

**Exhibit B**

**[Proposed Order]**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(CENTRAL DIVISION)

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In re:		)
		)
COMMUNITY INTERVENTION SERVICES, INC.,		) Chapter 11
COMMUNITY INTERVENTION SERVICES		)
HOLDINGS, INC., SOUTH BAY MENTAL HEALTH		) Case No. 21-40002-EDK
CENTER, INC., and FUTURES BEHAVIOR		) (Jointly Administered)
THERAPY CENTER, LLC		)
		)
	Debtors.	)
<hr/>		)

**ORDER APPROVING DEBTOR’S SALE OF SUBSTANTIALLY ALL ASSETS OF FUTURES BEHAVIOR THERAPY CENTER, LLC, INCLUDING CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, PURSUANT TO SECTIONS 363 AND 365 OF THE BANKRUPTCY CODE, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS**

Upon consideration of the *Motion For Authority to Sell Substantially All Assets of Futures Behavior Therapy Center, LLC, Including Certain Executory Contracts and Unexpired Leases, Pursuant to Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims, and Interests* dated January 5, 2021 [Docket No. \_\_] (the “Sale Motion”; capitalized terms used but not otherwise defined herein have the meanings given to them in the Sale Motion, the Sale Procedures Motion, or the APA (as defined below), as applicable), pursuant to which Debtor Futures Behavior Therapy Center, LLC (the “Debtor”) requested that this Court authorize the Debtor’s sale (the “Sale”) of substantially all of the Debtor’s assets utilized by the Debtor in operating its business (collectively, the “Assets”), including without limitation (i) the Debtor’s rights under two leases of real property at which the Debtor operates its business (the “Leases”), (ii) certain personal property, including equipment, furniture and inventory, (iii) certain executory contracts with third parties (together with the Leases, the “Assumed Contracts”), (iv)

certain permits and licenses authorizing the provision of certain services to the Debtor's clients (to the extent transferable), and (v) certain other miscellaneous, specified assets as set forth in that certain Asset Purchase Agreement dated as of January 5, 2021 between the Debtor and FBTC Transitional Sub, LLC, a Delaware limited liability company ("FBTS"), including, without limitation, the right to use the Debtor's trade names and other intellectual property, to FBTS, or its eligible designee, or to such other entity that submits the highest or otherwise best offer to acquire the Assets as determined through the Sale Procedures (as defined below); and the Court having conducted a hearing on the Sale Motion on \_\_\_\_\_, 2021; and the Court having reviewed the Sale Motion and considered the arguments of counsel and the matters addressed at such hearing, including the Declaration of Eric Coburn in support of the Sale filed on \_\_\_\_\_, 2021 [Docket No. \_\_\_\_] (the "Coburn Declaration"), including the Marketing Overview and Bid Summary attached thereto, and the objections to the relief sought in the Sale Motion filed by [*insert names of any objectors and docket numbers of any filed objections*]; and the Court having found and determined that the relief sought in the Sale Motion is in the best interests of the Debtor, its estate, and the creditors thereof, and all parties in interest and that the legal and factual bases set forth in the Sale Motion establish good cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

**IT IS HEREBY FOUND AND DETERMINED, pursuant to Fed. R. Bankr. P. 7052, that:**

**General**

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1134. Venue of the Debtors' Chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408(a) and 1409(a). Determination of the Sale Motion is a core

proceeding under 28 U.S.C. §157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. The statutory predicates for the relief requested in the Sale Motion are Sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**Compliance with Sale Procedures**

B. The Debtor has complied with the notice provisions of the Sale Procedures Order by providing the notices approved under the Sale Procedures Order to, as applicable, (i) counsel for the United States Trustee, (ii) counsel to the Agent, (iii) counsel to the creditors’ committee (if any), or, if such committee was not then represented by counsel, then, to the members of such committee or their respective counsel, (iv) any entities known to hold a lien or security interest in any of the Assets, (v) all parties that have filed and served a request for notice in the Debtors’ Chapter 11 cases, (vi) the Internal Revenue Service, (vii) the United States Attorney for the District of Massachusetts, (viii) each of the Debtor’s federal and state taxing authorities, and any federal, state or local governmental agency that has or exercises any licensing, registration or permitting authority over the Debtor or any of the Assets, including the Massachusetts Department of Early Education and Care, (ix) all non-Debtor parties to the Assumed Contracts, (x) all relevant environmental regulatory agencies, and (xi) all other known creditors of the Debtor. The notice of the Sale Hearing and of the relief sought by the Sale Motion, as reflected by the affidavits or certificates of service on file with the Court, was proper, timely, adequate and sufficient and meets the requirements of Sections 102(1), 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006, was reasonably calculated to give actual notice of the relief contemplated by the Sale Motion, is appropriate and sufficient under the

circumstances, and no other or further notice of the Sale, the Sale Procedures, the Auction, the Sale Motion, the Sale Hearing, or the entry of this Order need be provided to any entity.

C. Service of the Assumed Contracts Notice was good, sufficient and appropriate under the circumstances, in compliance with the Sale Procedures Order, and no other or further notice need be given to any entity in respect of establishing the Cure Amounts for the Assumed Contracts. Non-Debtor counterparties to the Assumed Contracts have had an opportunity to object to the Cure Amounts.

D. The Debtor has demonstrated good, sound and sufficient business purpose and justification, and it is a reasonable exercise of the Debtor's business judgment, (i) to sell the Assets on the terms and conditions set forth in the APA (as defined below), (ii) to assume and assign the Assumed Contracts to the Winning Bidder, and (iii) to consummate all transactions contemplated by the APA (as defined below). The sale of the Assets and the assumption and assignment of the Assumed Contracts is in the best interest of the Debtor, its estate, its creditors, and other parties in interest.

**Highest or Best Offer**

E. The Debtor and Duff & Phelps Securities, LLC ("D&P") marketed the Assets diligently, in good faith and in a commercially reasonable manner, to secure the highest and best offers for the Assets, including through the efforts of D&P to contact and make available offering and due diligence materials to potential purchasers and otherwise to make sale-related information about the Debtor, the Assets, and the Sale Procedures available to prospective purchasers of the Assets.

F. The Debtor and D&P have marketed the Assets and solicited bids for the Assets in compliance with the Sale Procedures Motion and the Sale Procedures Order, and creditors,

parties in interest and other entities have been afforded a full, fair and reasonable opportunity to submit offers to purchase the Assets.

G. The Debtor, D&P, and the Debtor's other representatives have complied in all material respects with the Sale Procedures and the Sale Procedures Order. The Debtor has complied with the provisions of Sections 363 and 365 of the Bankruptcy Code as regards the sale of the Assets and the assumption and assignment of the Assumed Contracts.

H. At the conclusion of the Auction, the Debtor, in consultation with its professional advisors and the Agent, designated the bid of [WINNING BIDDER] (the "Winning Bidder") as the highest or otherwise best offer to purchase the Assets (the "Winning Bid"), which Winning Bid is embodied in that certain Asset Purchase Agreement between the Debtor and the Winning Bidder dated as of \_\_\_\_\_, 2021 (the "APA", a copy of which is attached hereto as Exhibit A). Pursuant to the APA, the Winning Bidder has agreed, in consideration of the Debtor's sale of the Assets to the Winning Bidder, to pay the cash purchase price to the Debtor in the amount of \$\_\_\_\_\_, and to assume the Assumed Contracts and the Assumed Obligations (as defined in the APA), all as specified in the APA, subject only to satisfaction of the conditions to closing of the Sale as set forth in the APA.

I. The Debtor also designated the bid of \_\_\_\_\_ (the "Back-Up Bidder") as the second best offer to acquire the Assets (the "Back-Up Bid"), which Back-Up Bid is embodied in a modified asset purchase agreement with the Back-Up Bidder constituting the Back-Up Bidder's pre-Auction Qualified Bid that has been further modified to reflect the results of the Auction, and filed with this Court [Docket No. \_\_\_\_] (such modified APA, the "Back-Up Bidder APA"). The Back-Up Bid is on essentially the same terms as the Winning Bid except that it provides for a \$\_\_\_\_\_ lower cash purchase price.

J. If for any reason the sale of the Assets to the Winning Bidder does not close, and the Debtor proceeds to close the sale of the Assets to the Back-Up Bidder pursuant to the Back-Up Bidder APA, then, upon the closing of such sale to the Back-Up Bidder, the Back-Up Bidder shall be deemed to have been approved as the Winning Bidder by this Order and to constitute the “Winning Bidder” for purposes of this Order, and references in this Order to the Winning Bid, the Winning Bidder, and the APA shall be deemed to encompass the Back-Up Bid, the Back-Up Bidder, and the Back-Up Bidder APA, respectively. In addition, for purposes of this Order, the term “Winning Bidder” shall encompass any permitted assignee or nominee of the Winning Bidder under the APA.

K. The consideration provided by the Winning Bidder pursuant to the APA (i) is fair and reasonable, (b) is the highest or otherwise best offer for the Assets, and (c) constitutes reasonably equivalent value for the Assets.

**Sale Free and Clear**

L. The Debtor may sell the Assets free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, any successor or successor-in-interest liability theory, and other encumbrances of any kind or nature whatsoever (collectively, the “Encumbrances”) (except for the Assumed Obligations and the Permitted Liens), because, in each case, one or more of the standards set forth in Section 363(f)(1) – (5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object fall within one or more of the other subsections of Section 363(f) and are adequately protected by having their Encumbrances, if any, attach to the net cash proceeds of the Sale attributable to the Assets

in which such holder alleges an Encumbrance, in the same order of priority, with the same validity, force and effect that such Encumbrance had prior to the Sale, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

M. The Winning Bidder is not, and shall not be considered, a successor to the Debtor or its estate, and there is no continuity of enterprise between the Winning Bidder and the Debtor. The Winning Bidder (i) has not, *de facto* or otherwise, merged with or into the Debtor, (ii) is not a continuation or substantial continuation, and is not holding itself out as a mere continuation, of the Debtor or its estate, business or operations, or any enterprise of the Debtor, and (iii) does not have a common identity of incorporators, directors or equity holders with the Debtor.

N. The Winning Bidder would not have entered into the APA and would not consummate the transactions contemplated thereunder if the sale of the Assets to the Winning Bidder, and the assumption and assignment of the Assumed Contracts to the Winning Bidder, were not, except as otherwise provided in the APA, free and clear of all Encumbrances or if the Winning Bidder would, or in the future could (except and only to the extent expressly provided in the APA and with respect to the Assumed Obligations and the Permitted Liens), be liable for any of such Encumbrances.

**Assumption and Assignment of Assumed Contracts**

O. The executory contracts and unexpired leases that the Debtor is authorized to assume and assign to the Winning Bidder pursuant to the APA and Section 365 of the Bankruptcy Code are identified on attached Exhibit B (such executory contracts and unexpired leases are hereinafter referred to, collectively, as the “Assumed Contracts”). Each of the Assumed Contracts is valid and binding, in full force and effect, and enforceable in accordance

with its terms, and is property of the Debtor's estate pursuant to Section 541(a) of the Bankruptcy Code.

P. The assumption and assignment of the Assumed Contracts pursuant to the terms of this Order is integral to the APA and is in the best interests of the Debtor and its estate, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtor.

Q. The Debtor has provided adequate assurance, within the meaning of Section 365(b)(1) of the Bankruptcy Code, of the Debtor's cure of all defaults, obligations and liabilities under the Assumed Contracts, through the Debtor's undertaking to pay the cure amount for each of the Assumed Contracts as set forth on attached Exhibit B (the "Cure Amounts"). The Debtor shall pay the Cure Amounts in cash at the closing under the APA (the "Closing") or as otherwise directed by separate order of the Court.

R. To the extent that any non-Debtor party to any Assumed Contract objects, asserts or claims some greater amount is owed to it other than the Cure Amount with respect to the Debtor's obligations under the relevant Assumed Contract, such objection, assertion and/or claim is expressly overruled, unless it has been properly preserved for future resolution pursuant to the Sale Procedures Order.

S. The Winning Bidder has provided adequate assurance of its future performance under the Assumed Contracts within the meaning of Section 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

T. The Winning Bidder may in accordance with the APA designate additional executory contracts to be additional Assumed Contracts, and the Debtor in accordance with the APA may seek this Court's further order authorizing the Debtor's assumption and assignment to

the Winning Bidder of such additional Assumed Contracts. The Winning Bidder may in accordance with the APA elect not to accept assignment of any one or more of the Assumed Contracts, and nothing in this Order requires the Winning Bidder to take assignment of any particular Assumed Contract.

U. The Debtor shall continue to perform its post-petition obligations under the Assumed Contracts through the Closing or, as to any particular Assumed Contract, such earlier time as the Winning Bidder notifies the Debtor that the Winning Bidder has elected not to take assignment of such Assumed Contract and the Debtor has notified the non-Debtor contract party that such Assumed Contract will not be assumed and assigned.

**Compelling Circumstances for an Immediate Sale**

V. It is essential that the Sale of the Assets occur within the time constraints set forth in the APA. Time is of the essence in consummating the Sale.

W. The Sale does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtor, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtor, (iii) circumvent Chapter 11 safeguards, including those set forth in Sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests.

X. The consummation of the Sale is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the Sale.

**Good Faith Purchaser**

Y. The Winning Bidder is not an “insider” of the Debtor, as that term is defined in Section 101(31) of the Bankruptcy Code, and is not otherwise affiliated with the Debtor.

Z. The Winning Bidder has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) the Winning Bidder, in proposing and proceeding with the Sale in accordance with the APA, recognized that the Debtor was free to deal with other interested parties; (ii) the Winning Bidder agreed to provisions in the APA that would enable the Debtor to accept a higher and better offer; (iii) the Winning Bidder complied with all of the provisions in the Sale Procedures Order applicable to the Winning Bidder; (iv) all payments to be made by the Winning Bidder and other agreements entered into or to be entered into between the Winning Bidder and the Debtor in connection with the Sale have been disclosed; (v) the negotiation and execution of the APA and related documents were conducted in good faith and constituted an arm’s length transaction; (vi) the Winning Bidder did not induce or cause the Chapter 11 filing by the Debtor; and (vii) the APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor. The Winning Bidder is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under Section 363(m) of the Bankruptcy Code.

AA. Neither the Debtor, nor the Winning Bidder, nor their respective representatives engaged in any conduct that would cause or permit the APA, any of the other documents executed in connection with the APA, or the Sale to be avoided, or that would permit the recovery of excess value or the imposition of punitive damages, under Section 363(n) of the Bankruptcy Code.

BB. In the absence of a stay pending appeal, the Winning Bidder may close the transactions contemplated by the APA at any time after entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

**No Fraudulent Transfer**

CC. The consideration provided by the Winning Bidder pursuant to the APA (a) is fair and reasonable, (b) is the highest or otherwise best offer for the Assets, and (c) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, and Section 548 of the Bankruptcy Code).

**Sale Proceeds**

DD. No reason exists to revisit the compensation arrangements between the Debtor and D&P as set forth in the engagement letter agreement between the Debtor and D&P dated December 22, 2020, and approved by this Court [Docket No. \_\_\_] (the “D&P Fee”), which arrangements call for payment of the D&P Fee upon the closing of a sale transaction achieved through D&P’s efforts.

EE. Based on the record as it relates to the senior secured claim of the Agent and the Prepetition Secured Parties (both as defined in this Court’s final order approving the Debtor’s’ use of cash collateral entered on January \_\_, 2021 [Doc. No. \_\_\_] (the “Final Cash Collateral Order”), which claim as of the commencement of the Debtor’s Chapter 11 case totaled at least \$48,708,644.51, there exists no reason to delay payment to the Agent on account of such claim at the Closing of the remaining sale proceeds following payment of (i) the Payment Amount (as defined in the APA), (ii) the D&P Fee, and (iii) if required, the Break-Up Fee.

**Miscellaneous**

FF. It is necessary and appropriate, in order to ensure the validity of the sale of the Assets to the Winning Bidder and to ensure compliance with this Order, for this Court to retain jurisdiction to: (a) interpret and enforce the provisions of the APA, the Assumed Contracts, the Sale Motion, and this Order; (b) protect the Winning Bidder and any of the Assets against any asserted Encumbrances; (c) resolve any disputes arising under or relating to the APA, the Assumed Contracts, the Sale Motion, and this Order; and (d) determine the validity, extent and priority of asserted Encumbrances in, on, or to the Assets.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT:**

**General Provisions**

1. The findings of fact entered above and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law, it shall be so deemed, and to the extent that any conclusion of law shall later be determined to be a finding of fact, it shall be so deemed. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent herewith. This Court's findings of fact and conclusions of law, set forth in the Sale Procedures Order, are incorporated herein by reference.

2. The Sale Motion is GRANTED, and the Sale contemplated thereby is approved as set forth in this Order.

3. All objections to the Sale Motion or the relief requested therein that have not been

withdrawn, waived or settled, including all reservations of rights included therein which are not otherwise provided for by this Order, are overruled on the merits with prejudice.

**Approval of APA and Sale Transaction**

4. The Sale to the Winning Bidder pursuant to the APA is authorized under Section 363(b) of the Bankruptcy Code. The APA and all ancillary documents, and all of the terms and conditions thereof, are approved, and the Debtor is authorized to consummate the transactions contemplated thereby.

5. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtor is authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale of the Assets to the Winning Bidder pursuant to and in accordance with the terms and conditions of the APA, (ii) close the Sale as contemplated in the APA and this Order, and (iii) execute and deliver, perform under, consummate, implement and close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such ancillary documents.

6. The APA and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto in accordance of the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material and does not materially change the economic substance of the transactions contemplated thereby.

**Sale Free and Clear**

7. Pursuant to Sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtor is authorized to transfer the Assets at the Closing. The Assets (including the

Assumed Contracts) shall be transferred to the Winning Bidder upon and as of the Closing and such transfer shall constitute a legal, valid, binding and effective transfer of such Assets and, upon the Debtor's receipt of the Purchase Price, shall be free and clear of all Encumbrances, except for the Assumed Obligations and Permitted Liens under the APA. Upon the Closing, the Winning Bidder shall take title to and possession of the Assets subject only to the Assumed Obligations and Permitted Liens; provided, however, that the Winning Bidder shall not be relieved of liability with respect to the Assumed Obligations and Permitted Liens, including any obligations accruing under the Assumed Contracts from and after the Closing. All Encumbrances shall attach solely to the net proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Assets, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

8. Upon the Closing Date, and except as otherwise provided herein or in the APA, the Winning Bidder shall not bear liability for any liability or other obligation of the Debtor arising under or related to any of the Assets. Without limiting the generality of the foregoing, and except as otherwise expressly provided herein or in the APA, the Winning Bidder shall not be liable for any Encumbrances on, in, or against the Debtor or any of its predecessors or affiliates, its estate, or the Assets, and the Winning Bidder shall have no successor or vicarious liabilities of any kind or character, including, without limitation, under any theory of antitrust, environmental, successor, or transferee liability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing, or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, without limitation, liabilities on account of warranties, intercompany loans, receivables among the Debtor and its affiliates, environmental

liabilities, workers' compensation "experience rating," unemployment tax "contribution rating" rule or regulation, or any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the Closing Date.

9. Except as otherwise permitted by the APA or this Order, all persons and entities, including, without limitation, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Encumbrances of any kind or nature whatsoever on, in, or against the Debtor, its estate, or all or any portion of the Assets, arising under, out of, in connection with, or in any way relating to, the Debtor, the Assets, the operation of the Debtor's businesses prior to the Closing Date, or the transfer of the Assets to the Winning Bidder, are hereby forever barred, estopped, and permanently enjoined from asserting against the Winning Bidder, or any of its affiliates, successors, or assigns, or their property or the Assets, such Encumbrances, including, without limitation, by taking any of the following actions against the Winning Bidder or its affiliates, or their successors, assets, or properties, to the extent any such actions arise under, out of, in connection with, or in any way relate to, the Debtor, the Assets, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Assets to the Winning Bidder: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or other order; (c) creating, perfecting, or enforcing any lien or other claim; (d) asserting any set off, right of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or any other order of this Court, or the APA or actions contemplated or taken in respect thereof, or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or

authorization relating to the Assets solely on the ground that (i) the Debtor is a debtor under the Bankruptcy Code or (ii) the Winning Bidder is a purchaser at a sale pursuant to Section 363 of the Bankruptcy Code.

10. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances on all or any portion of the Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Winning Bidder for the purpose of documenting the release of all Encumbrances that the person or entity has or may assert with respect to all or any portion of the Assets, the Debtor is hereby authorized, and the Winning Bidder is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets.

11. This Order is deemed to operate as an unconditional release, discharge and termination, effective as of the Closing, of all Encumbrances in, on, or to the Assets. If the Closing does not occur, then such Encumbrances shall remain in effect.

12. This Order is binding on filing agents and officers, all government departments and units, whether federal, state, local or of a foreign state (or subdivision thereof), who may be required by operation of law, or the duties of office or of contract, to accept, file, register or otherwise record or release any documents or instruments or who may be required to report or insure any title or state of title in or to any of the Assets (all such entities being "Recording Officers"); provided, however, that nothing in this Order shall require Recording Officers to accept for filing any transfer document or instrument not accompanied by payment of any required conveyance tax or recording fee. Each and every federal, state and local governmental

agency or department is hereby required and directed (i) to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA, and (ii) to issue any certificate, including without limitation a certificate of good standing, necessary to effect or evidence removal of a lien, claim, or interest for corporate or other income taxes from the Assets.

13. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system maintained by any Recording Officer. If any entity that has filed a financing statement or other document or agreement evidencing a lien, claim, or interest in, on, or to any of the Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate individuals, termination statements, instruments of satisfaction, release of all liens, claims, or interests that the entity has with respect to any particular Assets conveyed pursuant to the APA, then the Debtor and the Winning Bidder are each hereby authorized to file, register or otherwise record a certified copy of this Order (or a Confirmatory Order (as defined herein)), which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release and discharge of such entity's liens, claims, or interests in such Assets.

**Assumption and Assignment of Assumed Contracts**

14. Subject to and conditioned on the Closing, the Debtor is authorized pursuant to Section 365(a) of the Bankruptcy Code to assume and assign the Assumed Contracts to the Winning Bidder. All requirements and conditions under Sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Winning Bidder of each Assumed Contract have been satisfied and, upon Closing, the Winning Bidder shall be fully and irrevocably vested in all right, title and interest of each Assumed Contracts, and

each Assumed Contract shall remain valid and binding and in full force and effect for the benefit of the Winning Bidder in accordance with its terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in Sections 365(b)(2), (e)(1), and (f)(1) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. The Cure Amounts constitute all of the amounts that are required to be paid under Section 365(b)(1) of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts. The non-Debtor parties to the Assumed Contracts are hereby deemed to have waived any and all prepetition claims other than the Cure Amounts. Pursuant to Section 363(k) of the Bankruptcy Code, other than as provided for in the APA, upon the assignment of the Assumed Contracts to the Winning Bidder, the Debtor shall have no further liability or obligations with respect thereto.

15. The Debtor shall continue to perform its post-petition obligations under the Assumed Contracts through the Closing or, as to any particular Assumed Contract, such earlier time as the Winning Bidder notifies the Debtor that the Winning Bidder has elected not to take assignment of such Assumed Contract and the Debtor has notified the non-Debtor contract party that such Assumed Contract will not be assumed and assigned. Any dispute regarding payment or performance of the Debtor's post-petition, pre-Closing obligations under an Assumed Contract prior to its assignment to the Winning Bidder (whether prior to, at, or after the Closing) shall be determined by this Court upon appropriate motion of the Debtor or the non-Debtor party to the Assumed Contract, but shall not affect the validity of the assumption and assignment of such Assumed Contract pursuant to this Order.

16. The Debtor and the Winning Bidder are hereby deemed to have provided adequate assurance of the Debtor's cure of prepetition defaults under, and of the Winning

Bidder's future performance of, the Assumed Contracts in accordance with Sections 365(b)(1)(B) and (C) and 365(f)(2)(B) of the Bankruptcy Code.

#### **Sale Proceeds**

17. The proceeds of the Sale shall be paid on the Closing Date for distribution as follows: (i) *first*, the Winning Bidder shall pay the Payment Amount (as defined in the APA) to those certain individual or entities identified on the Payment Schedule (as defined in the APA), (ii) *second*, the Winning Bidder shall pay the D&P Fee, and (iii) *third*, the remaining proceeds from the Sale shall be remitted at the Closing to Agent in partial satisfaction of the Prepetition Secured Parties' secured claims, which are described more fully in the Final Cash Collateral Order (the "Secured Parties' Payment"); provided that the Qualifying MIP Expenses with respect to the Sale shall be paid by the Agent from the Secured Parties Payment to the respective recipients as a carve-out from the proceeds of the Sale otherwise payable to the Prepetition Secured Parties; provided, further that if FBTS is not the buyer with respect to the Sale and is entitled to payment of the Break-Up Fee (as defined in the Sale Procedures Order) on the Closing Date, then the Debtor shall cause the Break-Up Fee to be paid to FBTS at Closing from the Winning Bidder's Purchase Price proceeds prior to the making of the Secured Parties' Payment.

#### **Miscellaneous**

18. The terms and provisions of the APA, together with the terms and conditions of this Order, shall be binding in all respects upon all entities, including, without limitation, the Debtor (including its employees, officers and directors), its estate, all creditors and equity interest holders of the Debtor, the Winning Bidder, the Back-Up Bidder, and their respective affiliates, successors and assigns, agents and any affected third parties, including, but not limited to, all persons asserting a claim against or interest in any of the Assets to be sold, conveyed or

assigned to the Winning Bidder pursuant to the APA.

19. The transactions contemplated by the APA are undertaken by the Winning Bidder without collusion and in good faith, as that term is defined in Section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts), unless such authorization and such Sale are duly stayed pending such appeal. The Winning Bidder is a good faith buyer within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of Section 363(m) of the Bankruptcy Code.

20. The provisions of this Order shall be binding upon any Chapter 11 trustee or Chapter 7 trustee appointed in the Debtors' bankruptcy cases and shall survive and be binding in the event of any dismissal of such bankruptcy cases.

21. Nothing contained in any Chapter 11 plan confirmed in the Debtors' cases or the order of confirmation confirming any such plan shall conflict with or derogate from the terms of this Order.

22. The Debtor and the Winning Bidder may request, and upon reasonable request this Court shall enter, an order (a "Confirmatory Order"), confirming the authorized sale of any specified Assets to the Winning Bidder pursuant to the APA and this Order, or otherwise clarifying or confirming with particularity any matter addressed by this Order, including without limitation as may be reasonably necessary or desired for purposes of establishing or recording evidence of title to specific Assets.

23. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the APA, the Sale Motion, and this Order.

24. This is a final order and is enforceable upon entry and to the extent necessary under Bankruptcy Rules 5003, 9014, 9021, and 9022. This Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein and the stays imposed by Bankruptcy Rules 6004(h), 6006(d), and 7062 are hereby modified and shall not apply to this Order or to the transactions contemplated by the APA.

25. This Court retains jurisdiction to:
- a. Interpret, implement and enforce the terms and provisions of this Order, the APA, and the Assumed Contracts, including without limitation the sale free and clear and limitation of liability provisions;
  - b. Protect the Winning Bidder and any of the Assets against any liens, claims, or interests;
  - c. Resolve any disputes arising under or relating to the APA, the Assumed Contracts, the Sale Motion, or this Order; and
  - d. Adjudicate all issues concerning asserted pre-Closing liens, claims or interests in, on, or to the Assets.

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Hon. Elizabeth D. Katz  
United States Bankruptcy Judge

**Exhibit A**

[Final APA]

**Exhibit B**

[Assumed Contracts and Cure Amounts]