

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

	)	Chapter 11
	)	
	)	Case No. 19-76260
	)	Case No. 19-76263
In re:	)	Case No. 19-76267
	)	Case No. 19-76268
Absolut Facilities Management, LLC, <i>et al.</i>	)	Case No. 19-76269
	)	Case No. 19-76270
Debtors. <sup>1</sup>	)	Case No. 19-76271
	)	Case No. 19-76272
	)	
	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING BIDDING PROCEDURES FOR  
THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’  
ASSETS, (II) AUTHORIZING THE SELECTION OF A STALKING  
HORSE BIDDER, (III) APPROVING BID PROTECTIONS, (IV)  
SCHEDULING AUCTIONS AND HEARINGS TO CONSIDER SUCH  
SALE OF ASSETS, (V) APPROVING ASSUMPTION AND ASSIGNMENT  
PROCEDURES RELATED TO SUCH SALE, AND (VI) APPROVING  
THE FORM AND MANNER OF RELATED NOTICE**

This matter coming before the Court on the motion (the “**Motion**”),<sup>2</sup> filed by Absolut Facilities Management, LLC and its affiliated debtor entities (collectively, the “**Debtors**”), as debtors and debtors-in-possession in the above-captioned cases (the “**Chapter 11 Cases**”), seeking, pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), an order (i) authorizing and approving the

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Absolut Facilities Management, LLC (1412); Absolut Center for Nursing and Rehabilitation at Allegany, LLC (7875); Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC (8266); Absolut Center for Nursing and Rehabilitation at Gasport, LLC (8080); Absolut at Orchard Brooke, LLC (1641); Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC (8300); Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC (8133); and Absolut Center for Nursing and Rehabilitation at Westfield, LLC (7924).

<sup>2</sup> Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

procedures (the “**Bidding Procedures**”) that are attached hereto as **Annex 1** for the sale the Debtors’ assets (the “**Sale**”), (ii) authorizing the selection of a Stalking Horse Bidder (as defined herein), (iii) approving bid protections, (iv) scheduling Auctions and Sale Hearings in connection with the Sales, (v) approving the form and manner of notice of the Auctions and the Sale Hearings, and (vi) granting other related relief; and the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the “**Bidding Procedures Hearing**”); and upon all of the proceedings had before the Court; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and the Court having considered the statements of counsel and the evidence presented at the Bidding Procedures Hearing; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing 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 it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and after due deliberation and sufficient cause appearing therefor; and this Court having determined that the relief requested in the Motion with respect to the matters addressed herein is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor:

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

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, 9014, and 9014. Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as **Annex 1**, (ii) the Debtors' authority, but not obligation, to designate a Stalking Horse Bidder(s), (iii) the Debtors' authority, but not obligation, to pay the Bid Protections, (iv) the procedures described below for the determination of the amounts necessary to cure defaults under the Contracts and Leases so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Contracts and Leases (the "**Assumption and Assignment Procedures**"), and (v) the form and manner of notice of the Auctions and Sale Hearings described in the Motion and this Order.

C. Good and sufficient notice of the Bid Procedures Hearing has been given under the circumstances, and no further notice with respect to the relief requested in the Motion is required except as set forth herein with respect to the Auctions and the Sale Hearings. Subject to the

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<sup>3</sup> The findings and conclusions set forth herein constitute the 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. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. The proposed form of notice of the Auctions, and the Sale Hearings, attached hereto as **Annex 2** (the “**Sale Notice**”), is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auctions, the Sale Hearings, the Bidding Procedures, and all deadlines in connection therewith, and no other or further notice shall be required for the Sales.

E. If the Debtors enter into one or more stalking horse purchase agreement(s) with Stalking Horse Bidder(s) and grant to such Stalking Horse Bidder(s) the Bid Protections (including a break-up fee and expense reimbursement amount) on the conditions set forth in the Bid Procedures, such Bid Protections will be (i) an actual and necessary cost of preserving the Debtors’ estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets, (iii) commensurate with the real and substantial benefits conferred upon the Debtors’ estates and stakeholders and all parties in interest by the Stalking Horse Bidder(s), (iv) a material inducement for, and conditions necessary to, ensure that the Stalking Horse Bidder(s) will continue to pursue its/their proposed agreement to purchase the Assets and (v) fair, reasonable and appropriate in light of the size and nature of the sale, the commitments that have been made, the efforts that have been and will be expended by the Stalking Horse Bidder(s), and the Stalking Horse Bidder(s)’s lost opportunities resulting from the time spent pursuing such transaction.

F. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Assets.

G. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale.

H. The Assumption and Assignment Procedures provided for herein and the Assumption and Assignment Notice, attached hereto as **Annex 3**, are reasonable and appropriate, consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, and are reasonably calculated to provide counterparties to the Contracts and Leases with proper notice of the intended assumption and assignment of their executory contracts or unexpired leases, any Cure Amounts relating thereto and the Assumption and Assignment Procedures. The Assumption and Assignment Procedures and the Assumption and Assignment Notice have been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the Contracts and Leases to assert any Objection.

I. The definition of “Consultation Parties” in the Motion is hereby amended to include Berkadia Commercial Mortgage, LLC, as authorized sub-servicer for Midland Loan Services, Inc., but only with respect to the assets of Absolut Center for Nursing and Rehabilitation at Westfield, LLC.

J. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent provided herein.

**I. Bidding Procedures and Related Relief**

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled, as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court, are overruled.

3. The Bidding Procedures are hereby approved, are incorporated herein by reference, and shall govern all bids and bid proceedings relating to the Assets. The Debtors and their claims and noticing agent are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. With respect to the Operating Assets, up until and including December 30, 2019, and with respect to the Receivables (unless otherwise sold with the Operating Assets), up until and including January 23, 2020, the Debtors are authorized to designate Stalking Horse Bidder(s) and to agree to pay such Stalking Horse Bidder a cash break-up fee equal to up to 3.0% of the value of the consideration to be paid by the Stalking Horse Bidder and may further agree to reimburse the reasonable expenses of the Stalking Horse Bidder in an amount up to \$75,000 (together, the “**Bid Protections**”); provided that if the Stalking Horse Bid has not been approved by the Consultation Parties, the Consultation Parties may object to such Bid Protections within three (3) business days after notice of the selection of the Stalking Horse Bid. If such a timely objection to the Bid Protections is filed, the Debtors shall schedule a hearing as soon as reasonably practical seeking approval of the Bid Protections. If there is no such objection to the Bid Protections prior to such objection deadline, the Bid Protections will be authorized hereby, and may be paid from the proceeds of an alternative sale, without further action or order by the Court.

5. Prior to the Debtors’ selection of a proposed Stalking Horse Bidder, the Landlord Group shall have the right of first refusal to match any proposed Stalking Horse Bid for any or all of the Operating Assets; provided that in the event of any matching by the Landlord Group, the

proposed Stalking Horse Bidder shall have the ability to increase or improve the proposed Stalking Horse Bid through cash payments, assumption of liabilities or any other consideration, until such time as the Landlord Group elects no longer to match. In the event the proposed Stalking Horse Bidder declines to increase or improve its bid after the invocation of the right of first refusal by the Landlord Group, the Landlord Group shall be named the Stalking Horse Bidder for the Operating Assets. Unless consented to by the Landlord Group, the DIP Lender may not assign (other than to Israel Sherman or an entity as to which Israel Sherman holds management control and in which he holds an interest exceeding 50%) any right to credit bid pursuant to section 363(k) of the Bankruptcy Code for any of the Debtors' Assets.

6. Other than as set forth in the Bid Protections or as separately approved by this Court, no party submitting a bid shall be entitled to a break-up fee or expense reimbursement.

7. The deadline by which a Qualified Bid of a Potential Bidder for the Operating Assets and, to the extent the Potential Bidder desires to purchase the Receivables at the same time as the Operating Assets, for the Receivables, must be actually received shall be January 8, 2020 at 4:00 p.m. prevailing Eastern Time (the "**Operating Assets Bid Deadline**"). The deadline by which a Qualified Bid of a Potential Bidder for the Receivables must be actually received shall be February 13, 2020 at 4:00 p.m. prevailing Eastern Time (the "**Receivables Bid Deadline**"). The Debtors shall have the right, in consultation with the Consultation Parties, to determine whether a bid is a Qualified Bid and whether a Potential Bidder is a Qualified Bidder and shall notify Potential Bidders whether their bids have been recognized as Qualified Bids as promptly as practicable after a Potential Bidder delivers all of the materials required by the Bidding Procedures. Capital Finance, LLC shall be entitled to submit a credit bid for the purchase of the Receivables

and is deemed a Qualified Bidder; provided, for the avoidance of doubt, that the Debtors shall have no obligation to sell the Receivables.

8. In the event that only one Qualified Bid is received for any portion of the Assets, the Debtor shall declare that bid to be the Successful Bid for those Assets and the Auction of those Assets will be cancelled; *provided that*, notwithstanding anything to the contrary in this Order, the Debtors are authorized to seek approval of a private sale in lieu of the competitive bidding process permitted herein if, at any time they should determine, in the exercise of their business judgment and in consultation with the Consultation Parties, that a private sale for any of the Assets is in the best interests of the Debtors' estates; *provided* further that while the Debtors are offering the Receivables for sale in connection with the Bid Procedures contemplated herein, the Debtors are under no obligation to accept any bid for, or to sell, any portion of the Receivables pursuant to such procedures or otherwise. In the event the Debtors determine, in consultation with the Consultation Parties, to seek approval of a private sale transaction, the Debtors will file a separate motion on no less than 14 days' notice seeking approval of such transaction.

9. The Auctions will take place at the offices of the Debtors' counsel, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154. The Debtors will conduct the Operating Assets Auction if, by the Operating Assets Bid Deadline, (1) more than one Qualified Bid is received for all of the Operating Assets; or (2) more than one Qualified Bid is received for any portion of the Operating Assets, in each case subject to the Debtors' right to determine, in consultation with the Consultation Parties, to proceed with a private sale for any of the Operating Assets. The Operating Assets Auction shall be held on January 9, 2020 starting at 10:00 a.m., or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine. The Debtors will conduct the Receivables Auction if, by the Receivables Bid Deadline, (1) more than one Qualified



Bid is received for all of the Receivables; or (2) more than one Qualified Bid is received for any portion of the Receivables, in each case subject to the Debtors' right to determine, in consultation with the Consultation Parties, to proceed with a private sale for any of the Receivables. The Receivables Auction shall be held on February 18, 2020 starting at 10:00 a.m., or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine.

10. Each bidder participating at the Auction will be required to confirm in writing, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. Each bidder shall be required to comply with the requirements of the Bidding Procedures.

11. The Auction will be conducted openly and shall be transcribed or recorded at the Debtors' option and shall be subject in all respects to the procedures outlined in the Bid Procedures and incorporated herein by reference.

## **II. Dates and Deadlines for Sale Objections**

12. **Sale Hearings:** The Court shall convene the Operating Assets Sale Hearing on **January 13, 2020 at 11:00 a.m. (prevailing Eastern Time)** at **United States Bankruptcy Court Eastern District of New York, Conrad Duberstein Memorial Courthouse, Courtroom 2554, 271-C Cadman Plaza East, Brooklyn, New York** or as soon thereafter as counsel and interested parties may be heard, and the Receivables Sale Hearing on **March 4, 2020 at 11:00 a.m. (prevailing Eastern Time)** at **United States Bankruptcy Court Eastern District of New York, Alfonse M. D'Amato Federal Courthouse, Courtroom 960, 290 Federal Plaza, Central Islip, New York** or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the applicable Sale to the Successful Bidder(s) and the entry of the applicable Sale Order. Any obligations of the Debtors set forth in such OTA or APA that are

intended to be performed prior to the Sale Hearing and/or entry of a Sale Order pursuant to such OTA or APA are authorized as set forth herein and shall be fully enforceable as of the date of entry of this Order. The Debtors may, with the consent of the Consultation Parties (which consent not to be unreasonably withheld) adjourn the Sale Hearings from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing.

13. **Sale Objection Deadlines:** Except as set forth below, objections to approval of the Sales, including the sale of the Debtors' assets free and clear of liens, claims, encumbrances and interests (except for permitted or assumed liens, claims, encumbrances and interests, including the Assumed Liens and Liabilities) pursuant to section 363(f) of the Bankruptcy Code, must be in writing, state the basis of such objection with specificity, and be filed with this Court and served so as to be received on or before January 10, 2020 at 4:00 p.m. (prevailing Eastern Time) (the "**Operating Assets Objection Deadline**") if the objection relates to the sale of the Operating Assets or by February 21, 2020 at 4:00 p.m. (prevailing Eastern Time) (the "**Receivables Objection Deadline**") and together with the Operating Assets Objections Deadline, the "**Sale Objection Deadlines**") if the objection relates to the sale of the Receivables. Objections, if any, **must:** (i) be in writing; (ii) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with this Court and served as to be *actually received* no later than the applicable Sale Objection Deadline by (a) counsel to the Debtors, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154 (Attn: Schuyler G. Carroll and Daniel B. Besikof); (b) the Office of the United States Trustee for the Eastern District of New York, Long Island Federal Courthouse, 560 Federal Plaza, Central Islip, NY 11722 (Attn: Christine H. Black); (c) counsel to

the Committee, AMINI LLC, 140 East 45th Street, 25th Floor, New York, NY 10017 (Attn: Jeffrey Chubak); (d) counsel to the Landlord Group, Arent Fox LLP, 1301 Avenue of the Americas, Floor 42, New York, NY 10019 (Attn: George P. Angelich); (e) counsel to Capital Funding, Whiteford, Taylor & Preston LLP, 220 White Plains Road, Second Floor, Tarrytown, NY 10591 (Attn: Kenneth M. Lewis); (f) counsel to Capital Finance, Blank Rome LLP, 444 West Lake Street, Suite 1650, Chicago, IL 60606 (Attn: Paige Tinkham); (g) United States Department of Housing and Urban Development, 610 Federal Plaza, Fifth Floor, Central Islip, NY 11722 (Attn: Richard P. Donoghue and Megan J. Freismuth); (h) counsel to Berkadia Commercial Mortgage LLC, Duane Morris, LLP, 190 South LaSalle Street, Suite 3700, Chicago, Illinois 60603 (Attention: John Robert Weiss); and (i) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (such parties, the “**Objection Notice Parties**”).

14. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of any Sale Order, or consummation of any Sale, and shall be deemed to constitute consent to entry of each Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

### **III. Assumption and Assignment Procedures**

15. By no later than seven (7) days after entry of the Bidding Procedures Order, the Debtors will file a schedule of cure obligations (the “**Executory Contract List**”)<sup>4</sup> for the Contracts and Leases. The Executory Contract List will include a description of each of the Contracts and Leases potentially to be assumed and assigned to Successful Bidder and, if any, the amount the

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<sup>4</sup> The inclusion of any of the Contracts and Leases shall not constitute an admission by the Debtors that any such contract is in fact an executory contract capable of assumption or that such Contract is necessarily a binding and enforceable agreement.

Debtors believe is necessary to cure such agreements pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”). A copy of the Executory Contract List, together with the Assumption and Assignment Notice, will be served on each of the non-debtor parties listed on the Executory Contract List electronically, if available, and by first class mail on the date that the Executory Contract List is filed with the Court. For the avoidance of doubt, the presence of a Contract or Lease on the Executory Contract List (a) does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease, and/or (b) shall not prevent the Debtors or the Successful Bidder from subsequently determining either (i) not to assume such Contract or Lease at any time before such Contract or Lease is actually assumed and assigned pursuant to an Order of the Court or (ii) to assume an agreement that was initially designated for rejection.

16. Objections to the Cure Costs set forth in the Executory Contract List must be in writing, state the basis of such objection with specificity, and be filed with the Court and actually received on or before **January 3, 2020 at 4:00 p.m. (prevailing Eastern Time)** by the Objection Notice Parties.

17. Objections to the assumption and assignment of any executory contract or unexpired lease identified in the Executory Contract List, on any basis permitted under the Bankruptcy Code or any other applicable law, must be in writing, state the basis of such objection with specificity, and be filed with the Court and actually received on or before **January 3, 2020 at 4:00 p.m. (prevailing Eastern Time)** by the Objection Notice Parties.

18. As soon as practicable following the conclusion of the Auctions, the Debtors shall file a notice identifying the Successful Bidder(s) and the Back-Up Bids, if any, with the Court and serve such notice upon each party identified in the Executory Contract List. The deadline for objecting to the assumption and assignment of the Contracts and Leases to such Successful Bidder

on the basis of adequate assurance of future performance shall be the commencement of the Sale Hearing.

19. Any Successful Bidder shall provide adequate assurance information to the non-Debtor counterparties to each Contract or Lease that may be assumed and assigned to it under the Purchase Agreement as soon as practicable to the extent requested by such non-Debtor Counterparty. Each of the non-Debtor counterparties to the Contracts or Leases who receive adequate assurance information in the form of voluntary disclosures or discovery from the Debtors or a proposed assignee regarding a proposed assignment and/or assignee shall keep the adequate assurance information confidential and only use or disclose the information as may be necessary to conduct due diligence on the proposed assignee and/or object to a proposed assignment of the Contract or Lease.

20. Unless a non-Debtor party to a Contract or Lease has timely and properly filed and served an objection to the assumption and assignment of its Contract or Lease, including with respect to the Cure Costs related thereto, such counterparty to that Contract or Lease shall: (a) be forever barred from objecting to the Cure Costs (if any) and from asserting any additional cure or other amounts with respect to its Contract or Lease, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Executory Contract List; (b) be forever barred from asserting that any conditions to the assumption and assignment of any Contract or Lease must be (or cannot be) satisfied under such Contract or Lease before such agreement may be assumed and assigned, or that any required consent to any such assignment has not been given or must be provided, whether under section 365(c) of the Bankruptcy Code or otherwise; (c) be deemed to have consented to the assumption and assignment; (d) be deemed to have agreed that all defaults under the applicable Contract or Lease arising or continuing prior to the effective date

of the assignment have been cured; (e) be forever barred and estopped from asserting that the Successful Bidder failed to provide adequate assurance of future performance; (f) be forever barred from asserting that such Contract or Lease was not capable of being assigned, and (g) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder, or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Contract or Lease or that there is any objection or defense to the assumption and assignment of such Contract or Lease. In addition, the Cure Costs set forth in the Executory Contract List shall be binding upon the non-Debtor parties to the Contract or Lease for all purposes in these Chapter 11 Cases and otherwise, and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Contract or Lease; *provided, however*, that the Cure Costs set forth in the Executory Contract List may be reduced by any amounts Debtors pay under a Contract or Lease on or after the Petition Date.

21. Where a non-Debtor counterparty to a Contract or Lease files a timely objection asserting a cure amount higher than the proposed Cure Amounts (the “**Disputed Cure Amounts**”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amounts prior to the Sale Hearing, and subject in all respects to the Successful Bidder’s consent to such resolution, the Debtors shall promptly provide the Committee notice and an opportunity to object to such proposed resolution, or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, then such objection will be heard at the Sale Hearing or, at the sole discretion of the Debtors (with the consent of the Successful Bidder), at such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of a Contract or Lease will be heard at the Sale Hearing.

#### **IV. Sale Hearing Notice and Related Relief**

22. The form of the Sale Notice, substantially in the form attached hereto as **Annex 2**, and the Assumption and Assignment Notice, substantially in the form attached hereto as **Annex 3**, are hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required if the Debtors serve such notices in the manner provided in the Motion and this Order. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale. Within one (1) business day of the entry of this Order, the Debtors shall cause the Sale Notice to be (1) made available upon the Debtors' case information website of Debtors' claims and noticing agent, Prime Clerk at <https://cases.primeclerk.com/absolutcare/>, and (2) served upon the following parties: (a) the U.S. Trustee; (b) the Consultation Parties; (c) the New York State Department of Health; (d) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (e) all governmental agencies having a regulatory or statutory interest in these cases; (f) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (g) all parties that are known or reasonably believed to have expressed an interest in acquiring any of the Assets; (h) all parties that are known or reasonably believed by the Debtors to have asserted any lien, encumbrance, claim, or other interest in the Assets; (i) all non-Debtor parties to the Contracts and Leases; and (j) all other known creditors of the Debtors. Compliance with the foregoing notice provisions shall constitute sufficient notice to all parties in interest, including those whose identities are unknown to the Debtors, of the Sale of the Assets, the contemplated assumption and assignment of the Contracts and Leases and the Cure Amounts, and no additional notice of such contemplated transactions need be given.

**V. Miscellaneous**

23. All Potential Bidders (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion (including any disputes relating to the Bidding Process, the Auction, and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to a jury trial in connection with any disputes relating to any of the foregoing matters.

24. The TSA shall be deemed approved if, after filing of a proposed form of TSA by the Debtors on the docket in these cases, no objection is received within seven (7) days from the filing thereof. In the event of any objection to approval of the TSA, the Court will fix a hearing on the approval of the TSA.

25. In the event of any inconsistencies between this Order, the Motion, and the Bidding Procedures, this Order shall govern in all respects.

26. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7062, or 9014, this Order shall be immediately effective and enforceable upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

27. Notwithstanding anything contained in this Order, all rights of Capital Finance, LLC, Capital Funding, LLC, the U.S. Department of Housing and Urban Development, the U.S. Department of Health and Human Services, and its component, Centers for Medicare & Medicaid Services, ABS DIP, LLC and the New York State Department of Health to object to any sale or assignment are preserved in their entirety, including, without limitation, on the grounds that such sale or assignment affects or alters any rights, remedies, claims or defenses of such entities under




any agreements, documents, statutes, rules, regulations, regulatory agreements, policies, loan agreements, security agreements, leases or applicable law.

28. The Limited Objection of Cass Development Company dated December 6, 2019 (Docket No. 300) shall be adjourned to **January 13, 2020 at 11:00 a.m. (prevailing Eastern Time)** at **United States Bankruptcy Court Eastern District of New York, Conrad Duberstein Memorial Courthouse, Courtroom 2554, 271-C Cadman Plaza East, Brooklyn, New York** for further consideration by this Court in the event that such Limited Objection shall not have been settled and withdrawn.

29. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

**Dated: December 18, 2019**  
**Central Islip, New York**



  
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**Alan S. Trust**  
**United States Bankruptcy Judge**

**ANNEX 1**  
**(BIDDING PROCEDURES)**

**BIDDING PROCEDURES**

Set forth below are the bid procedures (the “**Bid Procedures**”) to be employed by Absolut Facilities Management, LLC and its affiliated debtor entities (collectively, the “**Debtors**”), in connection with sale of the Debtors’ assets, free and clear of liens, claims encumbrances and interests (except for permitted or assumed liens, claims, encumbrances and interests, including the Assumed Liens and Liabilities),<sup>1</sup> pursuant to and in accordance with the terms and conditions specified herein.

On December \_\_, 2019, the United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”) entered an order which, among other things (a) approved these Bidding Procedures, (b) authorized, but did not obligate the Debtors to designate a Stalking Horse Bidder(s) and pay certain bid protections, (c) approved the form and manner of the sale notice and bidding procedures notice, (d) scheduled sale hearing dates, and (e) approved the procedures for the assumption and assignment of executory contracts and unexpired leases (the “**Bidding Procedures Order**”).

1. **Key Dates.** The Bidding Procedures provide interested parties with the opportunity to complete diligence, to submit competing bids for all or a portion of the Assets, and to participate in auctions to be conducted by the Debtors. The key dates for the sale process are as follows:

<b>Date</b>	<b>Deadline</b>
December 30, 2019	Designation of Stalking Horse Bidder(s) for Operating Assets
January 3, 2020 at 4:00 p.m.	Objection to the assumption of Contracts, including Cure Amounts
January 8, 2020 at 4:00 p.m.	Submission of bids for Operating Assets (the “ <b>Operating Asset Bid Deadline</b> ”)
January 9, 2020 at 10:00 a.m.	Conduct the Auction of the Operating Assets, if necessary (the “ <b>Operating Asset Auction Date</b> ”)
January 10, 2020 at 4:00 p.m.	Objection to the conduct of the Operating Asset Auction, if any, and objection to the Sale of Operating Assets
January 13, 2020 at 11:00 a.m.	Operating Asset Sale Hearing
January 14, 2020	Entry of Operating Asset Sale Order

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the motion filed at Docket No. 269 (the “**Sale Motion**”).

Date	Deadline
January 23, 2020	Designation of Stalking Horse Bidder(s) for Receivables
February 13, 2020 at 4:00 p.m.	Submission of bids for Receivables (the “ <b>Receivables Bid Deadline</b> ”)
February 18, 2020 at 10:00 a.m.	Conduct the Auction of the Receivables, if necessary (the “ <b>Receivables Auction Date</b> ”)
February 21, 2020 at 4:00 p.m.	Objection to the conduct of the Receivables Auction, if any, and objection to the Sale of Receivables
March 4, 2020 at 11:00 a.m.	Receivables Sale Hearing
February 28, 2020	Entry of Receivables Sale Order

2. **Assets to Be Sold.** The Debtors are selling substantially all of their assets (the “**Assets**”). A bidder may offer to purchase all of the Operating Assets, or a portion thereof, as well as all of the Receivables or a portion thereof. Notwithstanding anything to the contrary in these Bidding Procedures or in the Bid Procedures Order, the Debtors shall have the right, in consultation with the Consultation Parties, to determine, at any time, to proceed via private sale for any Asset or combination of Assets or to determine not to sell any or all of the Assets. In such event, the Debtors shall seek approval of such sale by separate motion on no less than 14 days’ notice. These rights shall exist under all circumstances, even if the Debtors receive a bid from a Potential Bidder for such Asset(s) that would otherwise constitute a Qualified Bid.

3. **Participation Requirements.** Any person or entity seeking to conduct due diligence on any of the Assets and participate in the bidding process must become a “**Potential Bidder**”. Unless otherwise ordered by the Court, to become a Potential Bidder and participate in the bidding process, each person or entity will be required to deliver (unless previously delivered) the following materials to the Debtors: (a) an executed confidentiality agreement in form and substance satisfactory to the Debtors; (b) a statement and other factual support demonstrating, to the Debtors’ satisfaction, a bona fide interest in purchasing any portion of the Debtors’ Assets; and (c) sufficient information, as determined by the Debtors in consultation with the Consultation Parties, to allow the Debtors to determine that the person or entity has the wherewithal (i) to close, which may include financial statements (or such other form of financial disclosure acceptable to the Debtors in their discretion) and (ii) with respect to a Potential Bidder on the Operating Assets, to obtain requisite regulatory and other governmental approvals and provide adequate assurance of future performance of the lease obligations, including all such obligations while any Change of Ownership application relating to any of the Senior Care Facilities is pending with the State of New York and any Transfer of Physical Assets application is pending with HUD. The Debtors’ pre-petition lender, Capital Finance, LLC, shall be named a Potential Bidder upon request and without the need to provide the information set forth in this paragraph.

4. **Due Diligence.** Due diligence may include access to information provided by the Debtors and their professionals, on-site inspections, and such other matters which a Potential

Bidder may reasonably request and as to which the Debtors in their sole discretion, may agree. The Debtors and their professionals will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. The Debtors may, in their discretion, coordinate diligence efforts such that multiple Potential Bidders will have simultaneous access to due diligence materials or simultaneous attendance at site inspections. Neither the Debtors nor any of their representatives are obligated to furnish any information relating to their Assets to any person other than Potential Bidders. The Debtors reserve the right to refuse any Potential Bidder access to due diligence materials if such Potential Bidder's access is determined to be harmful to the Debtors' estates.

5. **Required Bid Materials, Deposit and Minimum Overbid.** Unless otherwise ordered by the Court, a **“Qualified Bid”** (and each person submitting a qualified bid being a **“Qualified Bidder”**), is a proposal that, at a minimum:

- a. is submitted on or before the applicable Bid Deadline by delivering an electronic copy of the bid to counsel for the Debtors, Loeb & Loeb LLP, Schuyler G. Carroll ([scarroll@loeb.com](mailto:scarroll@loeb.com)) and Daniel B. Besikof ([dbesikof@loeb.com](mailto:dbesikof@loeb.com)) (counsel to the Debtors will then promptly transmit such Bid Materials to the Consultation Parties);
- b. is a firm, unconditional bid to purchase Assets that are the subject of the bid, and not subject to any contingencies as to the validity, effectiveness, and/or binding nature of the offer, including, without limitation, further due diligence review or financing;
- c. discloses all persons or entities participating in such bid;
- d. discloses any agreement reached with any third party, including the Landlord Group, relating to the bid or the continued operation of the Senior Care Facilities;<sup>2</sup>
- e. identifies the cash consideration to be paid for the relevant Assets (the **“Purchase Price”**);
- f. to the extent the bid includes any Assets subject to a Stalking Horse Bid, is a firm bid which is not less than the Stalking Horse Bid *plus* the Break-Up Fee *plus* the Expense Reimbursement (collectively, the **“Minimum Overbid”**); *provided* that the amounts comprising the Break-Up Fee and Expense Reimbursement portions of the Minimum Overbid must be in cash;
- g. designates each and every contract and unexpired lease, the assumption and assignment of which is a condition to closing; *provided* that the

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<sup>2</sup> For the avoidance of doubt, (a) the Landlord Group shall retain absolute discretion regarding its decision to agree to lease incentives or modifications, including without limitation with respect to any bid that (i) contemplates the assumption of less than all of the Senior Care Facility leases, or (ii) fails to include the pro rata share of Percentage Rent (as defined in that certain Omnibus Third Amendment to Operating Leases entered into as of March 1, 2018).

Qualified Bidder may identify additional contracts prior to closing or at such other date as agreed by the Debtors;

- h. provides for payment of Cure Amounts no later than thirty (30) days after entry of the relevant Sale Order, including all prepetition and post-petition amounts due and owing (including without limitation curing any mechanics lien filed against the Senior Care Facilities' property in accordance with the applicable lease(s));
- i. is accompanied by sufficient information to demonstrate that the Potential Bidder has the financial wherewithal and ability to timely consummate the acquisition of the relevant Assets on terms and conditions substantially the same as in the OTA or APA, as applicable, and evidence to provide adequate assurance of future performance of all obligations to be assumed, including evidence of adequate financing, if applicable;
- j. is accompanied by a signed proposed OTA or APA, as applicable, as well as, with respect to the Operating Assets, a blackline showing any revisions to the Debtors' proposed form OTA; and
- k. is accompanied by a good faith cash deposit ("**Deposit**") in the form of a wire transfer, certified check, or such other form acceptable to the Debtors, in an amount equal to ten percent (10%) of the Purchase Price.

The Debtors, in consultation with the Consultation Parties, may make any modifications to the Bidding Procedures, including the bid requirements described above, as necessary to accommodate a piecemeal bid they determine is in the best interests of the Debtors' estates. In the event the Debtors' pre-petition lender, Capital Finance, LLC, submits a credit bid for the Receivables, it shall not be required to provide the information or deposit set forth in this Section 5 and shall be deemed a qualified bidder upon submission of its credit bid; provided, for the avoidance of doubt, that the Debtors shall have no obligation to sell any of the Receivables.

Persons or entities who collectively are referred to as a "Qualified Bidder" need not be affiliates and need not act in concert with one another, and the Debtors may aggregate separate bids from unaffiliated persons to create one "bid" from a "Qualified Bidder"; *provided*, however, that all bidders shall remain subject to the provisions of section 363(n) of the Bankruptcy Code regarding collusive bidding. Nothing contained herein shall prevent the consideration of bids for less than all Assets, and the Debtors, in consultation with the Consultation Parties, may make any modifications to the Bidding Procedures as necessary to accommodate such a bid as they determine in the best interests of the estates.

6. **Landlord Group as Qualified Bidder for Operating Assets.** With respect to any or all of the Senior Care Facilities, a bid of \$1 from the Landlord Group or an affiliate, to the extent actually formally submitted by the Operating Asset Bid Deadline, shall be deemed a Qualified Bid for any Operating Assets, provided that if a Landlord Group Qualified Bid is the Successful Bid for any Senior Care Facility (a) the Landlord Group must pay applicable cure costs relating to any leases or executory contracts for which it seeks assumption and assignment

and (b) the OTA and all other effectuating sale documents will be assignable by the Landlord Group. The Landlord Group shall not be deemed a Qualified Bidder with respect to the Receivables absent compliance with the requirements of paragraph 5 above to the extent applicable to a bid on Receivables; provided that for the avoidance of doubt the Debtors are under no obligation to sell the Receivables.

7. **Stalking Horse Bid Protections.** After consultation with the Consultation Parties, the Debtors may by no later than December 30, 2019 for sales of the Operating Assets and by no later than January 23, 2020 for sales of the Receivables, designate one or more Qualified Bids as a stalking horse bid (each, a “**Stalking Horse Bid**”) and execute an asset purchase agreement with the applicable stalking horse bidder (each, a “**Stalking Horse Bidder**”). No bid may be a Stalking Horse Bid if it does not constitute a Qualified Bid. Upon execution of an OTA or APA, as applicable, with a Stalking Horse Bidder, the Debtors may grant such Stalking Horse Bidder a cash break-up fee equal to up to 3.0% of the value of the Purchase Price to be paid by the Stalking Horse Bidder and may further agree to reimburse the reasonable expenses of the Stalking Horse Bidder in an amount up to \$75,000 (together, the “**Bid Protections**”).

Prior to the Debtors’ selection of a proposed Stalking Horse Bidder, the Landlord Group shall have the right of first refusal to match any proposed Stalking Horse Bid for any or all of the Operating Assets; provided that in the event of any matching by the Landlord Group, the proposed Stalking Horse Bidder shall have the ability to increase or improve the proposed Stalking Horse Bid through cash payments, assumption of liabilities or any other consideration, until such time as the Landlord Group elects no longer to match. In the event the proposed Stalking Horse Bidder declines to increase or improve its bid after the invocation of the right of first refusal by the Landlord Group, the Landlord Group shall be named the Stalking Horse Bidder. Unless consented to by the Landlord Group, the DIP Lender may not assign (other than to Israel Sherman or an entity as to which Israel Sherman holds management control and in which he holds an interest exceeding 50%) any right to credit bid pursuant to section 363(k) of the Bankruptcy Code for any of the Debtors’ Assets.

The Debtors will provide notice of each such Stalking Horse Bidder, Bid Protections and OTA or APA as outlined in the Bid Procedures Order. If the Stalking Horse Bid has been approved by the Consultation Parties, such Bid Protections shall be deemed approved pursuant to the Bid Procedures Order and may be paid from the proceeds of an alternative sale without further action or order by the Court. If the Stalking Horse Bid has not been approved by the Consultation Parties, the Consultation Parties may object to such Bid Protections within three business days after notice of the selection of the Stalking Horse Bid. If a timely objection to the Bid Protections is filed, the Debtors shall schedule a hearing as soon as reasonably practical seeking approval of the Bid Protections. If there is no objection to the Bid Protections prior to the objection deadline, the Bid Protections shall be deemed approved by the Bid Procedures Order and may be paid without further action or order by the Court. Other than as set forth in the Bid Protections or as separately approved by the Bankruptcy Court, no party submitting a bid shall be entitled to a break-up fee or expense reimbursement.

8. **Modification of Bids.** Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the relevant Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. 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 the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid; *provided* that any Qualified Bid may be improved at the Auction.

9. **Determination by the Debtors.** Subject to the Debtors' right to proceed via private sale for any Asset or combination of Assets or to determine not to sell any or all of the Assets, the Debtors, in consultation with the Consultation Parties, will (a) determine whether any person or entity is a Qualified Bidder, (b) receive bids from Qualified Bidders, (c) evaluate and negotiate such bids, and (d) conduct the Auctions. Subject to the Debtors' right to proceed via private sale for any Asset or combination of Assets or to determine not to sell any or all of the Assets, the Debtors, in consultation with the Consultation Parties, will select what they determine to be the highest and best Qualified Bid for the relevant Assets to serve as the starting point at the relevant Auction taking into account all relevant considerations, including the financial condition of the applicable bidder and certainty of closing (a "**Baseline Bid**").

10. **Auction.** The Auctions will take place at the offices of the Debtors' counsel, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154.

The Debtors will conduct the Operating Assets Auction if, by the Operating Assets Bid Deadline, (1) more than one Qualified Bid is received for all of the Operating Assets; or (2) more than one Qualified Bid is received for any portion of the Operating Assets, in each case subject to the Debtors' right to determine, in consultation with the Consultation Parties, to proceed with a private sale for any of the Operating Assets. The Operating Assets Auction shall be held on **January 9, 2020 starting at 10:00 a.m.**, or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine.

The Debtors will conduct the Receivables Auction if, by the Receivables Bid Deadline, (1) more than one Qualified Bid is received for all of the Receivables; or (2) more than one Qualified Bid is received for any portion of the Receivables, in each case subject to the Debtors' right to determine, in consultation with the Consultation Parties, to proceed with a private sale for any of the Receivables. The Receivables Auction shall be held on **February 18, 2020 starting at 10:00 a.m.**, or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine. Notwithstanding the foregoing, in the event multiple offers for the Receivables are received from Potential Bidders on the Operating Assets, the Debtors reserve the right, but do not have any obligation, to hold the Receivables Auction on January 9, 2020 in conjunction with the Operating Assets Auction.

The following procedures shall apply at each of the Auctions:

- a. Only Qualified Bidders who have made a Qualified Bid shall be entitled to make any subsequent bids at the Auction;
- b. Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- c. Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative;

- d. Bidding shall commence at the amount of the highest Qualifying Bid as determined by paragraph (9) above;
- e. Each Qualified Bidder may then submit successive bids in increments of at least \$50,000.00 higher than the bid at which the Auction for the subject Assets commenced and then continue at minimum increments of at least \$50,000.00 higher than the previous bid; *provided* that the Debtors, in consultation with the Consultation Parties, shall retain the right to modify the bid increment requirements at the Auction;
- f. The Auction shall be conducted openly and shall be transcribed or recorded, and the Qualified Bidders will be informed of the terms of the previous bid;
- g. Qualified Bidders shall have the right to submit additional bids and make additional modifications to their proposed OTA or APA, as applicable, at the Auction, *provided* that any such modifications on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors' estates, as determined by the Debtors in consultation with the Consultation Parties, than the terms of the highest and best Qualified Bid at the time;
- h. The Auction for the Assets or any portion of the Assets shall continue until there is only one bid that the Debtors determine, in consultation with the Consultation Parties, is the highest or best from among the Qualified Bids submitted at the Auction with respect to the subject Assets (a "**Successful Bid**"); *provided* that the Debtors reserve the right to determine not to sell any portion of the Receivables.
- i. The Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the next highest and/or best Qualified Bid to any Successful Bid and will designate such Qualified Bid as a back-up bid (a "**Back-Up Bid**") to be consummated in the event a Successful Bid fails to consummate the contemplated transaction. There may be more than one Back-Up Bid if aggregated Qualified Bids are determined to be Back-Up Bids. A Qualified Bidder that submitted a Qualified Bid that is designated a Back-Up Bid is a "Back-Up Bidder". Each Back-Up Bid shall remain open and binding until thirty (30) days after the relevant Sale Hearing or such later date agreed upon by the Debtors and the Back-Up Bidder (the "**Outside Back-Up Date**");
- j. At the relevant Sale Hearing, the Debtors shall present the Successful Bid(s) and Back-Up Bid(s) to the Court for approval. The Debtors' presentation of the announced Successful Bid(s) to the Court for approval does not constitute the Debtors' acceptance of such Successful Bid(s). The Debtor shall have accepted such Successful Bid(s) only when approved by the Court; and



- k. The Debtors, in consultation with the Consultation Parties, may adopt such other rules for the Auction (including rules that may depart from those set forth herein) that they anticipate will result in the highest and otherwise best value for the Debtors' estates and that are not inconsistent with the Bidding Procedures and are communicated to all participants at or prior to the Auction.

11. **Sale Hearings.** The Successful Bid(s) will be subject to approval by the Bankruptcy Court at the relevant Sale Hearing. The Operating Assets Sale Hearing shall take place on January 13, 2020 or as soon thereafter as the Court's calendar permits and the Receivables Sale Hearing shall take place on March 4, 2020 or as soon thereafter as the Court's calendar permits. The Successful Bidder(s) shall appear at the relevant Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner and provide adequate assurance of future performance under any and all contracts and leases to be assumed and/or assigned as part of the proposed Sale.

12. **Return of Deposits.** Except as otherwise provided herein, all deposits shall be returned to each bidder not selected as a Successful Bidder or Back-Up Bidder no later than seven (7) days following conclusion of the Auction, except that any Back-Up Bidder shall receive its deposit no later than the third business day after the earlier to occur of (a) the closing of the sale transaction with the relevant Successful Bidder, or (b) the Outside Back-Up Date.

13. **Failure to Consummate Purchase.** Following the relevant Sale Hearing, if any Successful Bidder fails to consummate an approved Sale because of (a) the failure of a condition precedent beyond the control of either the Debtor or the Successful Bidder, (b) a breach or failure to perform on the part of such Successful Bidder, or (c) the termination of an OTA as to a Senior Care Facility for any reason, any Landlord Group Qualified Bid for such Senior Care Facility shall be substituted in place of the Successful Bidder for the Operating Assets of such Senior Care Facility, subject to the rights of any previously selected Back-Up Bidder pursuant to the Bid Procedures; and the Back-Up Bidder or Landlord Group Qualified Bid will be deemed to be the new Successful Bidder for such Operating Assets, and the Debtors will be authorized to consummate the Sale without further order of the Court. If no such Back-Up Bidder exists at the time of termination of an OTA, the Debtors shall have the right to re-market the Senior Care Facility for a period of 30 days (or such longer period as the Landlord Group and the Debtors may reasonably agree), during which time the Debtors will pay rent to the Landlord Group in respect of the applicable lease. In the case of (b) above, the defaulting Successful Bidder's deposit shall be forfeited to the Debtors.

**ANNEX 2**  
**(SALE NOTICE)**

**NOTICE OF PROPOSED SALE OF ASSETS, AUCTION AND SALE HEARING**

PLEASE TAKE NOTICE that on November 22, 2019, Absolut Facilities Management, LLC and its affiliated debtor entities (collectively, the “**Debtors**”), debtors and debtors-in-possession in the above-captioned cases (the “**Chapter 11 Cases**”) filed with the Bankruptcy Court their Motion of the Debtors for Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Selection of a Stalking Horse Bidder, (C) Approving Bid Protections, (D) Scheduling Auctions and Hearings to Consider Such Sale of Assets, (E) Approving Assumption and Assignment Procedures Related to Such Sale, and (F) Approving the Form and Manner of Related Notice; and (II)(A) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Interests (Except for Assumed Liens and Liabilities), (B) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With Such Sale and (C) Granting Related Relief (the “**Sale Motion**”) [Docket No. 269].<sup>1</sup>

PLEASE TAKE FURTHER NOTICE that, on December \_\_, 2019, the Bankruptcy Court entered the order approving the Sale Motion (the “**Bidding Procedures Order**”), which among other things, establishes bidding procedures (the “**Bidding Procedures**”) for the manner in which the assets of the Debtors are to be sold.

PLEASE TAKE FURTHER NOTICE that a copy of the Sale Motion, the Bidding Procedures, and Bidding Procedures Order is available on the website of the Debtors’ claims and noticing agent, Prime Clerk at <https://cases.primeclerk.com/absolutcare/>. A copy of the Sale Motion, Bidding Procedures, and Bidding Procedures Order may also be obtained upon request to counsel for the Debtors at Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154 (Attn: Daniel B. Besikof) or [dbesikof@loeb.com](mailto:dbesikof@loeb.com).

PLEASE TAKE FURTHER NOTICE that, notwithstanding anything to the contrary in these Bidding Procedures or in the Bid Procedures Order, the Debtors shall have the right, in consultation with the Consultation Parties, to determine, at any time, to proceed via private sale for any Asset or combination of Assets or to determine not to sell any or all of the Assets. These rights shall exist under all circumstances, even if the Debtors receive a bid from a Potential Bidder for such Asset(s) that would otherwise constitute a Qualified Bid.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bid Procedures Order, the Debtors are, at any time up through and including **December 30, 2019** for sales of the Operating Assets and by no later than **January 23, 2020** for sales of the Receivables authorized to designate one or more Qualified Bids as a stalking horse bid (each, a “**Stalking Horse Bid**”) and execute an Operations Transfer Agreement or Asset Purchase Agreement, as applicable, with the proposed stalking horse bidder (each, a “**Stalking Horse Bidder**”). No bid may be a Stalking Horse Bid if it does not constitute a Qualified Bid.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that Bids for the Operating Assets are due on **January 8, 2020 at 4:00 p.m. (prevailing Eastern Time)** and Bids for the Receivables are due on **February 13, 2020 at 4:00 p.m. (prevailing Eastern Time)** (together, the “**Bid Deadlines**”); provided that nothing shall prevent a Potential Bidder from submitting a bid for any Receivables on or before the January 8, 2020 deadline for bids on the Operating Assets.

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Bidding Procedures Order, the Auctions will take place at the offices of the Debtors’ counsel, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154. The Debtors will conduct the Operating Assets Auction if, by the applicable Bid Deadline, (1) more than one Qualified Bid is received for all of the Operating Assets; or (2) more than one Qualified Bid is received for any portion of the Operating Assets. The Operating Assets Auction shall be held **on January 9, 2020 starting at 10:00 a.m.**, or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine. The Debtors will conduct the Receivables Auction if, by the applicable Bid Deadline, (1) more than one Qualified Bid is received for all of the Receivables; or (2) more than one Qualified Bid is received for any portion of the Receivables. The Receivables Auction shall be held on **February 18, 2020 starting at 10:00 a.m.**, or such other time or place as the Debtors, in consultation with the Consultation Parties, shall determine. Notwithstanding the foregoing, in the event multiple offers for the Receivables are received from Potential Bidders on the Operating Assets, the Debtors reserve the right, but do not have any obligation, to hold the Receivables Auction on January 9, 2020 in conjunction with the Operating Assets Auction. In each case, occurrence of the Auctions is subject to the Debtors’ right to determine, in consultation with the Consultation Parties, to proceed with a private sale for any of the Assets or not to sell any of the Assets.

PLEASE TAKE FURTHER NOTICE that a hearing on approval of the sale of the Operating Assets shall take place on **January 13, 2020 at 11:00 a.m.** or as soon thereafter as the Court’s calendar permits, and a hearing on approval of the sale of the Receivables shall take place on **March 4, 2020 at 11:00 a.m.** or as soon thereafter as the Court’s calendar permits (together, the “**Sale Hearings**”). At the respective hearings, the Debtors shall appear before the Bankruptcy Court and seek entry of an order or orders:

- a. authorizing the sale of the Assets by the Debtors to the Successful Bidder(s) at the Auction;
- b. authorizing the assumption and assignment of certain executory Contracts and unexpired Leases; and
- c. granting certain related relief.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the sale of the Assets, the other relief requested in the Sale Motion, to the Successful Bidder(s), the Successful Bid(s) or the manner in which the applicable Auction was conducted must: (a) be set forth in writing describing the basis therefor; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; and be filed with the Bankruptcy Court electronically so as to be received no later than **4:00 p.m. (prevailing Eastern Time) on January 10, 2020** with respect to the sale of the Operating Assets and no later than **4:00 p.m. (prevailing Eastern Time) on February 21, 2020** with respect to the sale of the Receivables (together, the “**Sale Objection Deadlines**”).

PLEASE TAKE FURTHER NOTICE that the failure of any person or entity to file an objection before the applicable Sale Objection Deadline, shall be deemed to constitute consent to the sale of the Assets to the Successful Bidder(s) and the other relief requested in the Sale Motion, and be a bar to the assertion, at the applicable Sale Hearing or thereafter, of any objection to the Sale Motion, the Auctions, the sale of the Assets free and clear of any liens, claims and encumbrances and interests (except for permitted or assumed liens, claims, encumbrances and interests, including the Assumed Liens and Liabilities), the Debtors’ consummation and performance of the applicable operations transfer agreements or asset purchase agreements with the Successful Bidder(s), and the assumption and assignment of the Contracts and Leases, if authorized by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that this Sale Notice is subject to the full terms and conditions of the Sale Motion and the Bidding Procedures Order, which shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety.

Dated: December \_\_, 2019  
New York, New York

LOEB & LOEB LLP

/s/

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*Counsel to the Debtors  
and Debtors-in-Possession*

**ANNEX 3**  
**(CURE NOTICE)**

**NOTICE OF DEBTOR'S INTENT TO POTENTIALLY ASSUME  
AND ASSIGN CERTAIN UNEXPIRED LEASES AND EXECUTORY  
CONTRACTS AND SETTING FORTH THE CURE AMOUNTS**

PLEASE TAKE NOTICE that on November 22, 2019, Absolut Facilities Management, LLC and its affiliated debtor entities (collectively, the “**Debtors**”), debtors and debtors-in-possession in the above-captioned cases (the “**Chapter 11 Cases**”) filed with the Bankruptcy Court their Motion of the Debtors for Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Selection of a Stalking Horse Bidder, (C) Approving Bid Protections, (D) Scheduling Auctions and Hearings to Consider Such Sale of Assets, (E) Approving Assumption and Assignment Procedures Related to Such Sale, and (F) Approving the Form and Manner of Related Notice; and (II)(A) Authorizing the Sale of Such Assets Free and Clear of Liens, Claims, Encumbrances, and Interests (Except for Assumed Liens and Liabilities), (B) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases In Connection With Such Sale and (C) Granting Related Relief (the “**Sale Motion**”) [Docket No. 269].

PLEASE TAKE FURTHER NOTICE that, on December \_\_, 2019, the Bankruptcy Court entered the order approving the Motion (the “**Bidding Procedures Order**”), which among other things, establishes bidding procedures (the “**Bidding Procedures**”) relating to the assumption and assignment of Contracts and Leases of the Debtors. A copy of the Bidding Procedures Order is enclosed.

PLEASE TAKE FURTHER NOTICE that at **11:00 a.m. (prevailing Eastern Time) on January 13, 2020**, or as soon thereafter as counsel may be heard, there will be a hearing (the “**Sale Hearing**”), where the Debtors will seek approval and authorization of the Sale to the Successful Bidder at the Auction.

PLEASE TAKE FURTHER NOTICE that the Debtors are parties to various executory contracts and unexpired leases and, pursuant to the Bidding Procedures Order, the Debtors intend to assume and assign certain of such contracts and leases to the Successful Bidder(s) upon the closing of the Sale(s) (collectively, the “**Contracts and Leases**”).

PLEASE TAKE FURTHER NOTICE that you have been identified as a counterparty to one or more of the Contracts and Leases. The Contract or Leases with respect to which you have been identified as a counterparty, and the corresponding proposed cure amount (the “**Cure Amount**”) which the Debtors have identified as necessary to cure defaults and/or provide compensation or adequate assurance of compensation for defaults arising prior to the Petition Date are set forth on Schedule 1 annexed hereto.

PLEASE TAKE FURTHER NOTICE that the Debtors believe that any and all defaults (other than the filing of these Chapter 11 Case) and actual pecuniary losses under the Contracts and Leases can be cured by the payment of the Cure Amount.

PLEASE TAKE FURTHER NOTICE that the assumption and assignment of any Contract or Lease and payment of any Cure Amount shall result in the full release and satisfaction of any claims or defaults, whether monetary or non-monetary, upon the consummation of the relevant Sale.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the assumption and assignment of any Contract or Lease, or the proposed Cure Amount with respect to such Contract or Lease must: (a) be set forth in writing describing the basis therefor; (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules; and (c) and must be filed with the Bankruptcy Court electronically so as to be actually received on or before **4:00 p.m. (prevailing Eastern Time) on January 3, 2020** (the “**Objection Deadline**”). Any such objection must set forth with particularity the basis for any such objection with appropriate documentation in support thereof and identify the Contract or Lease at issue.

PLEASE TAKE FURTHER NOTICE that if at any time after the entry of the Bidding Procedures Order, the Debtors identify additional prepetition executory contracts and/or leases to be assigned to the Successful Bidder, the Debtors shall serve a supplemental Cure Notice by first class mail, facsimile, electronic transmission, or overnight mail on the contract counterparty (and its attorney, if known) to each supplemental Contract or Lease by no later than ten (10) days before the proposed effective date of the assignment. Each supplemental Cure Notice shall set forth the following: (i) the name and address of the contract counterparty, (ii) notice of the proposed effective date of the assignment (subject to the right of the Debtors and the Purchaser to withdraw such request for assumption and assignment of the Contract or Lease prior to Closing), (iii) identification of the Contract or Lease, and (iv) the Cure Amount, if any.

PLEASE TAKE FURTHER NOTICE that unless the contract counterparty or any other entity properly files an objection to the supplemental Cure Notice within ten (10) days of the date of the supplemental Cure Notice, the Debtors may assume and assign the Contract or Lease subject to the occurrence of the Closing, without further order or notice of hearing. If an objection is filed and served within ten (10) days of the date of the supplemental Cure Notice, and the objection cannot be resolved consensually, such dispute shall be heard and resolved at the Sale Hearing or such other later date as may be set by the Court.

PLEASE TAKE FURTHER NOTICE that any counterparty failing to timely file an objection to a Cure Amount or the proposed assumption and assignment of a Contract or Lease shall be forever barred from objecting to the Cure Amount, from asserting any additional cure or other amounts against the Debtors, the Debtors’ estates, or the Successful Bidder with respect to its Contract or Lease, from challenging the assumption and assignment of such Contract or Lease in connection with the Sale, and will be deemed to consent to the Sale and the proposed assumption and assignment of its Contract or Lease.

PLEASE TAKE FURTHER NOTICE that if a non-debtor counterparty to a Contract or Lease files an objection to assumption or assignment, whether based on Cure Amount, adequate assurance of future performance, or any other alleged cause or claim, then, to the extent the relevant parties are not able to consensually resolve the dispute prior to the Sale Hearing, such dispute shall be heard and resolved at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that if no Cure Amount is due under the Contract or Lease, and the counterparty to such Contract or Lease does not otherwise object to the assumption and assignment of such Contract or Lease, no further action needs to be taken on the part of that counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtors' decision to assume and assign the Contracts and Leases is subject to Bankruptcy Court approval and consummation of the Sale. Absent consummation of the Sale, each Contract and Lease shall not be deemed assigned and shall in all respects be subject to further administration under the Bankruptcy Code. The designation of any agreement as a Contract or Lease shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

PLEASE TAKE FURTHER NOTICE that the Successful Bidder is not bound to accept assignment of any Contract or Lease, and may amend the schedule of Contracts and Leases at any time prior to closing.

PLEASE TAKE FURTHER NOTICE that additional information relating to the Sale as well as copies of the Sale Motion, the Bidding Procedures, and Bidding Procedures Order are available on the website of the Debtors' claims and noticing agent, Prime Clerk at <https://cases.primeclerk.com/absolutcare/>. A copy of the Sale Motion, Bidding Procedures, and Bidding Procedures Order may also be obtained upon request to counsel for the Debtors at Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154 (Attn: Daniel B. Besikof) or [dbesikof@loeb.com](mailto:dbesikof@loeb.com).

Dated: December \_\_, 2019  
New York, New York

LOEB & LOEB LLP

/s/

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