Debtors terminated certain leases at underperforming facilities, and accepted a $100 million cash infusion from ReGen Healthcare, LLC ("ReGen"). *See id.* ¶¶ 4, 27, 30. The ReGen transaction resulted in the Company being voluntarily delisted from NASDAQ, while ReGen obtained the right to convert its debt into 93% of the Debtors' equity and to appoint three members to the Debtors' Board. ReGen is an

affiliate of Pinta Capital Partners ("Pinta"), the private equity group founded by Joel Landau ("Mr. Landau").

15. Despite the cash contributions by ReGen, the Debtors continued to struggle, in part due to the approximately $100 million of annual legal fees spent defending against personal injury and wrongful death claims. *See* First Day Declaration ¶ 5.

16. On May 8, 2025, the Debtors retained Jefferies to conduct a restructuring, sale and marketing process. In the two months between its retention and the Petition Date, Jefferies did not conduct any prepetition marketing process. Instead, the Debtors negotiated exclusively with the proposed Stalking Horse Bidder (a company related by common ownership to the Debtors). On July 9, 2025, the Debtors filed their petitions for chapter 11 relief.

17. On July 15, 2025, the Debtors filed the Bidding Procedures Motion. The Bidding Procedures Motion seeks, among other things, approval of the Bidding Procedures and the Debtors' entry into the Stalking Horse APA. The Debtors previously made clear the DIP Motion and Bidding Procedures Motion constitute two aspects of a single transaction between the Debtors and the DIP Lenders. *See* July 11, 2025 Hr'g Tr. at 56:7-12.

18. On August 7, 2025, following receipt of the Committee's issues list regarding the instant Motion, Debtors' counsel Dan Simon wrote to Committee counsel that "the hearing on August 18 is not to approve the Stalking Horse Agreement. It is to approve bidding procedures in connection with marketing and sale process. The material terms of the Stalking Horse APA, including the economic terms, have been on file since July 15. Whatever objections you have to the specifics of the Stalking Horse Agreement will be reserved until the Sale Hearing." **Exhibit C**.

19. Additional background related to the chapter 11 cases, the extensive history of Mr. Landau and Pinta's "Profits Over Patients" playbook can be found in the Background section of

the *Objection of the Statutory Unsecured Claimholders' Committee to Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "DIP Objection") filed concurrently herewith, and is incorporated in its entirety by reference herein.

ARGUMENT

20. The Debtors have represented to the Committee that they do not seek Court approval of the Stalking Horse APA at the hearing scheduled for August 18, 2025. Ex. C. As such, the Court should separate the request to approve the Bidding Procedures from the request to approve the Debtors' entry into the Stalking Horse APA, including any requested findings about the parties' alleged good faith. This bifurcation is particularly warranted here, as the Debtors failed to even file the Stalking Horse APA in the month between the first day hearing in these chapter 11 cases and the Committee's extended Objection Deadline, let alone in advance of the objection deadline established for other interested parties. No party has had the opportunity to even review the Stalking Horse APA, or to prepare an objection to the Debtors' entry into the Stalking Horse APA itself.

21. Based solely on the record available prior to the filing of this Objection, however, it is clear that neither the Stalking Horse Bid nor the Bidding Procedures should be approved. The Stalking Horse Bid should be rejected because it is an unfair sweetheart insider deal—indeed, the culmination of four years of deals benefitting insiders at a dramatic cost to unsecured creditors and patient care. The Debtors must sustain their burden, and this insider deal cannot be approved without meeting a heightened scrutiny standard. To put it plainly, it cannot satisfy any standard

as it fails to meet the basic purpose for which stalking horse bids are approved because it fails to create any meaningful bidding floor, not to mention the chilling effects from an insider bid in general and especially one with so much uncertainty and flexibility. Moreover, the Bidding Procedures should not be approved without significant amendment, including to increase transparency, ensure the process is run for the benefit of all stakeholders, and give interested parties more time to consider whether to bid, how to bid, and the assets on which they want to bid.

I. Debtors Must Meet the Heightened Standard Applicable to Insider Deals

A. The Entire Fairness Standard Applies to Approval of Both the Stalking Horse Bid and the Bidding Procedures

22. It is well settled that courts apply a "heightened scrutiny" or "entire fairness" standard when a transaction involves a debtor and its insiders.[7] *See In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (citing *In re MSR Hotels & Resorts, Inc.*, No. 13-11512, 2013 WL 5716897, at *1 (Bankr. S.D.N.Y. Oct. 1, 2013)); *see also In re Residential Cap., LLC*, No. 12-12020, 2013 WL 3286198, at *19 (Bankr. S.D.N.Y. June 27, 2013); *In re Med. Software Sols.*, 286 B.R. 431, 445 (Bankr. D. Utah 2002) ("because the asset sale is to a purported insider, the purchaser has a heightened responsibility to show that the sale is proposed in good faith and for fair value"). A heightened standard is necessary given that transactions with insiders

[7] The Debtors' suggestion that the stalking horse is not an insider transaction proves the exact opposite. In response to the requirements of Complex Procedures, Part E. Section 17(a) the Debtors represent: "The sale is not to an insider. Rather, the sale is to CPE 88988 LLC, an entity under common control with WAX, or a controlled affiliate thereof. As noted herein, WAX is a prepetition secured lender and an entity that shares common beneficial ownership with ReGen Healthcare, LLC, which holds convertible subordinated notes with the Debtors and has the right to appoint three members of the Debtors' Board." Regardless, one thing is clear and inescapable—Mr. Landau is the ultimate decision maker in control of all of these entities and is an insider of each pursuant to 11 U.S.C. § 101(31)(B)(iii) at least, and certainly qualifies as a non-statutory insider. *See In re Fortune Nat. Res. Corp.*, 350 B.R. 693, 696 (Bankr. E.D.La. 2006) ("Indeed, when [a director] is without question an insider of the debtor, it would be both folly and a triumph of form over substance to hold that the LLC over which [the director] exerts complete control is not an insider. Certainly Congress' reasons for requiring heightened scrutiny for certain individuals apply with equal force to entities entirely controlled by such individuals. To hold otherwise would be to eviscerate this section of the code by inviting insiders to escape judicial scrutiny simply by incorporating themselves.").

"are inherently suspect because 'they are rife with the possibility of abuse.'" *In re LATAM Airlines Grp. S.A.*, 620 B.R. at 769 (citation omitted). In *Pepper v. Litton*, the Supreme Court noted that dealings between an entity and its controlling shareholder "are subjected to rigorous scrutiny and where any of [the insider's] contracts or engagements with the [entity] is challenged, the burden is on the [insider to] not only to prove the good faith of the transaction but also to show its inherent fairness." 308 U.S. 295, 306 (1939).

23. The Fifth Circuit has adopted the Supreme Court's reasoning, holding that "a claim arising from the dealings between a debtor and an insider is to be rigorously scrutinized by the courts," and that, when applying this heightened scrutiny to an insider transaction with the debtor, the burden of proof shifts to the insider, *In re Fabricators, Inc.*, 926 F.2d at 1465, who then has the burden of proving the "inherent fairness and good faith of the challenged transaction," *Porretto v. Williams (In re Porretto)*, 761 F. App'x 437, 443-44 n.9 (5th Cir. 2019) (affirming the District Court's decision).

24. This burden has two prongs, requiring a showing that both (a) the process leading to the transaction and (b) the price and terms of the transaction "not only appear fair but are fair." *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010); *see also Pepper*, 308 U.S. at 306-07; *In re L.A. Dodgers, LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (insider DIP financing "requires proof of fair dealing and fair price and terms"); *In re Anchorage Boat Sales, Inc.*, 29 B.R. 275, 278 (Bankr. E.D.N.Y. 1983); *In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 549 (Bankr. S.D.N.Y. 1997) ("the conduct of bankruptcy proceedings not only should be right but must seem right"). As the Supreme Court has explained, this standard "is designed for the protection of the entire community of interests in the corporation—creditors as well as stockholders." *Pepper*, 308 U.S. at 307.

25. The insider nature of the proposed Stalking Horse APA taints both the Stalking Horse Bid and the Bidding Procedures. As the Debtors admit, the Stalking Horse Bidder is an affiliated party of its insiders. Bidding Procedures Motion ¶ 10. The Bidding Procedures Motion is part of an integrated restructuring, which features a prominent role for the Debtors' controlling insider, ReGen and certain of its affiliates, including WAX and the Stalking Horse Bidder (collectively, the "Insiders"). The Stalking Horse Bidder, which is also one of the DIP Lenders, is an affiliate of WAX, "a term loan lender and an entity that shares common beneficial ownership with [ReGen]." *Id.* ¶ 10 n.7. Thus, the beneficial owners of the Stalking Horse Bidder are "insiders" pursuant to Bankruptcy Code § 101(31). As a result, the transaction must be scrutinized under the exacting "entire fairness" standard, with the Debtors bearing the burden of proof, not the more deferential "business judgment" standard discussed by the Debtors.

B. The Stalking Horse Bid Should Be Denied

26. The Stalking Horse Bid cannot be approved because it is not a fair deal for the Debtors' stakeholders, and goes against the very purposes for which stalking horse bids are offered.

i. The Stalking Horse Bid's Opacity Fails to Set a Floor for Bids

27. Stalking horse bids are approved by courts to set a floor to the bids that may be received during the sale process. *In re Houston Reg'l Sports Network, L.P.*, 547 B.R. at 753 ("The purpose of a stalking horse bid is to set a floor for the value of a debtor's assets and avoid low bids during the auction process."); *see also Varela v. AE Liquidation, Inc. (In re AE Liquidation, Inc.),* 866 F.3d 515, 519 n.3 (3d Cir. 2017) ("[t]he purpose of a stalking horse in the context of a § 363 sale is to establish a competitive floor or minimum bid amount for the purchase of the debtor's business, thereby preventing lowball offers that would fail to provide a minimum amount of value.") (quoting Rakhee V. Patel & Vickie L. Driver, *Toto, I've A Feeling We're Not in Kansas*

Anymore: Bankruptcy Sales Outside the Ordinary Course of Business, Fed. Law., February 2010, at 56, 58).

28. The Stalking Horse Bid should not be approved because, among other things, it fails to advance that core purpose. *See* Turnbull Decl. ¶ 19. At the heart of the problem is the Stalking Horse Bid's failure to fix key economic terms. The Stalking Horse Bid requires the assumption of substantial and amorphous liabilities, including $450 million of unsecured legacy debt to certain of the Insiders, obligations owed to governmental entities, commercial lenders, and various third-party vendors. *See* Bidding Procedures Motion ¶ 19. The White Oak facility, and other assumed liabilities remain undefined and subject only to a cap to be decided by the Debtors and Stalking Horse Bidder at a later time. *Id.*, ¶¶ 19, 24. Without a clear valuation or ceiling, these obligations function as floating purchase price adjustments, undermining any effort by third parties to compare or exceed the Stalking Horse Bid. Turnbull Decl. ¶ 20.

29. Worse still, the Debtors provide no allocation of value for the assets or liabilities included in the bid. *Id.* The Stalking Horse Bid lumps together a wide array of assets and obligations without specifying their respective values, making it impossible for third parties to formulate alternate proposals for anything less than the entire deal package. *See* Bidding Procedures Motion, Ex. 2. This is particularly problematic given the bidding procedures theoretically permit offers for specific asset groupings. Bidding Procedures Order, Ex. 1, Bidding Procedures, § V.c. Without delineating the value ascribed to different assets, competing bidders cannot meaningfully participate without redoing all diligence under compressed timeframes while in the dark about the hurdle price it must top, which discourages competition and collective bidding the Committee believes will be instrumental to increasing sale value and unsecured creditor recoveries. Turnbull Decl. ¶ 20. Indeed, the Committee believes the *only* way to maximize the

value of the Debtors' estates is to encourage multiple competing bids for subsets of the Debtors' assets.

30. The Stalking Horse Bid's failures are compounded by the Debtors' own unsupported, questionable representations. The Debtors have claimed the Special Investigation Committee conducted a robust prepetition investigation into potential estate claims and causes of action. *See* First Day Declaration ¶ 112. The Bidding Procedures Motion goes even further, averring—without any backup or evidence—that the independent directors "valu[ed] the proposed causes of action proposed to be sold to the Stalking Horse Bidder and evaluat[ed] the forms of consideration provided by the Stalking Horse Bidder in exchange for such causes of action" and "engaged in robust, arms'-length negotiations with the Stalking Horse Bidder to reach the agreements subsumed within the Stalking Horse Term Sheet." Bidding Procedures Motion ¶¶ 54–55.[8] Despite these purportedly extensive efforts and negotiations, the Stalking Horse Bid provides no clarity as to which claims are being released,[9] what value was placed on those claims, or how that value was integrated into the deal. These causes of action are core estate assets, and without understanding their scope and value, it is impossible to determine whether the transaction is fair or whether higher and better alternatives might be available.

31. The Stalking Horse Term Sheet's closing conditions further undermine the parties' and the Court's ability to make an "apples-to-apples" comparison. The Stalking Horse Bid outlines an agreement that is, in effect, an agreement to agree (including with White Oak, the IRS and

8 The lack of evidentiary support demonstrating the negotiation process and how such admittedly hot-button insider claims and causes of action were dealt with in negotiation wholly undermines the Debtors' request that this Court enter a finding that the Stalking Horse APA, which has still not been filed, was the product of good-faith, arms'-length negotiations. Bidding Procedures Order ¶ 34.

9 The Stalking Horse Term Sheet refers to all of Debtors' obligations to Released Parties, which is defined to expressly include, among others, ReGen, WAX, MAO 22322, LLC, Pinta, Perigrove, Integra WIP Tenant LLC, Joel Landau and David Gefner. Stalking Horse Term Sheet ¶ 19.

counterparties to the Purchase Options). Numerous critical terms remain undefined (by way of example, a cure cost cap) or subject to post-signing negotiation. Closing is conditioned on receipt of all required third-party and governmental consents and approvals, including approval by agencies with jurisdiction over healthcare facility licensing. *See* Bidding Procedures Order, Ex. 2 at 12. In addition, the treatment of the White Oak Facility and the resolution of the IRS's secured claims must be mutually agreed between the parties before closing. *See id.*, Ex. 2 at 25-26. These vague conditions do not constitute a firm offer capable of being meaningfully assessed or outbid, but instead, serve as placeholders that make the bid impossible to value.

32. This conditional structure allows the Stalking Horse Bidder to inflate the headline value of its bid by credit bidding amorphous *unsecured* obligations to its own insiders that have no trade relation or other business purpose on a go-forward basis, which other bidders would be unwilling or unable to assume, at least without significant diligence. The result is a process that is skewed in favor of the Insiders from the outset.

33. Moreover, based on the Stalking Horse Term Sheet, the Stalking Horse APA will permit the Stalking Horse Bidder to walk away from Funded Liabilities to the extent those liabilities exceed any excess amount remaining under the DIP at the proposed Sale closing (which excess, notably, the Debtors do not project to exist). *See* Bidding Procedures Order, Ex. 2 at 11. This creates the near-certainty of leaving the estate administratively insolvent after significant time and resources have been invested into a process anchored on that bid. The Committee respectfully submits that no such conditional offer should serve as the platform for a sale timeline that sacrifices diligence, competition, and value.

34. Set forth below is a preliminary summary of the deficiencies with the Bidding Procedures and the Stalking Horse Bid, based on the Stalking Horse Term Sheet, that prevent a

sufficient and fair auction to be conducted to maximize the value of the Debtors' estates. Turnbull Decl., ¶ 19.

	Stalking Horse	Potential Overbidder
Free Option for the Stalking Horse	No deposit or specific performance remedy for a breach	10% earnest money deposit required for a Qualified Bid ("QB").
Leases Assumed	To be finalized up to one day prior to closing	Required identification of assumed leases and executory contracts to be a QB
Asset purchase agreement	Required by the term sheet by July 29. Not provided as of the date hereof.	Must submit a redline against the to be filed Stalking Horse APA (which no party has yet seen nor is there any clear deadline when it will become available).
Access to due diligence	N/A	Must describe what assets it intends to acquire before commencing due diligence
Deposit	None	10% of aggregate purchase price
Financing	No requirement of demonstration of committed, unconditional financing	Must include commitment(s) for unconditional financing
Employees	List to be provided two days prior to the auction, after the QB deadline. No minimum level of employees must be hired.	Must indicate intentions as to acceptance of employees in Qualified Bid
Employee obligations	No source of funds provided to satisfy (a) payroll, IBNR claims and WARN obligations for non-transferred employees and (b) other claims for all employees (transferred or not) including PTO, severance, workers compensation, COBRA	TBD based on general overbid standards
Contingency	Termination right in the event that there is no ABL Lender agreement,	No contingencies permitted
Identity	No disclosure provided	All entities, shareholders, partners, investors, etc. to be specifically identified
Cure Amounts	Subject to a cap, to be agreed by Purchaser and Seller	Must agree to pay all cure amounts
Collusion	DIP Lenders are permitted to submit a joint bid	None permitted

	Stalking Horse	Potential Overbidder
Back-up Bid	No requirement to serve as a back-up Bidder	Required to serve as a back-up bidder for 90 days after the Sale Hearing
Minimum Overbid	N/A	To be set at 2% plus $750,000 over the Stalking Horse Bid although aspects of that bid are not determined until as late as one day before closing
Piecemeal Bids	N/A	The proposed Bidding Procedures provide no guidance to bidders seeking to acquire less than all of the Acquired Assets under the Stalking Horse Bid.

35. In sum, the Stalking Horse Bid fails to operate as a stalking horse bid, as it does not provide a discernible floor against which other bids can compete. Allowing the Stalking Horse Bid to go forward would be providing a significant benefit to the Insider Stalking Horse Bidder with the Estate receiving nothing of value in return. The bid should not be approved.

ii. There Is No Evidence of a Fair Process Prior to the Stalking Horse Bid

36. To approve a deal with an insider, the Debtors must show that the process leading to the agreement was entirely fair. *In re Innkeepers USA Tr.*, 442 B.R. at 231. Where an agreement with an insider "was not 'shopped' in the market prior to signing," the agreement is not the product of a fair process. *Id.* Here, the Debtors concede that they did **no** prepetition marketing before inking the Stalking Horse Term Sheet. On the contrary, it was predetermined that the Debtors' Insiders would serve as Stalking Horse Bidder, and that no other parties would be invited to even consider purchasing the Debtors' assets until after the Debtors accepted the insider Stalking Horse Bid and DIP Facility, and filed chapter 11, forcing all other bidders to compete with the nebulous terms of the Stalking Horse APA. Tellingly, the Debtors formed a Special Investigation Committee in March 2025 to "investigate" and cleanse the sale of estate actions against themselves before the Debtors retained Jefferies on May 8, 2025. Simultaneous with being selected as Stalking Horse Bidder, putting on its different hat as DIP Lender, that same Insider determined to

impose DIP Milestones requiring a truncated timeline on all other interested parties, giving itself a consent right to any attempts to lengthen their diligence period. *See* Bidding Procedures Order ¶ 37 ("Subject to the terms of the Bidding Procedures, the Debtors, *with the consent of the DIP Lenders* . . . may modify the Bidding Procedures as necessary or appropriate to maximize value for their estates.") (emphasis added). And, while the Debtors represent in the Bidding Procedures Motion that the Stalking Horse Bid was negotiated in good faith and at arms'-length, the factual record is wholly inadequate to support that finding—indeed, it is devoid of any evidentiary support. To the contrary, it turns out the Special Investigation Committee is not the one doing the negotiations at all. On August 4, 2025, the Special Investigation Committee's counsel disclosed to the Committee's counsel on a call that they too are still waiting for the Debtors to send them the Stalking Horse APA.

37. Courts have found similar processes unfair and denied agreements emerging from similar factual matrices. Specifically, in *In re Innkeepers USA Tr.*, the court held that the process leading to an agreement with the debtors' insiders was not fair where it had not been shopped prior to the signing of the deal. 442 B.R. at 231. The Court noted that "[t]he Debtors did not run any marketing process, and in fact, Moelis & Company LLC ('Moelis'), the Debtors' investment banker, was told not to pursue other bidders or transactions." *Id.* at 232. Swap out Jefferies for Moelis, and the same can be said here. *See also In re Bidermann Indus. U.S.A.*, 203 B.R. at 551 (where debtor failed "to test the marketplace for other expressions of interest" and instead entered into transaction with insider, debtor failed to satisfy entire fairness standard or business judgment standard; "the proposed sale does not reveal the effective exercise of business judgment, but rather the 'illicit manipulation of a board's deliberative process by self- interested corporate fiduciaries.'"). Indeed, insider-favored terms, including failing to ascribe value to insider releases

and avoidance actions, has served to demonstrate that debtors in other cases failed to satisfy heightened scrutiny and, in any event, failed to articulate a sound business justification to approve the proposed sale. *See, e.g.*, *In re Fam. Christian, LLC*, 533 B.R. 600, 625–26, 628 (Bankr. W.D. Mich. 2015) (holding that the debtors failed to satisfy their burden under heightened scrutiny and did not articulate a sound business justification). The Stalking Horse Bid should not be approved.

iii. The Stalking Horse Bid's Terms Are Not Substantively Fair

38. To pass muster under the entire fairness standard, the Debtors must also prove that the substantive terms of the agreement are fair. *In re Los Angeles Dodgers, LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (insider DIP financing "requires proof of . . . fair price and terms"). The Debtors have not met that burden. Indeed, it is impossible for them to meet that burden given the opacity of the Stalking Horse Bid, discussed above. *See supra* ¶¶ 28-29. Neither the Court, potential bidders, nor other parties in interest know how much the Stalking Horse Bidder would be paying for the Purchased Assets. In such circumstances, no one can know whether the terms are fair or not, and so the Court cannot approve the Stalking Horse Bid as fair.

39. Moreover, what little we can divine from the Stalking Horse Bid only further undermines the conclusion that the deal is fair. The deal proposes to assume hundreds of millions of dollars' worth of *unsecured liabilities* owed to insiders, but not liabilities owed to other similarly situated parties. *See* Stalking Horse Term Sheet at 9 (defining Excluded Liabilities to include "all liabilities or indebtedness for borrowed money of the Sellers . . . other than [the liabilities owed to Insiders] contemplated by parts (iv), (vi), and (vii) of the Assumed Liabilities"). The assumption of those liabilities will mean that insiders will end up being paid in full on their claims, while locking in a virtual wipeout of all non-insider unsecured claims. Such terms are inherently unfair and should be rejected under a business judgment standard—they certainly cannot pass muster under the entire fairness standard.

40. Moreover, the Stalking Horse Term Sheet proposes to transfer all of the estate's causes of action against all of its insiders to the Stalking Horse Bidder. Critically, the Debtors have made no attempt to value those causes of action, let alone assign any of the Stalking Horse Bid purchase price to them. Despite various empty representations made by the Debtors and Special Investigation Committee members regarding the thoroughness of their investigation, after over three months (including at least two full months pre-petition prior to entering into the Stalking Horse Term Sheet and approving the chapter 11 filing), the Debtors proffer (a) no report summarizing the Special Investigation Committee's findings, (b) no valuation conducted to determine the Debtors' best interests, and (c) no value ascribed to the purchased causes of action in the Stalking Horse Bid. As such, it is impossible for the Court to hold that the Stalking Horse Bid constitutes "fair terms" or a "fair price." *In re Los Angeles Dodgers, LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (insider deal "requires proof of . . . fair price and terms").

iv. The Sale Is Prohibited Under Supreme Court Precedent as an Unjustified Priority-Skipping Transaction

41. The Stalking Horse Bid cannot be approved because it is an unauthorized gift to the Debtors' equity interest holders in violation of the Bankruptcy Code's priority scheme. A fundamental principle of bankruptcy law is that creditors must be paid in full before equity interest holders receive anything on account of their claims. *See, e.g.*, *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) ("The Code's priority system constitutes a basic underpinning of business bankruptcy law."). Equity interest holders are unequivocally barred from receiving special opportunities to buy assets or otherwise retain ownership of the debtors not open to other parties receive "property" "on account of" their equity interests. *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). If those opportunities are not marketed before being given to equity holders, the very opportunity to participate in them

constitutes an impermissible transfer of property to the equity interest holders on account of its interests. *Id.* at 455 ("This opportunity should, first of all, be treated as an item of property in its own right.").

42. Here, the Debtors' decision to enter into the Stalking Horse Bid with an Insider absent a marketing process constitutes the transfer of an exclusive opportunity to the Debtors' equity interest owner (the opportunity to be the "default" bidder with many additional months to evaluate and appraise its bid than any other party), which itself violates the priority scheme of the Bankruptcy Code, and, as a result, cannot be approved. There can be no question that this structure would violate Supreme Court precedent if included in a plan. *Id.* (exclusive opportunity given to equity interest holders to subscribe for new equity, that was not marketed, violates the absolute priority rule). As a result, it cannot be approved under section 363 either.

43. Just as there was no "affirmative indication of intent" that Congress approved priority-skipping dismissals in § 1112(b), there is no such indication of intent that Congress intended to permit priority-skipping sales under § 363. *Czyzewski*, 580 U.S. at 465. Nor does, in these circumstances, the approval of this Stalking Horse Bid advance any "significant Code-related objectives." *Id.* at 467–68. Indeed, the Stalking Horse Bid does not even meet the basic purpose of a stalking horse bid, as discussed above, *supra* ¶ 28, let alone a purpose that would justify violating the Bankruptcy Code's "fundamental" priority scheme. *Czyzewski*, 580 U.S. at 465. In such circumstances, the Stalking Horse Bid itself is an illegitimate provision of an exclusive opportunity to the Debtors' equity interest owner and as such it cannot be approved.

v. The Stalking Horse Bid Is an Impermissible Sub Rosa Plan That Benefits Insider Affiliates at the Expense of Unsecured Creditors

44. Section 363 asset sales cannot be used to circumvent the Bankruptcy Code's protections for creditors in chapter 11. *See Pension Benefit Guar. Corp. v. Braniff Airways, Inc.*

(In re Braniff Airways, Inc.), 700 F.2d 935, 940 (5th Cir. 1983); *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1227-1228 ("Undertaking reorganization piecemeal pursuant to § 363(b) should not deny creditors the protection they would receive if the proposals were first raised in the reorganization plan"). Yet, that is precisely what the Stalking Horse Bid seeks to do. By proposing the Stalking Horse Bid—an insider-controlled transaction with fixed treatment and overly broad releases of claims against those very same Insiders—the Debtors are asking this Court to preapprove a plan disguised as an asset sale, bypassing the Bankruptcy Code's procedural safeguards and violating the rights of creditors. The Stalking Horse Bid inappropriately allocates value among creditors and limits liability, all without the safeguards of the plan confirmation process. Moreover, the Stalking Horse Bid is likely to render the Debtors' estates administratively insolvent, leaving the Debtors unable to satisfy even their core fiduciary and statutory obligations.

45. The Stalking Horse Bid is not a routine section 363 asset sale, it is a *sub rosa* plan (dubbed by the Debtors as a "holistic integrated transaction")[10] that violates chapter 11's confirmation requirements. Critically, the Stalking Horse Bid impermissibly fixes creditors' recoveries (*i.e.*, their treatment). Among other terms, the Stalking Horse Bid dictates that all of the Debtors' secured debt is assumed, along with over $450 million in unsecured debt purportedly owed to certain of the Insiders, while locking in a virtual zero recovery to over $1.1 billion in similarly situated unsecured claims of noninsiders. It would then leave only fifteen million dollars ($15,000,000) to wind down the Debtors' estate, perhaps pay administrative and priority creditors, and distribute the remainder, if anything, to general unsecured creditors. That is, recovery for all of the Debtors' stakeholders is established by this sale, including grossly unfair discrimination

[10] July 11, 2025 Hr'g Tr. at 54:12-16 (Mr. Kanwal reassuring the Court that this is "not a DIP that you'd say, well, is this term market, is that term market, in totality is it market?" because the "DIP Financing is one piece of a holistic, integrated solution [with the Stalking Horse Bid]").

among unsecured claims (based on whether they are held by Mr. Landau's companies, or not), in a manner that would never pass muster under section 1129 of the Bankruptcy Code. *Cf. Braniff* at 939–40 (sale that dictated recoveries for creditors was sub rosa plan).

46. Not only does the Stalking Horse Bid pre-determine creditor treatment without a plan and the procedural protections of the Bankruptcy Code, but it does so in a manner that violates the absolute priority rule. The Stalking Horse Bid assumes "all liabilities of the Sellers to ReGen under the approximately $99,500,000 in outstanding principal amount due under the various convertible promissory notes and all other loan documents in connection therewith" (the "ReGen Notes"). While the Debtors characterize the ReGen Notes as a loan, the Committee believes it is in fact disguised equity. The rescue "loan" gave ReGen (i) the ability to appoint three board members, including the Chairman of the Board, (ii) the right to convert its debt to equity at any time into ninety-three percent (93%) of the Debtors' voting shares,[11] and (iii) a one percent (1%) interest rate,[12] all hallmarks of disguised equity financing. *See In re Midway Games, Inc.*, 428 B.R. 303 (Bankr. D. Del. 2010) (denying dismissal of motion to recharacterize loan claim as equity interest when loan was provided by party with controlling equity stake to an undercapitalized debtor on favorable economic terms). Accordingly, the Stalking Horse Bid violates the absolute priority rule because it gives a recovery to equity while unsecured creditors are not made whole. As discussed above, no "substantive Code-related objective" has or can be put forward to justify such a departure, and it is thus barred under Supreme Court precedent. *Czyzewski*, 580 U.S. at 465.

11 Substantially concurrent with entry into the ReGen "loan," the Debtors voluntarily delisted from NASDAQ.

12 Moreover, the Fourth ReGen Note bears interest at one and a half percent (1.5%), paid in kind, which is even more equity like.

47. The Insiders' favorable recovery comes both in the form of the assumption of approximately $100 million of the ReGen Notes, assumption of over $350 million in notes held by WAX and other Insiders, and through the acquisition (and presumed release) of all estate causes of action against the Insiders in the Stalking Horse Bid. The Stalking Horse Bid permits the Insiders to take all the Debtors' valuable assets free and clear of all of the liabilities they themselves created. The Insiders' Stalking Horse Bid cannot be used to provide such releases to those same Insiders.

48. The Stalking Horse Bid also inappropriately implicates substantive consolidation, which "occurs when the assets and liabilities of separate and distinct legal entities are combined in a single pool and treated as if they belong to one entity." *Clyde Bergemann, Inc. v. Babcock & Wilcox Co. (In re Babcock & Wilcox Co.)*, 250 F.3d 955, 958-59 n.5 (5th Cir. 2001). It "may take multiple forms, but it usually results in, *inter alia*, pooling the assets of, and claims against, [multiple] entities; satisfying liabilities from the resultant common fund; eliminating intercompany claims; and combining the creditors of [the] companies for the purposes of voting on reorganization plans." *Bank of N.Y. Tr. Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 249 (5th Cir. 2009). The Stalking Horse Bid does not allocate the purchase price among the individual Debtors or even clearly defined asset pools. Absent such a fixed allocation, the Stalking Horse Bid operates as a *de facto* substantive consolidation, without satisfying the standard for the "extreme and unusual remedy" of substantive consolidation. *Gandy v. Gandy (In re Gandy)*, 299 F.3d 489, 499 (5th Cir. 2002) ("Substantive consolidation is an extreme and unusual remedy." (internal citations omitted)). The Debtors have offered no legal or evidentiary support for the appropriateness of substantive consolidation, and their failure to do so means they should not be permitted to enter into the Stalking Horse Bid, or that, as permitted by

the Bidding Procedures, the Debtors should require the Stalking Horse Bidder to "allocate the value ascribed to [its] Bid for any particular Asset," Bidding Procedures Order, Ex. 1, Bidding Procedures § V.c, and allocate its purchase price among clearly-defined asset classes.

49. Making it even more obvious that the sale process is being run for the benefit of the Insiders, the Stalking Horse Bid is likely to leave the Debtors' estates administratively insolvent post-sale. To the extent the Stalking Horse Bidder elects not to assume any priority or administrative claims, the Stalking Horse Bid includes only an illusory mechanism to provide for their payment. The Stalking Horse Bid provides that the Excluded Cash "shall be adjusted on a dollar-for-dollar basis" to account for the amount of any such claims, but then provides any such additional cash "shall not exceed any excess amounts remaining under the DIP Financing at the Closing Date." The DIP Budget shows the DIP fully drawn by week five, and, accordingly, the Debtors do not even believe there will be "excess amounts" remaining undrawn under the DIP facility. Interim DIP Order, Ex. 2. The insider Stalking Horse Bidder cannot be permitted to acquire all of the Debtors' operating assets, while leaving the Debtors' estates administratively insolvent. *In re Crutcher Res. Corp.*, 72 B.R. 628, 633 (Bankr. N.D. Tex. 1987) (denying a sale motion where, among other reasons, the sale of the assets "effectively prevents reorganization of the subsidiaries and destroys any possibility whatsoever of payments to the unsecured creditors of the subsidiaries.").

vi. <u>The Stalking Horse Bidder's Credit-Bid Rights Must Be Denied or Limited For Cause Because the Underlying Debt Is Disputed, Insider-Controlled, and Subject to Recharacterization and Equitable Subordination</u>

50. The Stalking Horse Bid may only permit credit bidding for claims secured by undisputed, perfected liens, and, as currently structured, the Stalking Horse Bid could allow improper credit bidding. The Stalking Horse Bid fails to consider the impact of the DIP Loan as

to pre-petition lenders' collateral and previously unencumbered assets. Because the DIP Loan has allowed those lenders to improve their position and broaden their collateral—including to cover estate causes of action and avoidance actions against themselves—it is possible that the Stalking Horse Bidder may attempt to use that improved position to support a credit bid for assets over which they did not hold liens prepetition. The Bidding Procedures must make clear that credit bids cannot include or encompass any prepetition unencumbered assets, and that DIP claims can only be credit bid to the extent of the DIP Collateral approved in a final order.

51. While the Committee investigates the Debtors' prepetition lenders and their loan claims, any approval of the Stalking Horse Bidder's right to credit bid or apply assumed liabilities as sale consideration before the completion of such investigation would be premature. The Stalking Horse Bid should only be permitted subject in all respects to the Committee's challenge rights and Section 363(k), and the Bidding Procedures should clearly note the reservation of those rights.

52. Further, the Committee reserves its right to assert that the ReGen Notes should be recharacterized as equity, not debt. As discussed above, the ReGen Notes have all the hallmarks of disguised equity and, accordingly, are subject to recharacterization. *See Grossman v. Lothian Oil Inc. (In re Lothian Oil Inc.),* 650 F.3d 539 (5th Cir. 2011). Additionally, the Committee reserves its rights to assert that the ReGen Notes should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

53. In any event, even if the ReGen Notes are not recharacterized or equitably subordinated, they are still unsecured liabilities, and the Stalking Horse Bidder's assumption of the ReGen Notes, just like the assumption of loans owed to WAX and other affiliates, cannot be consideration for the Assets. Such assumption would violate the Bankruptcy Code's requirement

of equality of treatment among similarly situated creditors. The Stalking Horse Bidder's assumption of the ReGen Notes and other unsecured funded liabilities would provide only certain unsecured creditors (the Insiders) with a full recovery, while the remaining unsecured creditors will receive nothing. The Bankruptcy Code prohibits that outcome. The Debtors should not be allowed to accomplish through a sale what they could not in a plan.

vii. Stalking Horse Bid Deprives the Estate of Potentially Significant Value

54. The Stalking Horse Bid gives the Stalking Horse Bidder improper rights to unencumbered estate claims. Specifically, the Stalking Horse Bid proposes to transfer to the Stalking Horse Bidder all avoidance actions against their hand-picked Released Parties, regardless of their relation to the ongoing business. The avoidance actions must remain with the Debtors' estate, especially given that (a) unsecured creditors are unlikely to receive any recovery under the Stalking Horse Bid and (b) the Committee's investigation into potential claims has just begun. Moreover, the Stalking Horse Bidder could gain a windfall by pursuing avoidance actions against certain disfavored vendors and tort creditors, obtaining recoveries in full, and then not having to share those recoveries pro rata with the estates. To the extent any transfer of any avoidance actions could be appropriate, the Bidding Procedures and any Asset Purchase Agreement must require a buyer to separately itemize the portion of their bid attributable to each such action, and the proceeds thereof must go to the Debtors' unsecured creditors.

55. The Stalking Horse Bid also inappropriately limits the Debtors' ability to bring D&O claims *that are not being acquired* by the Stalking Horse Bidder. Specifically, the Stalking Horse Bid caps D&O claims at applicable insurance policy limits. This is unusual, as a buyer should have no interest in limiting D&O claims of the Debtors' estates against third parties, and further suggests this sale process is being run for the benefit of the Insiders.

C. The Court Should Not Approve the Bidding Procedures

56. As the Debtors acknowledge, "[t]he paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate." Bidding Procedures Motion ¶ 27 (citing *In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010)). But, despite that acknowledgement, the Debtors' Bidding Procedures are specifically designed to ensure that cannot occur.

57. As currently proposed, the Bidding Procedures and the Stalking Horse Bid fail to provide an appropriate avenue to maximize the value of the Debtors' estates. The purpose of Bidding Procedures is to facilitate the open and fair sale of a debtor's assets through a process that will maximize their value for the benefit of the debtor's creditors. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that courts are given discretion and latitude in order to facilitate a fair and open public sale focused on maximizing value); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (sale procedures must seek to "facilitate an open and fair public sale designed to maximize value for the estate."). Instead, these Bidding Procedures and the Stalking Horse Bid are tailored to drive the Debtors' assets back into the hands of the Debtors' insiders by unnecessarily truncating the sale process and handing undue control to Insiders to alter the deadlines. As currently structured, the Bidding Procedures effectively thwart any meaningful exposure of the Debtors' assets to potential higher and better offers.

58. In connection with the Bidding Procedures Motion, the Debtors impose an aggressive sale timeline resulting in a heavily-condensed sale process. The proposed pace sought by the Debtors is surprising given their lack of urgency to market their assets in the months leading up to the Petition Date. The Debtors provide a number of reasons for why the process they have designed is appropriate and necessary in this case. First, Debtors claim it "affords . . . sufficient

time to generate interest in any or all of the [Debtors'] Assets." Bidding Procedures Motion ¶ 21. Additionally, the Debtors assert that the proposed timeline is commensurate with (a) "the Debtors' liquidity constraints," (b) "the Debtors' businesses and the interests of their patients and residents," and (c) "the terms and conditions of the Interim DIP Order." *Id*. None of these assertions withstand scrutiny.

59. The assertion that the sale timeline affords "sufficient time to generate interest" in the Debtors' assets is flatly contradicted by the Debtors' own admissions. The Debtors conducted no pre-petition marketing process despite having retained Jefferies over two months prior to the Petition Date. This was not an oversight, it was by design. There was only ever intended to be one potential purchaser. Because there was no pre-petition marketing process, all prospective bidders must begin diligence from square one. That takes time, but the current schedule simply does not allow for it. Even if the Debtors had begun the post-petition marketing process on the Petition Date, interested parties would have only 90 days to diligence 299 Debtor entities and their 175 healthcare facilities, plus the Debtors' interests in non-Debtor JVs and other affiliates, causes of action, individual and master leases across 18 states, and a complex debt structure. That is clearly not enough time. *See* Turnbull Decl., ¶ 13.

60. The Debtors' reference to "liquidity constraints" is similarly unpersuasive. The Debtors have provided zero evidence of liquidity-driven distress requiring an expedited sale. There is no indication that the Debtors are losing key employees, or that any facilities are subject to imminent closure. In fact, the Debtors are currently operating with positive cash flow, *see* First Day Declaration ¶ 98. Curiously, beyond the projected $18 million of additional DIP Financing this month, the Debtors do not project any need for additional post-petition financing to conduct the sale process through an October auction and even a projected February 2026 sale closing. In

fact, the Debtors' first Budget-to-Actual Report, issued on August 7, 2025, indicates the Debtors held [redacted] in cash, as opposed to only [redacted] projected in their current DIP budget. Ganti Decl. ¶ 13. The Committee's financial advisor believes this is not merely a timing issue or a temporary surplus awaiting budgeted spending, but rather includes a significant permanent increase in short term liquidity. Ganti Decl. ¶ 12. There is no cash urgency or liquidity need based on the Debtors' own submissions.[13] What the Debtors portray as urgency is, in reality, the result of DIP Milestones—milestones set by the DIP Lenders, one of which is the Stalking Horse Bidder! The Debtors cannot rely on self-imposed, artificial contractual deadlines to justify a timeline that undermines competitive tension and fails to satisfy their obligation to maximize the value of their estates.

61. The Debtors' reliance on the DIP Milestones to justify the accelerated sale timeline is circular and unconvincing. The DIP Milestones are not neutral or arms-length constraints. The DIP Facility, the Bidding Procedures, and the Stalking Horse Bid were not negotiated in isolation; they form a single, insider-engineered structure, designed and controlled by the Debtors' insiders to chill competitive bidding. The same insider group acts as a DIP Lender, enabling it to impose aggressive sale milestones that deter competition. That circular structure creates the very real risk that potential third-party bidders will be unable or unwilling to compete under these constraints. By eliminating the breathing room necessary for third parties to perform diligence, structure bids, and secure financing, this structure not only fails to invite value-maximizing competition, it severely hampers it. Turnbull Decl. ¶¶ 16-17.

[13] The Committee further understands the most recent DIP Budget, updated for actual results through July, demonstrate the Debtors are operating at a positive cash flow rate of [redacted] in excess of initial projections, more than their entire supposed DIP need of $30 million.

62. Lastly, the Debtors' assertion that their proposed timeline is aligned with "the Debtors' businesses and the interests of their patients and residents" is equally unsubstantiated. The Debtors offer no declaration, operations report, or expert testimony suggesting that patient care would be in jeopardy or that operations cannot be maintained during a longer sale process. The Debtors identify no specific operational risks, regulatory deadlines, or resident care issues that compel this accelerated timeline. In fact, compressing operator transitions and diligence can destabilize staffing and continuity of care, risking worse outcomes for patients and residents, the opposite of what the Debtors contend a rushed sale protects. Arguably, nothing could be worse for patient care than to permit the Debtors to leave behind their obligations to patients they have killed and otherwise harmed, and continue onwards with Landau's "Profits over Patients" business model that got them here in the first place.[14]

63. The Debtors cite a number of cases in support of their compressed sale timeline. *See* Bidding Procedures Motion ¶ 29. Not only are the cited cases easily distinguishable, the facts in those cases highlight just how lacking the Debtors' prepetition marketing process here was. In *Steward*, the court only approved the debtors' proposed sale timeline following months of extensive prepetition outreach and negotiations with over 250 parties. See *In re Steward Health Care Sys. LLC*, Case No. 24-90213 (CML) (Bankr. S.D. Tex. June 3, 2024) [Docket No. 281] ¶¶ 14-20.[15] The Debtors also cite to the two-week sale timeline in *Eiger*, yet fail to mention that the sale process there was split in two tracks, with the debtors seeking expedited approval for a

[14] Notably, the Debtors' patient care ratings, as measured by the Centers for Medicare & Medicaid Services' Five-Star Quality Rating System has declined substantially from 37.8% of facilities grading out as above average (4 or 5 stars) in 2021 when ReGen took over, to only 15.3% exceeding that grade today, more than double the rate of decline experienced by other healthcare providers over the same time period. Ganti Decl. ¶¶ 26-27.

[15] Steward is a curious example for the Debtors to rely on as the template for a "value-maximizing" sale process, where, even after prepetition marketing, a hurried sale process left the Debtors languishing in Chapter 11 on the brink of administrative insolvency, forced to offer a 50% quick-pay to administrative claimholders while pushing payment of the balance out to 2027. Hardly a model worth emulating.

sub-set of their assets for which the debtors had already engaged in an intensive six-month long prepetition sale process. *See In re Eiger Pharms., Inc.*, Case No. 24-80040 (SGJ) (Bankr. N.D. Tex. Apr. 5, 2024) [Docket No. 13] ¶ 29. The debtors did not seek expedited relief for assets "not subject to the same marketing process prepetition." *Id.* In *Impel*, the debtors engaged with 93 potential targets, had a populated data room prepetition, and conducted presentations with 15 potential purchasers. *See In re Impel Pharms. Inc.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 11, 2024) [Docket No. 15] ¶ 67. Finally, in *AppHarvest*, the debtors conducted an extensive marketing process, which included months of outreach to approximately 105 potential purchasers, and even three site visits to the debtors' facilities. *See In re AppHarvest Prods., LLC,* Case No. 23-90745 (DRJ) (Bankr. S.D. Tex. Aug. 25, 2023) [Docket No. 277] ¶ 11. Here, by contrast, the Debtors ran no prepetition sale process at all and now seek to force every prospective bidder to start diligence from scratch on a single, company-wide transaction spanning hundreds of entities, multi-state operations, JV interests, and complex lease structures. The circumstances are not nearly comparable.

64. As set forth above, courts have emphasized that the sale of a debtor's assets to an insider, such as here, are subject to a heightened scrutiny standard, which requires both (a) the process leading to the transaction and (b) the price and terms of the transaction "not only appear fair but are fair." *In re Innkeepers USA Tr.*, 442 B.R. at 231. The process proposed by the Debtors to approve the Stalking Horse APA is far from fair to competitive bidders, and cannot be approved.

65. The Debtors have failed to show that a compressed sale timeline is necessary. There is no melting ice cube, no expiring regulatory license, no threat to operations, and no looming covenant default that compels a sprint to the finish line. The Debtors negotiated these milestones and Bidding Procedures with the DIP Lender and the Stalking Horse Bidder, both of

which are affiliated with the Debtors' controlling insider, ReGen. The Bidding Procedures provide the controlling persons of all of those entities with effective veto rights over any other bidder, and the ability to modify the Bidding Procedures as they and the Debtors see fit. No bidder can feel confident participating in this murky, tainted process. The Committee submits that the sale timeline should be extended in accordance with the timeline set forth in the Corrected Bidding Procedures, and that the Bidding Procedures should be modified as set forth therein to, among other things, remove the Stalking Horse Bidder's undue influence over the process.

RESERVATION OF RIGHTS

The Committee has not received a copy of the Stalking Horse APA in advance of the Objection Deadline and otherwise has had limited time to evaluate the relief sought under the Bidding Procedures Motion. Accordingly, this Objection is submitted without prejudice to, and with a full reservation of the Committee's rights, claims, defenses, and remedies, including the right to amend, modify, or supplement this Objection, to raise additional objections and to introduce evidence at any hearing relating to the Bidding Procedures Motion, and without in any way limiting any other rights to further object to the Bidding Procedures Motion. Should the Debtors file a Stalking Horse APA prior to the hearing on the Bidding Procedures Motion, the Committee reserves the right to seek an adjournment of the hearing to afford it time to review and respond to such new information.

CONCLUSION

The Committee respectfully requests the Court enter an order (i) denying the Stalking Horse Bid and the Debtors' entry into a potential Stalking Horse APA, (ii) approving the Corrected Bidding Procedures, and (iii) granting such other and further relief as the Court deems just and proper.

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Proposed Counsel to the Statutory Unsecured Claimholders' Committee to Genesis Healthcare, Inc., et al.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 11, 2025, the foregoing document was electronically filed with the court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF System.

/s/ Zachary H. Hemenway
Proposed Counsel for the Committee

Exhibit A

Corrected Bidding Procedures

[Filed Under Seal]

Exhibit B

Redline of Bidding Procedures Order

[Filed Under Seal]

Exhibit C

August 7, 2025 Email

[Filed Under Seal]