

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

In re

Oklahoma ProCure Management, LLC,

Debtor.¹

Chapter 11

Case No. 18-12622 (MFW)

DEBTOR’S MOTION FOR ENTRY OF: (I) ORDER (A) GRANTING RELIEF, IN PART, FROM COMPLIANCE WITH DEL. BANKR. L.R. 6004-1, (B) APPROVING CERTAIN NOTICING PROCEDURES IN CONNECTION WITH PROPOSED PRIVATE SALE OF DEBTOR’S ASSETS AND BUSINESS, (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES FOR PROPOSED SALE, (D) SCHEDULING THE SALE HEARING AND FIXING CERTAIN RELATED DATES AND (E) GRANTING RELATED RELIEF; AND (II) ORDER (A) APPROVING A PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, OTHER THAN CERTAIN EXCLUDED ASSETS, FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS THEREUNDER, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

Oklahoma ProCure Management, LLC, The above-captioned debtor and debtor in possession (the “Debtor”), hereby moves (the “Motion”) this Court for the following orders:

(a) an order, in substantially the form attached hereto as **Exhibit A** (the “Procedures Order”): (i) granting relief, in part, from compliance with Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”); (ii) approving certain noticing procedures as described more fully in this Motion in connection with the proposed private sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”), other than certain Excluded Assets (as defined herein); (iii) approving the Assumption and Assignment Procedures (as defined herein), as described more fully in this Motion, in connection with the Debtor’s potential assumption,

¹ The Debtor in this case, along with the last four digits of the Debtor’s federal EIN, is Oklahoma ProCure Management, LLC (9763). The Debtor’s mailing address is 5901 W. Memorial Rd., Oklahoma City, Oklahoma 73142.

assignment and cure of the Ground Lease, the IBA Service Agreement and Other Contracts and Leases (each as defined herein) in connection with the proposed Sale and effective upon the closing thereof; (iv) scheduling a hearing (the “Sale Hearing”) on approval of the Sale, the Debtor’s request for entry of the Sale Order (as defined below) and to consider related relief requested in this Motion to commence not more than thirty (30) days after the filing of this Motion; and (v) granting related relief; and

(b) an order, in form and substance acceptable to (as such proposed order may be modified at or prior to the Sale Hearing, the “Sale Order”):² (i) approving an asset purchase agreement (together with all exhibits and schedules thereto, as amended from time to time, the “Purchase Agreement”) between the Debtor, as Seller, and The Oklahoma Proton Center LLC (the “Buyer”), as Buyer, to be filed at least twenty-one (21) days prior to the proposed Sale Hearing (as defined herein); (ii) approving the Sale of substantially all of the Debtor’s assets, other than the Excluded Assets, free and clear of liens, claims, encumbrances, and interests (collectively, “Interests”), other than certain Interests that may be assumed by Buyer in accordance with the express terms of the Purchase Agreement; (iii) approving the Debtor’s assumption, assignment of, and the agreed cure amount for, all effective upon the closing of the Sale, that certain Amended and Restated Proton Therapy Equipment Service Agreement, dated April 19, 2007 (together with all schedules, exhibits and supplements, as amended from time to time, the “IBA Service Agreement”), by and between IBA Proton Therapy, Inc. (“IBA”) and the Debtor; (iv) approving the Debtor’s assumption and assignment of, and the cure amount for, that certain Ground Lease Agreement, dated April, 2007 (together with all schedules, exhibits and supplements, as amended from time to time, the “Ground Lease”), by and between INTEGRIS

² The Debtor anticipates the proposed form of Sale Order will be filed on or before November 26, 2018.

Realty Corporation (“INTEGRIS Realty”), as Lessor, and the Debtor, as Lessee; (v) approving the assumption and assignment of, and fixing the cure amounts for, those Other Contracts and Leases to be assumed and assigned to the Purchaser in accordance with the Assumption and Assignment Procedures and the Purchase Agreement, effective upon closing of the Purchase Agreement; and (vi) granting related relief.

In support of this Motion, the Debtor incorporates by reference the *Declaration of James J. Loughlin, Jr. in Support of First Day Relief* (D.I. 7) (the “First Day Declaration”) filed in this Chapter 11 Case, and respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtor consents pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion 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.

3. The statutory predicates for the relief sought herein are sections 105, 363, 365 and 541 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules.

INTRODUCTION AND BACKGROUND

A. The Debtor's Business

4. The Debtor owns and operates a full-service proton treatment center in Oklahoma City, Oklahoma. The 58,000-square foot Oklahoma ProCure Center (the "Center") opened for operation in July 2009 and is the only fully functional and operational multi-room proton therapy center in the state. The Center is a leading provider of proton beam therapy, one of the most precise forms of radiation treatment available to treat cancerous and non-cancerous tumors. Proton beam therapy uses a controlled beam of protons to destroy cancer cells, while minimizing harm to the surrounding healthy tissue. This method allows the radiation dose to be concentrated more precisely on the cancerous cells, providing for higher radiation dosage, reduced patient side effects, fewer patient treatments, improved local cancer control, improved quality of life for the patient, and shorter treatment times.

5. The Center treats a wide variety of cancer cases, including breast, head and neck, lung and prostate. The Center also specializes in treating pediatric and international patients, with patients coming from as far as the United Kingdom and China to receive treatment at the facility. Historically, the Center has treated a daily average of approximately 50 to 60 patients under beam, but the Center has the capacity to treat up to 100 patients a day.

6. The Center maintains affiliations with multiple healthcare providers to ensure its patients receive unparalleled care and comfort from an experienced team of physicians, medical physicists, dosimetrists and staff. Specially, the Center's affiliation with Radiation Medicine Associates ("RMA"), the leading radiation oncology group in Oklahoma, provides the Center with highly skilled and engaged physician partners with extensive experience using proton therapy.

7. The Center's hospital partner, INTEGRIS Health, Inc. (collectively, with its

affiliates, “INTEGRIS”), also offers a wider variety of cancer treatment options to supplement the Center’s patients’ proton therapy treatment as needed. The Center is connected to the INTEGRIS Cancer Institute, a 135,000-square foot campus, which provides additional medical services a patient might need while undergoing proton therapy. The Center’s facility occupies land held by the Debtor pursuant to the above-referenced Ground Lease with INTEGRIS Realty.³

B. The Debtor’s Corporate Structure

8. The Debtor is a Delaware limited liability company that was formed on August 8, 2006, to develop and operate the Center. The Debtor’s ultimate parent is ProCure Treatment Centers, Inc., a Delaware corporation (“ProCure Parent”), which at one time held controlling interests in entities that operated four proton treatment centers throughout the United States, including the Debtor’s Center in Oklahoma City, Oklahoma, and centers in Chicago, Illinois, Seattle, Washington, and Princeton, New Jersey. However, between 2013 and 2018, ProCure Parent either sold or divested its ownership interest in all of the proton therapy centers other than the Debtor’s Center.

C. The Debtor’s Capital Structure

9. Funded Debt Obligations. The Debtor, as borrower, is party to that certain Credit Agreement, dated as of April 19, 2007 (as amended, supplemented and modified from time to time, the “Credit Agreement,” and together with all loan documents, security agreements, mortgages, pledge agreements, collateral assignments related to or executed in connection with the Credit Agreement, the “Pre-petition Transaction Documents”), by and among the Debtor, BNP Paribas Fortis SA/NV (formerly Fortis Bank S.A./N.V), for itself as Lender, Hedge Provider and as the Agent (the “Agent”) for the Lenders, KBC Bank NV as Lender and Hedge

³ The Debtor reserves all rights in connection with the Ground Lease, including concerning whether it is a true lease.

Provider, Valliance Bank, as Lender and Hedge Provider and the other lenders from time to time party thereto (the “Prepetition Lenders”), pursuant to which the Debtor obtained a senior secured financing facility as follows: (a) a commercial loan facility of up to \$39,000,000 (the “Commercial Loan Facility”); and (b) a buyer credit facility of up to \$61,500,000 (the “Buyer Credit Facility,” and with the Commercial Loan Facility, the “Prepetition Facilities”). As security for the Debtor’s repayment obligations under the Credit Agreement, the Debtor granted the Agent a first priority security interest in and lien on substantially all of the Debtor’s existing and after-acquired personal and real property and on certain accounts, assets, claims and shares of the Debtor (and the proceeds thereof).

10. In 2012, the Debtor defaulted under the Credit Agreement. At that time, the Debtor was indebted to the Lenders in the approximate amounts of \$34,281,000 under the Commercial Loan Facility and \$58,701,750 under the Buyer Credit Facility. Following this default, the Debtor, the Agent and the Lenders entered into a series of forbearance agreements and amendments to the Credit Agreement, including most recently that certain Forbearance Agreement dated September 28, 2018 (as amended, the “Forbearance Agreement”). Pursuant to the Forbearance Agreement the Lenders have agreed to forbear from exercising their respective rights and remedies with respect to the Debtor’s default through the earlier of (i) December 31, 2018, and (ii) the occurrence of any Additional Triggering Event (as set forth in the Forbearance Agreement). Significantly, after executing this most recent Forbearance Agreement, as described more fully below, the Debtor became aware of information suggesting an imminent threat to its ongoing interest in the Ground Lease premises that, if realized, almost certainly would have destroyed any near-term prospect of the Debtor being able to continue operating the Center as a going concern or of maximizing value for its creditors and other stakeholders through a sale or

other restructuring transaction.

11. As of the Petition Date, the Debtor was liable under the Prepetition Facilities in an aggregate amount of approximately \$126 million, plus interest thereon and fees, expenses (including any attorneys' and financial advisors' fees that are chargeable or reimbursable under the Pre-petition Transaction Documents), charges, costs resulting from termination of any hedge, swap or derivative agreements and other obligations incurred in connection therewith, as provided in the Pre-petition Transaction Documents.

12. Additionally, the Debtor obtained unsecured debt financing under that certain Second Amended and Restated Senior Subordinate PIK Note dated August 5, 2013 ("Parent PIK Note") between the Debtor, as borrower, ProCure Parent and ProCure Midwest Holdings, LLC. The Parent PIK Note comprised of a loan in the original principal amount of approximately \$14.1 million. As of the Petition Date, the outstanding balance due on the Parent PIK Note was approximately \$22 million, including accrued and unpaid interest.

13. Significant Leasehold/Contractual Obligations. As noted above, pursuant to the Ground Lease, the land occupied by the Center is leased from INTEGRIS Realty Corp. As a consequence of the Debtor's ongoing financial distress, in the period leading up to the Petition Date, the Debtor was unable to remain current on the monthly rent payments specified by the Ground Lease. Accordingly, through the Petition Date, the Debtor had an outstanding balance for Base Rent due under Ground Lease in the approximate amount of \$339,143, plus certain additional amounts.

14. Additionally, pursuant to the IBA Service Agreement, the Debtor receives vitally important operational and maintenance support services from IBA, a subsidiary of Ion Beam Applications SA (collectively, the "IBA Companies"). The IBA Companies manufacture and sell

cyclotrons and other equipment for the provision of proton therapy, including the proton therapy system that is at the heart of the Debtor's Center. Again, symptomatic of the Debtor's ongoing financial distress, for a significant period of time prior to the Petition Date, the Debtor failed to make certain payments to IBA under the IBA Service Agreement. Accordingly, the Debtor estimates that IBA was owed approximately \$4.7 million as of the Petition Date.

15. The IBA Companies, however, have been extremely supportive of the Debtor's ongoing restructuring efforts, including the Sale that Debtor hopes to effectuate here. To this end, not only has IBA exercised restraint on a pre-petition basis in pursuing contractual or other remedies against the Debtor, IBA has agreed to, among other things, for a period of time on a post-petition basis to defer weekly payments that would otherwise be due to it during this Chapter 11 Case in order to aid the Debtor in managing its liquidity and help bridge the Debtor to the contemplated Sale.

16. Other Trade and Miscellaneous Unsecured Debts. The Debtor estimates that as of the Petition Date claims of other trade and miscellaneous unsecured creditors totaled approximately \$3.1 million.

D. Events Leading to the Filing of the Chapter 11 Case

17. Beginning in the third quarter of 2016, the Center began to experience a substantial decline in patient volume, which led to declining revenue, profitability and cash flow. This declining patient volume and revenue can be traced primarily to issues associated with insurance reimbursement and changes made by many of the larger insurance companies not to pay for or approve proton treatment for a number of diseases and conditions, including prostate cancer. While the Center had struggled financially since its formation, the decline in patient count in 2016 was a major contributing factor to the Debtor's ongoing financial distress.

18. In spring 2017, the Agent and Lenders acted to draw the full amount available

under an approximately \$2.8 million standby letter of credit that had been established in connection with the Prepetition Facilities, which draw triggered a reimbursement obligation, secured by cash, to the issuer of the letter of credit.

19. As the Debtor's financial situation worsened, management took proactive steps to address the Debtor's liquidity problems and to achieve a long-term fix for the Debtor's unworkable capital structure. Initially, management attempted to accelerate already ongoing discussions with INTEGRIS, which had been an early investor in the Center, and was a natural transaction partner in view of its adjoining cancer treatment institute situated on the same campus. Additionally, management began to reach out to other possible investors and transaction partners.

20. In the summer 2017, while the discussions with INTEGRIS were ongoing and to manage operational uncertainties occasioned by the Debtor's liquidity constraints, the Center temporarily discontinued taking new patients. Subsequently, patient volume rose to break-even levels and equipment-operator IBA agreed to provide services to the Center pursuant to a payment plan that was beneficial to the Center maintaining its liquidity and continuing operations. Hopeful that the Debtor's liquidity had improved enough to successfully effectuate a sale transaction, in fall 2017, the Center resumed taking new patients. Ultimately, after extensive discussions, in October 2017, INTEGRIS withdrew from further negotiations about a potential transaction to acquire the Center.

21. Despite this setback, in late 2017, the Debtor's members and the Lenders remained supportive of seeking alternatives to avoid permanently closing the Center. Thus, in late 2017 the Debtor explored a potential sale transaction with two additional, separate interested parties, but again was unable to close.

22. Beginning in January 2018, the Debtor's management, with the assistance of the Center's restructuring advisors, conducted another complete and thorough sale process. As part of this process, management contacted over 100 potential financial and strategic purchasers. Over 40 strategic buyers were contacted and over 60 financial buyers were contacted as part of the formal sale process conducted by management. The Debtor and its advisors prepared a marketing teaser, as well as a 43-page confidential information memorandum and made it readily available to potential investors for review. The Debtor and its advisors further populated a data room with operational and financial information and held multiple marketing sessions with potential investors, both telephonically and onsite at the Center.

23. As a result of this process and other marketing efforts, the Debtor received five indications of interest and one formal letter of intent. One other interested party emerged; it, however, failed to make a formal, complete bid for the Center. After signing the letter of intent with the only prospective buyer, the Debtor and its management engaged in three months of due diligence. Unfortunately, that potential buyer ultimately declined to proceed with a transaction.

24. Following this unsuccessful sale process, the Debtor's financial performance continued to deteriorate throughout 2018. In the months leading up to the Debtor's bankruptcy filing, the number of patient treatments had fallen to approximately 30 patients per day, signaling an extremely low level of activity for the Center. At that diminished level of patient traffic, the Debtor found itself with inadequate operating revenue to cover its operating costs and to service its debt. It has only been with the support of the Lenders and other creditors, such as IBA, that the Debtor has been able to continue caring for its patient population and further exploring the strategic alternatives available to it.

25. In early October 2018, a potential buyer group, led by David Raubach, through

The Oklahoma Proton Center LLC, an Oklahoma limited liability company (*i.e.*, the Buyer in this proposed Sale), made an offer to purchase the Center in what was originally contemplated to be an out-of-court transaction. Throughout October and early November, the Debtor and the Buyer worked diligently to arrange financing and reach agreement with the various stakeholders, physicians and other service providers currently involved at the Center. During this period, the Buyer, among other things, funded a good faith deposit and provided statements of support for the transaction from its lending institution, its equity investor group and IBA. Additionally, in late October, representatives of Buyer contacted INTEGRIS about the possibility of acquiring the land that the Center occupies pursuant to the Ground Lease.

26. In early November, events transpired that cast doubt on the near-term ability of the Center to complete ongoing patient care and that nearly derailed any remaining chance for the Debtor to complete a going concern sale transaction for the Center and its related assets. On or about November 7, 2018, representatives of INTEGRIS communicated to the Debtor that INTEGRIS had decided to proceed with the sale of the land subject to the Ground Lease to a third party rather than pursue a transaction with the Buyer. As noted above, this placed the Debtor and the Center in a precarious position because the Debtor had been unable to remain current on rental payments required by the Ground Lease.

27. Although INTEGRIS Realty had never attempted to terminate the Ground Lease or taken the further steps necessary under the Ground Lease and applicable law to evict the Debtor from the property, the Debtor had no assurances that the third-party purchaser of the land would forbear from taking such actions. Indeed, the Debtor had reason to believe that the third-party to which INTEGRIS might be selling the land was an entity that had at one time been a

participant in the M&A process that management had run for the Debtor.⁴ If so, the potential sale of the land occupied by the Center presented a clear and present danger to the ability of the Center to complete a going concern transaction and quite likely could disrupt the Center's ability to complete ongoing proton therapy treatment for its patients.

28. Meanwhile, Debtor's management recognized that, in view of the Debtor's precarious situation, it would be unwise for the Center to continue accepting new patients at this time. A normal course of proton therapy treatment ordinarily takes from four to seven weeks and can last as long as ten weeks. By mid-October, it was far from clear whether the Debtor would have the financial and other resources to complete a treatment course for any new incoming patients. Accordingly, despite the additional financial stress it would entail, the Debtor's board of directors resolved on or about October 18, 2018, to suspend accepting new patients to the Center whose treatment would extend beyond December 31, 2018. This difficult but necessary step has allowed the Center's management and medical staff to focus the Center's limited resources on completing patient care for every cancer patient currently being treated at the Center.

29. In the days leading up to the Petition Date, the Debtor's management and legal advisors worked tirelessly with counsel, financial advisors and other representatives of the Agent and Lenders, the Buyer and IBA to obtain necessary debtor-in-possession financing for this chapter 11 case, to make headway on a Sale transaction with the Buyer, and to prepare the Debtor for a soft as possible under circumstances landing in chapter 11 bankruptcy.

⁴ These fears were validated at the November 20, 2018 hearing in this Chapter 11 Case when an attorney identifying himself as counsel for SAH Global – a party that had participated in the Debtor's prepetition marketing and due diligence process but ultimately failed to tender an acceptable bid for the Center – addressed the Court, contending that his client somehow had acquired an interest in the land subject to the Ground Lease.

30. In connection with the filing of this case, an affiliate of the Buyer, Allied Health Management, LLC (the “DIP Lender”), and the Debtor reached agreement to provide upwards of \$400,000 in new cash post-petition financing to fund this bankruptcy case (the “Post-Petition Financing”) as well as the funding of certain ongoing deferred amounts owed to the Debtor’s key supplier, IBA. It is expected that this funding will enable the Debtor to complete the Sale to the Buyer prior to December 31, 2018, and thereby maximize value for the Debtor’s creditors, save jobs, and allow the Debtor’s proton therapy center to continue to operate and treat patients.

RELIEF REQUESTED

31. By this Motion, the Debtor seeks the following relief:

(a) entry of the Procedures Order, in substantially the form attached hereto as **Exhibit A**: (i) granting relief, in part, from compliance with Local Rule 6004-1’s requirements, among other things, to, at the time of filing of a sale motion, attach copies of sale transaction documents, attach a proposed sale order and highlight certain provisions relating to the proposed sale transaction in the sale motion; (ii) approving certain noticing procedures as described more fully in this Motion in connection with the proposed private Sale of substantially all of the Debtor’s Assets, other than certain Excluded Assets; (iii) approving the Assumption and Assignment Procedures for use in connection with the Debtor’s potential assumption, assignment and cure of Other Contracts and Leases to the Buyer upon the closing of the proposed Sale; (iv) scheduling the Sale Hearing on approval of the Sale, the Debtor’s request for entry of the Sale Order and to consider related relief requested in this Motion to commence not more than thirty (30) days after the filing of this Motion; and (v) granting related relief; and

(b) entry of the Sale Order: (i) approving the Purchase Agreement to be filed in at least twenty-one (21) days prior to the proposed Sale Hearing; (ii) approving the Sale of substantially

all of the Debtor's Assets, other than the Excluded Assets, free and clear of Interests, other than certain specified Interests to be assumed by Buyer as set forth in the Purchase Agreement; (iii) approving the Debtor's assumption, assignment of, and the agreed cure amount for, all effective upon the closing of the Sale, the IBA Service Agreement; (iv) approving the Debtor's assumption and assignment of, and the cure amount for, the Ground Lease; (v) approving the assumption and assignment of, and fixing the cure amounts for, those Other Contracts and Leases to be assumed and assigned to the Buyer in accordance with the Assumption and Assignment Procedures and the Purchase Agreement, effective upon closing of the Purchase Agreement; and (vi) granting related relief.

THE PROPOSED SALE TRANSACTION

32. As noted above, circumstances forced the Debtor to commence this Chapter 11 Case prior to finalizing all of the terms of the proposed Sale to the Buyer and before the Debtor and the Buyer could complete documentation of the Purchase Agreement. Hence, the Debtor is not yet in a position to describe fully in this Motion certain terms and conditions of the proposed Sale and the Purchase Agreement. Accordingly, this Motion contains a summary of the material terms of the proposed Sale as they exist as of the filing of this Motion.

33. It is the Debtor's intention to file and serve on relevant parties in interest the Purchase Agreement and proposed form of Sale Order so that parties in interest will have that document available for review at least twenty-one (21) days prior to the proposed Sale Hearing. The Debtors therefore expect to file the proposed Purchase Agreement by November 26, 2018. When the Proposed Purchase Agreement is filed it will be accompanied by the proposed form of Sale Order and a supplemental summary of the terms of the proposed Sale containing the information required by Local Rule 6004-1(b)(iv) (the "Supplemental Local Rule Disclosures").

As used herein and in the proposed Procedures Order and proposed Sale Order, the term “Supplemental Sale Documents” refers to the notice to be filed at least twenty-one (21) days prior to the Sale Hearing attaching (a) the Purchase Agreement, (b) the proposed form of Sale Order and (c) the Supplemental Local Rule Disclosures.

34. The preliminary proposed Sale terms are as follows:

<u>Term</u>	<u>Description</u>
Seller:	Oklahoma ProCure Management, LLC.
Buyer:	The Oklahoma Proton Center LLC.
Purchase Price:	<p><u>Cash Purchase Price.</u> The Sale establishes a gross cash purchase price of \$17.25 million (the “<u>Gross Cash Purchase Price</u>”), subject to reduction on a dollar for dollar basis as follows: (i) on account of the waiver, defeasement and deemed satisfaction of all DIP Obligations owing to the DIP Lender, an affiliate of Buyer;⁵ (ii) for any amount to be paid out of the Gross Cash Purchase Price to IBA as part of the IBA Settlement (as defined in the Interim DIP Order) in full settlement and compromise of the IBA Deferred Amount and any other pre-petition or post-petition claims of IBA against the Debtor by the payment from the net proceeds of the Sale of the IBA Postpetition Settlement Amount (as defined in the Interim DIP Order) and other agreed amounts provided for in the IBA Settlement; and (iii) in connection with the assumption and assignment of the Ground Lease to the Buyer, any amount required to be funded out of the Gross Cash Purchase Price for the cure amount required to be to INTEGRIS Realty on account of the failure of the Debtor to pay Rent (as defined in the Ground Lease) past due as of the Petition Date.</p> <p><u>Assumption of Liabilities.</u> Buyer’s assumption of certain liabilities as will be more fully set forth in the Purchase</p>

⁵ As such terms are defined in the Interim Order (I) Authorizing Post-Petition Super-Priority Secured Financing Pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 503(b) of the Bankruptcy Code; (II) Authorizing the Debtor to Use Cash Collateral; (III) Providing Adequate Protection to the Pre-Petition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code; (IV) Modifying the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief, dated November 21, 2018 (D.I. 36) (the “Interim DIP Order”).

	Agreement.
Purchased Assets:	Substantially all of the assets of the Debtor, other than cash, the proceeds of the Sale and certain other excluded Assets to be identified in the Purchase Agreement (the “ <u>Excluded Assets</u> ”).
Excluded Assets:	As set forth in the definition of Excluded Assets appearing immediately above.
Assumed Liabilities:	Assumed liabilities will be set forth in the Purchase Agreement, but will include, among other things, post-closing obligations arising under the IBA Service Agreement, the Ground Lease and Other Contracts and Leases that are assumed and assigned to the Buyer at closing.
Termination:	As to be set forth in the Purchase Agreement, but in all respects subject to an appropriate “fiduciary out” recognizing the Debtor’s obligation to maximize the value of its bankruptcy estate in the event that a higher and better alternative transaction emerges.

35. The following chart preliminarily discloses certain information required to be disclosed pursuant to Local Rule 6004-1(b):

<u>Rule</u>	<u>Disclosure/Location</u>
Sale to Insider <i>Local Bankr. R. 6004-1(b)(iv)(A)</i>	The Buyer is not an “insider” of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code.
Agreements with Management <i>Local Bankr. R. 6004-1(b)(iv)(B)</i>	The Buyer has no agreements in place with management.
Releases <i>Local Bankr. R. 6004-1(b)(iv)(C)</i>	None.
Private Sale/No Competitive Bidding <i>Local Bankr. R. 6004-1(b)(iv)(D)</i>	While the Sale to the Buyer is not subject to an auction, the Debtor, to the extent required by the Bankruptcy Code and its duties under applicable law, intends to consider any higher and better competing offer received by the Debtor at least seven (7) days prior to the date of the Sale Hearing. ⁶
Closing and Other Deadlines	Within fifteen (15) days after entry of the Sale Order.

⁶ If (i) the Court requires the Debtor to subject the Sale to a formal post-petition marketing and auction process, including obtaining approval of bidding and notice procedures (collectively, “Bidding Procedures”), before proceeding to a hearing on approval of the Sale, (ii) the Debtor, Buyer and Agent hereafter agree to request approval of Bidding Procedures, or (iii) the Debtor decides in the good faith exercise of its fiduciary duties that the Debtor’s receipt of a competing bid for an alternative transaction requires the Debtor to conduct an auction, the Debtor reserves the right to seek Court approval of Bidding Procedures that may provide for a break-up fee and expense reimbursement for the Buyer on terms consistent with those to be agreed upon in the Purchase Agreement.

<i>Local Bankr. R. 6004-1(b)(iv)(E)</i>	
Good Faith Deposit <i>Local Bankr. R. 6004-1(b)(iv)(F)</i>	None, other than the commitment of Buyer's affiliate acting as the DIP Lender to provide Post-Petition Financing to the Debtor in this Chapter 11 Case and to defease the DIP Obligations in consideration of a dollar for dollar reduction of the Gross Cash Purchase Price.
Interim Arrangements with Stalking Horse Bidder <i>Local Bankr. R. 6004-1(b)(iv)(G)</i>	None.
Use of Proceeds <i>Local Bankr. R. 6004-1(b)(iv)(H)</i>	TBD, except that in connection with the Post-Petition Financing, the Pre-Petition Secured Parties have agreed that the Debtor's estate may retain not less than \$350,000 of the net cash purchase price to wind-down the Debtor and complete administration of the Debtor's bankruptcy estate, including potentially through confirmation of a liquidating chapter 11 plan.
Tax Exemption <i>Local Bankr. R. 6004-1(b)(iv)(I)</i>	TBD.
Record Retention <i>Local Bankr. R. 6004-1(b)(iv)(J)</i>	The Debtor will retain copies of all documents sold in the Sale or retain appropriate access to such documents for the purpose of the Chapter 11 Case and related matters and proceedings.
Sale of Avoidance Actions <i>Local Bankr. R. 6004-1(b)(iv)(K)</i>	None.
Successor Liability <i>Local Bankr. R. 6004-1(b)(iv)(L)</i>	Except as otherwise expressly provided in the Purchase Agreement, successor liability will be explicitly disclaimed as an Excluded Liability.
Sale Free and Clear of Unexpired Leases <i>Local Bankr. R. 6004-1(b)(iv)(M)</i>	None.
Credit Bid <i>Local Bankr. R. 6004-1(b)(iv)(N)</i>	In connection with the closing of the Sale to the Buyer, the Buyer, in defeasance in full of all DIP Obligations, is entitled to a dollar for dollar reduction of the Gross Cash Purchase Price, as described above.
Relief from Bankruptcy Rule 6004(h) <i>Local Bankr. R. 6004-1(b)(iv)(O)</i>	The Debtor seeks a waiver of the 14-day stays under Bankruptcy Rules 6004(d) and 6004(h).

ASSUMPTION, ASSIGNMENT AND CURE OF CONTRACTS AND LEASES

36. The contemplated Sale to the Buyer is premised upon, among other things, the Debtor's ability to assume, assign and cure all defaults under the IBA Service Agreement and the

Ground Lease.⁷ In addition, it is expected that the Purchase Agreement will provide for the assumption, assignment and cure of Other Contracts and Leases, as designated pursuant to the terms and conditions of the Purchase Agreement.

37. Because the need for the Debtor to transfer to the Buyer its rights, claims and interests in and to the IBA Service Agreement and the Ground Lease as part of any going-concern Sale to the Buyer, it is critical to the ability of the parties to move forward with the Sale transaction that they undertake that process immediately. To this end, by this Motion and pursuant to the proposed Procedures Order, the Debtor is requesting that, unless otherwise agreed by the Debtor, the Agent and the Buyer, the Court require INTEGRIS Realty and SAH Global (as to the Ground Lease) and IBA (as to the IBA Service Agreement) to file and serve any objection to the proposed cure amount for these agreements or to their assumption and assignment to the Buyer so as to be received by counsel for the Debtor, the Buyer and the Agent within fourteen (14) days after the filing of this Motion. The Debtor submits that this is appropriate for, among other reasons, (a) this Motion makes explicitly clear the Debtor's intention to assume and assign the Ground Lease and the IBA Service Agreement to the Buyer upon the closing of the contemplated going concern Sale to the Buyer, all as described more fully herein,⁸ and (b) to properly administer this Chapter 11 Case and maximize value, the

⁷ As to the IBA Service Agreement, in connection with the Sale to the Buyer, the Debtor understands that an agreement in principle exists among the Debtor, the Buyer and IBA regarding (a) payment to IBA of the IBA Postpetition Settlement Amount at closing (*see* Interim DIP Order, ¶¶ 13(b) & 24(a)), (b) the payment to IBA from the Sale proceeds of an agreed upon cure amount of \$500,000 in full satisfaction, discharge and release of any other cure required for assumption and assignment of the IBA Service Agreement to IBA at closing, and (c) modification of the terms and conditions of the IBA Service Agreement on a go forward basis between IBA and the Buyer.

⁸ Moreover, the Debtor made its intentions clear with respect to the Ground Lease and the IBA Service Agreement in (a) the First Day Declaration (¶¶ 11, 14, 15, 16, 29-30, 32 &

Debtor must understand the nature and extent of any potential disputes concerning the assumption and assignment of these two agreements as soon as possible.

38. Further, it is the Debtor's intent to file and serve a notice (the "Potential Assignment Notice") and schedule of proposed cure amounts for all other contracts and leases (all of the Debtor's contracts and leases, other than the IBA Agreement and Ground Lease, the "Other Contracts and Leases") of the Debtor that potentially may be assumed and assigned as part of a Sale (such schedule, the "Potentially Assigned Lease/Contract Schedule") by a date that is at least twenty-one (21) days prior to the proposed hearing on the Motion.⁹ Pursuant to the proposed Procedures Order, the Debtor is requesting that counterparties to such Other Contracts and Leases be required to file and serve any objections to the assumption or assignment of, or the proposed cure amount for, any such Other Contracts or Leases so as to be received by the Debtor, the Purchaser and the Agent at least seven (7) calendar days prior to the Sale Hearing. Accordingly, all counterparties to Other Contracts and Leases will receive at least fourteen (14) days' notice of the objection deadline applicable to their respective Other Contract or Lease. The Debtors believe that this manner and extent of notice, not only complies with the applicable Bankruptcy Rules and Local Rules, but also provides more than adequate notice under the circumstances.

39. Objections, if any, to the proposed assumption, assignment and/or cure as to the Ground Lease, the IBA Service Agreement or any Other Contract or Lease must: (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any

35), and (b) in numerous other communications between or among representatives for the Debtor, the Buyer, IBA, INTEGRIS Realty and each of their respective professionals.

⁹ As of the filing of this Motion, the Debtor believes that the Potentially Assigned Lease/Contract Schedule will be filed and served contemporaneously with the Purchase Agreement on November 26, 2018.

other orders of the Court; (c) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof; and (d) be filed with the Court and served so as to be actually received by counsel for the Debtor, the Buyer and the Agent before the applicable objection deadline. Any objection to the proposed assumption and assignment or related cure of a contract or lease in connection with the proposed Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing; provided, however, that the Debtor reserves the right, with the consent of the Buyer and the Agent, to adjourn the hearing to a date or dates to be determined with respect to any objection as to the cure amount applicable to a contract or lease.

40. The foregoing procedures described in Paragraphs 36 through 39 of this Motion and the applicable paragraphs of the Procedures Order are referred to herein and in the Procedures Order as the “Assumption and Assignment Procedures”.

BASIS FOR RELIEF REQUESTED

A. Approval of the Sale

41. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) provides in relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

42. A sale of the debtor’s assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F. 3d 389, 395 (3rd Cir. 1996) (citing *Fulton State Bank v. Schipper (In re*

Schipper), 933 F. 2d 513, 515 (7th Cir. 1991)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F. 2d 143 (3rd Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F. 2d 1063 (2nd Cir. 1983); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991)). The *Delaware & Hudson Railway* court rejected the pre-Code “emergency” or “compelling circumstances” standard, finding the “sound business purpose” standard applicable and, discussing the requirements of that test under *McClung* and *Lionel*, observing:

A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the Property; and whether the asset is decreasing or increasing in value.

124 B.R. at 176.

43. The *Delaware & Hudson Railway* court further held that “[o]nce a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the Buyer is proceeding in good faith.” *Id.*

44. The Debtor has proposed the Sale of the Assets as the only viable approach currently available to this estate and has concluded that the sale is supported by a number of sound business reasons.

45. As noted above, the Debtor’s Assets have been extensively marketed over the last year. Although the Debtor received expressions of interest in the past for its business, such

proposals never materialized into an enforceable sale agreement. Unless the Debtor is able to close a Sale by or near December 31, 2018, the Debtor will be forced as soon as practicable and consistent with applicable law to close its Center, dismiss its employees, discontinue patient treatments and otherwise wind-down its business.

46. The Sale of the Assets is supported by sound business reasons and is in the best interests of the Debtor and its estate. Accordingly, the Debtor requests approval under section 363(b) of the Bankruptcy Code of the sale to the Buyer, as set forth herein and in the Supplemental Sale Documents to be filed.

B. The Assets Should be Sold Free and Clear of Interests Under 11 U.S.C. § 363.

47. In the interest of attracting the best offers, the Debtor request authorization to sell the Assets free and clear of any and all Interests (except for those expressly assumed by the Buyer) in accordance with section 363(f) of the Bankruptcy Code, with any such Interests attaching to the proceeds of the Sale subject to all defenses to such Interests as may exist as of the closing of the Sale.

48. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- i. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- ii. such entity consents;
- iii. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- iv. such interest is in bona fide dispute; or
- v. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets “free and clear” of liens, claims, encumbrances, and other interests. *See, e.g., In re Dura Automotive Sys., Inc.*, 2007 WL 7728109, at *6 n.32 (Bankr. D. Del. Aug. 15, 2007).

49. Furthermore, section 105(a) of the Bankruptcy Code grants the Court broad discretionary powers, providing that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). This equitable power may be utilized to effectuate the provisions of section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *6-7 (Bankr. D. Del. Mar. 27, 2001) (highlighting bankruptcy courts’ equitable authority to authorize sale of estate assets free and clear).

50. The Debtor will present argument and evidence at the hearing that the Sale satisfies the requirements of section 363(f). Accordingly, the Debtor requests authorization to sell the Assets free and clear of all liens, claims, encumbrances, and other interests.

C. The Buyer Should be Entitled to the Protections of Bankruptcy Code Section 363(m)

51. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Pennsylvania*, 788 F.2d at 147; *Miami Ctr. Ltd. P’ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, Case No. 03-51524, 2007 WL 1428477 (Bankr. D.N.J. May 11, 2007); *In re Temtechco, Inc.*, 1998 WL 887256, at *4 (D. Del. 1998).

52. The Purchase Agreement executed by a Buyer will have been negotiated at arm’s-length and in good faith, with each of the parties represented by its own advisors and counsel.

Accordingly, the Debtor requests that the Sale Order include a provision that the Buyer of the Assets is a “good faith” purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtor maintains that providing the Buyer with such protection will ensure that the maximum price will be received by the Debtor for the Assets.

D. Authorization of Assumption and Assignment of Assumed Contracts

53. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). A debtor may assume or reject an executory contract or unexpired lease if its reasonable business judgment supports assumption or rejection. *See, In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984); *see also Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

54. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11

U.S.C. § 365(b)(1).

55. The Assumption and Assignment Procedures, as set forth above, are appropriate and reasonably tailored to provide counterparties to executory contracts and unexpired leases with adequate notice of the proposed assumption and assignment of their contracts and leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and assumption and assignment of their contracts and leases. The Assumption and Assignment Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues in connection with the Sale at the hearing on the Motion or at a later date if the dispute relates to a cure amount and the hearing is adjourned by the Debtor as to such dispute with the consent of the Buyer and the Agent. Therefore, the Debtor submits that implementation of the Assumption and Assignment Procedures is appropriate under the facts and circumstances of the chapter 11 case and the proposed Sale.

56. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor’s assets). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract ... only if the trustee assumes such contract ... and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes,*

Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.

57. The Debtor submits that the assumption and assignment of executory contracts and unexpired leases to the Buyer is necessary to the consummation of the Sale and is well within the Debtor's sound business judgment. Those contracts and leases are essential to obtaining the highest or otherwise best offer for the Assets because they are necessary to run the Debtor's business. It is unlikely that any purchaser would want to acquire any company on a going-concern basis unless a significant number of the contracts and leases needed to conduct the business and manage the day-to-day operations are included in the transaction. In addition, the Purchase Agreement and Sale Order will provide that the Buyer or Debtor will have (i) cured and/or provided adequate assurance of cure of any default required to be cured and existing prior to the assumption and assignment; and (ii) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from such default.

58. Counterparties to the Debtor's executory contracts and unexpired leases will be provided with the Potentially Assigned Lease/Contract Schedule and will have an opportunity to object to the potential assumption and assignment of their contracts and leases prior to the entry of the Sale Order. The Debtor proposes that any counterparty that fails to object to the proposed assumption and assignment of its contract or lease will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set

forth in the proposed Sale Order, and to the cure amounts identified in the Potentially Assigned Lease/Contract Schedule. *See, e.g., In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

59. Accordingly, the Debtor submits that the assumption and assignment to the Buyer of the Debtor's contracts and leases should be approved as an exercise of the Debtor's sound business judgment

E. Waiver of Automatic Fourteen-Day Stay under Bankruptcy Rules 6004(h) and 6006(d)

60. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen (14) days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

61. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the stay period, commentators agree that the stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally* 10 COLLIER ON BANKRUPTCY ¶ 6004.09 (15th ed. 1999). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

62. Because of the potentially diminishing value of the Assets and the anticipated expiration of access to the Post-petition Financing and cash collateral, the Debtor must do everything reasonably possible to close this Sale by December 31, 2018. Thus, waiver of any applicable stay is appropriate in this circumstance.

NOTICE

63. Notice of this Motion is being provided (substantially contemporaneously with the filing of this Motion unless otherwise noted) to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) counsel to the Agent; (d) counsel to the DIP Lender/Buyer; (e) counsel to IBA; (f) counsel to INTEGRIS and INTEGRIS Realty; (g) the parties to any Other Contracts and Leases of the Debtor that Debtor' reasonably believes may be executory contracts or unexpired leases, respectively (such notice to be provided at least twenty-one (21) days prior to the Sale Hearing); (h) federal, state and local taxing authorities known or reasonably suspected by the Debtor to have an interest in any Assets to be included in the Sale; and (i) any other party that has requested notice pursuant to Local Rule 2002-1(b) at least one day prior to the filing of this Motion.

64. In consideration of the possibility that this Motion may be considered as one seeking "first day" relief insofar as the Debtor is seeking entry of the Procedures Order, within two business days after entry of an order on this Motion, the Debtor will serve upon the parties required to receive service under Local Rule 9013-1(m) a copy of such Procedures Order and, if not previously served with this Motion, a copy of this Motion.

65. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court: (a) enter the Procedures Order, substantially the form attached as **Exhibit A**, (b) enter the Sale Order; and (c) such other and further relief to the Debtor as is just and proper under the circumstances.

November 21, 2018
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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Proposed Counsel for the Debtor and Debtor in Possession

EXHIBIT A

PROCEDURES ORDER

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

In re

Oklahoma ProCure Management, LLC,

Debtor.¹

Chapter 11

Case No. 18-12622 (MFW)

Re: D.I. _____

ORDER: (I) GRANTING RELIEF, IN PART, FROM COMPLIANCE WITH DEL. BANKR. L.R. 6004-1; (II) APPROVING CERTAIN NOTICING PROCEDURES IN CONNECTION WITH PROPOSED PRIVATE SALE OF DEBTOR’S ASSETS AND BUSINESS; (III) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES FOR PROPOSED SALE; (IV) SCHEDULING THE SALE HEARING AND FIXING CERTAIN RELATED DATES; AND (V) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² dated November 21, 2018 of Oklahoma ProCure Management, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), for, *inter alia*, entry of an order (this “Order”) granting relief, in part, from compliance with Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”); (ii) approving certain noticing procedures (the “Sale Noticing Procedures”) in connection with the proposed private sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”), other than certain Excluded Assets; (iii) approving the Assumption and Assignment Procedures (as defined herein), in connection with the Debtor’s potential assumption, assignment and cure of the Ground Lease, the IBA Service Agreement and Other Contracts and Leases in connection with the proposed Sale and effective upon the closing thereof; (iv) scheduling a hearing (the “Sale

¹ The Debtor in this case, along with the last four digits of the Debtor’s federal EIN, is Oklahoma ProCure Management, LLC (9763). The Debtor’s mailing address is 5901 W. Memorial Rd., Oklahoma City, Oklahoma 73142.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Hearing”) on approval of the Sale, the Debtor’s request for entry of the Sale Order and to consider related relief; and (v) granting related relief; and the Court having reviewed and considered (i) the Motion, (ii) any objections thereto relating to the relief to be granted by this Order, if any, (iii) the arguments of counsel made, and the evidence proffered or adduced at the hearing held on November __, 2018 (the “Hearing”) to consider the Debtor’s request for entry of this Order and the portions of the Motion related thereto, and (iv) the record of this Chapter 11 case; and the Court finding that the relief requested in the Motion to the extent granted by this Order is in the best interests of the Debtor, its estate and creditors and other parties in interest; and after due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § § 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a). Venue of these cases and the Motion in this Court is proper under 28 U.S.C. § § 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion and granted by this Order are sections 105, 363 and 365 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), as supplemented by Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

C. The relief granted herein is in the best interests of the Debtor, its estate and creditors, and other parties in interest.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

D. The Debtor has articulated good and sufficient business reasons for the Court to (i) grant relief, in part, from Local Rule 6004-1 as set forth in this Order, (ii) approve the Sale Noticing Procedures, (iii) approve the Assumption and Assignment Procedures, (iv) schedule the Sale Hearing and related dates, and (v) grant related relief as set forth in the Motion and this Order.

E. Prior to the commencement of the Hearing, the Debtor caused to be filed in this Chapter 11 Case a notice attaching the proposed form of Asset Purchase Agreement between the Debtor, as Seller and The Oklahoma Proton Center LLC, as Buyer (“Buyer”), the proposed form of Sale Order, and the Supplemental Local Rule Disclosures as contemplated by Local Rule 6004-1(b)(iv) (together, the “Supplemental Sale Documents”).

F. Due, sufficient and adequate notice of the Hearing on the Motion to consider the Debtor’s request for entry of this Order and the relief in this Order has been given in light of the circumstances and the limited nature of the relief requested, and no other or further notice thereof is required.

G. The Debtor’s proposed Sale Notice Procedures and Assumption and Assignment Procedures, the Supplemental Sale Documents, the Potential Assignment Notice (in the form attached hereto as **Exhibit 1**) and the Sale Notice (in the form attached hereto as **Exhibit 2**) are appropriate and reasonable and are calculated to provide all interested parties with timely and proper notice thereof and opportunity to respond. No further notice of each is necessary or required.

It is therefore **ORDERED, ADJUDGED, AND DECREED EFFECTIVE IMMEDIATELY THAT:**

1. Those portions of the Motion seeking approval of the Sale Noticing Procedures, the Assumption and Assignment Procedures and the other relief set forth in this Order are hereby GRANTED.

2. Any objection to the portions of the Motion seeking approval of the Sale Noticing Procedures, the Assumption and Assignment Procedures and the other relief set forth in this Order, to the extent not resolved, waived or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.

3. The Potential Assignment Notice and Sale Notice are hereby approved.

4. Within one (1) business day after the entry of this Order, or as soon thereafter as practicable (the "Mailing Date"), the Debtor (or their agent) shall serve the Motion, the Supplemental Sale Documents, the Potential Assignment Notice, the Potentially Assigned Lease/Contract Schedule, and the Sale Notice by first-class mail, postage prepaid, or by email, where available, upon:

(a) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Assets;

(b) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion;

(c) the U.S. Trustee;

(d) counsel to the proposed Buyer/DIP Lender;

(e) counsel to the Agent;

(f) the Internal Revenue Service;

(g) all known state and local taxing authorities;

(h) the Securities and Exchange Commission;

(i) the U.S. Attorney for the District of Delaware and the U.S. Attorney for the Western District of Oklahoma; and

(j) all persons and entities that have filed a request for service of filings in this Chapter 11 Case pursuant to Bankruptcy Rule 2002.

5. On the Mailing Date, or as soon thereafter as practicable, the Debtor (or its agent) shall serve by first-class mail, postage prepaid, the Sale Notice upon all other known creditors of the Debtor and all counterparties to the Debtor's executory contracts and unexpired leases (as to each such person, to the extent that such person would not already receive the Sale Notice pursuant to Paragraph 4 of this Order).

6. On the Mailing Date, or as soon thereafter as practicable, the Debtor (or its agent) shall serve by first-class mail, postage prepaid, the Potential Assignment Notice and the Potentially Assigned Lease/Contract Schedule upon all known counterparties to the Debtor's executory contracts and unexpired leases (as to each such person, to the extent that such person would not already receive the Potential Assignment Notice and Potentially Assigned Lease/Contract Schedule pursuant to Paragraph 4 of this Order).

7. The Assumption and Assignment Procedures as set forth in the Motion are hereby approved and made part of this Order as if fully set forth herein. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

8. The decision to assume and assign the applicable assumed and assigned contracts and/or leases to the Buyer is subject to Court approval and the consummation of a Sale of the Assets. Accordingly, absent closing of such Sale, the applicable assumed and assigned contracts

and/or leases shall not be deemed assumed and/or assigned and shall, in all respects, be subject to further administration under the Bankruptcy Code.

9. The Potential Assignment Notice is (a) reasonably calculated to provide sufficient effective notice to all non-Debtor counterparties to assumed and assigned contracts or leases and any other affected parties of the Debtor's intent to assume and assign some or all of such contracts or leases and to afford the non-Debtor counterparty to each such contract or lease the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Rules 2002, 6004 and 6006, and (b) hereby approved.

10. The inclusion of a contract or lease on the Potentially Assigned Lease/Contract Schedule shall not constitute or be deemed a determination or admission by the Debtor, the Buyer, or any other party in interest that such document is, in fact or law, an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that such contract or lease will be assumed in connection with the Sale of the Assets. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts or leases listed on the Potentially Assigned Lease/Contract Schedule.

11. Any objection to the assumption and assignment to the Buyer of, or cure amount for, the IBA Service Contract (such objection, an "IBA Service Contract Objection") must be in writing and filed with the Clerk of the Court, 824 Market St., 3rd Floor, Wilmington, DE 19801, and served so as to be received by the Notice Parties on or before **December 6, 2018, at 4:00 p.m. (prevailing Eastern Time)**.

12. Any objection to the assumption and assignment to the Buyer of, or cure amount for, the Ground Lease (such objection, a "Ground Lease Objection") must be in writing and filed with the Clerk of the Court, 824 Market St., 3rd Floor, Wilmington, DE 19801, and served so as

to be received by the Notice Parties on or before **December 6, 2018, at 4:00 p.m. (prevailing Eastern Time)**.

13. Any objection to the assumption and assignment to the Buyer of, or cure amount for, any contract or lease appearing on the Potentially Assigned Lease/Contract Schedule (an “Other Contract/Lease Objection,” and collectively with IBA Service Contract Objections and Ground Lease Objections, “Contract Objections”) must be in writing and filed with the Clerk of the Court, 824 Market St., 3rd Floor, Wilmington, DE 19801, and served so as to be received by the Notice Parties on or before **December [] , 2018, at 4:00 p.m. (prevailing Eastern Time)**.

14. Any Contract Objection must state (a) the basis for such objection, including if the objection is that such contract is not executory or such lease has expired or terminated, the legal and factual bases supporting that asserted status, and (b) with specificity what cure amount the non-Debtor counterparty to the relevant contract or lease believes is required (in all cases within the immediately preceding clauses (a) or (b), with appropriate documentation in support thereof).

15. Any Contract Objection solely to the cure amount shall not prevent or delay the Debtor’s assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to a cure amount, the Debtor may, with the consent of the Buyer and Agent, hold the claimed cure amount in reserve pending further order of the Court or mutual agreement of the parties. So long as the cure Amount is held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contracts or leases, the Debtor can, without further delay, assume and assign such contracts and leases. Under such circumstances, the objecting non-Debtor counterparty’s recourse is limited to the funds held in reserve.

16. If no objection to the cure amount for a contract or lease is timely received, the cure amount set forth in the Potentially Assigned Lease/Contract Schedule shall be controlling notwithstanding anything to the contrary in any assigned contract or lease or other document as of the date of filing of the Potentially Assigned Lease/Contract Schedule.

17. After the Debtor's initial filing of the Potentially Assigned Lease/Contract Schedule, the Debtor may amend or supplement the Potentially Assigned Lease/Contract Schedule through the date that is seven (7) calendar days prior to the Sale Hearing. In the event that the Debtor amends or supplements the Potentially Assigned Lease/Contract Schedule, (a) the Debtor shall cause notice thereof to be served by overnight courier or hand deliver, as applicable, upon the other Notice Parties and upon any non-Debtor counterparty to a contract or lease added to the Potentially Assigned Lease/Contract Schedule by such a supplement or for which the cure amount is reduced or eliminated through such an amendment, and (b) any non-Debtor counterparty to a contract or lease that is added to the Potentially Assigned Lease/Contract Schedule through such supplement or for which the cure amount is reduced or eliminated through any such amendment, shall have five (5) business days from the date of the filing of such supplement or amendment to supplement a previously filed Contract Objection to object to such supplement or amendment.

18. The Sale Hearing to approve the Sale shall be held on _____ at **:00** **.m. (prevailing Eastern Time)**, at the United States Bankruptcy Court for the District of Delaware, 824 Market St. 5th Floor, Wilmington, DE 19801, before the Honorable Mary F. Walrath

19. Except as otherwise provided in this Order with respect to any IBA Service Contract Objection, any Ground Lease Objection or any Other Contract/Lease Objection (each as

defined herein), all objections to the Sale (a “Sale Objection”) must be in writing and filed on and served so as to be received by _____ **at :00 .m. (prevailing Eastern Time)** (the “Sale Objection Deadline”) with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801. In addition, any Sale Objection must be served on the Notice Parties (as defined herein) so as to be received on or before the Sale Objection Deadline. Failure to file and serve a Sale Objection as aforesaid shall be deemed to be consent to the Sale for purposes of section 363(f) of the Bankruptcy Code.

20. The Sale Hearing may be adjourned by the Debtor, in consultation with the Agent and the Buyer, from time to time, without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the Chapter 11 Case; provided however, that the Sale Hearing may not be adjourned to a date later than thirty-five (35) days after the filing of the Motion without the consent of the Agent or Buyer.

21. The “Notice Parties” as such term is used in this Order are the following: (a) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16th Fl., Wilmington, DE 19801, Attn: Gregory Werkheiser, Esq., counsel to the Debtor; (b) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda Richenderfer, Trial Attorney; (c) Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY, 10020, Attn: Brian Trust, Esq. and Joaquin M. C de Baca, Esq., counsel to the Agent; (d) Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, Attn: D. Christopher Carson, Esq., and 1201 N. Market St., Suite 1407, Wilmington, DE 19801, Attn: J. Cory Falgowski, Esq., counsel to the Buyer; and (e) counsel of record to any official committee of unsecured creditors appointed in the Chapter 11 Case.

22. Notwithstanding anything to the contrary in this Order or the Purchase Agreement, if Debtor receives a proposal, offer or inquiry for any merger, sale of substantial Assets or any similar transaction that did not result from a breach of any contractual exclusivity right granted Buyer pursuant to the Purchase Agreement, Debtor shall in no way be prevented from fulfilling its fiduciary or statutory obligations under applicable law, including the Bankruptcy Code or any order of the Bankruptcy Court, including, without limitation, pursuing any such transaction; provided, however, that the Debtor shall promptly notify Buyer and Agent if any person makes any such proposal, offer or inquiry with respect to any of the foregoing, the material terms thereof and the identity of such person.

23. Debtor's obligation to comply with Local Rule 6004-1(b), subparts (i), (ii) and (iv) is modified such that Debtor will be deemed to have fully complied with Local Rule 6004-1(b) if, on or before the date that is at least twenty-one (21) days prior to the Sale Hearing, Debtor files and serves the Supplemental Sale Motions in accordance with the requirements set forth in this Order.

24. The Debtor is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Order.

25. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

26. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtor's estate.

27. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7052, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: Wilmington, Delaware
_____, 201_

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
[Potential Assignment Notice]

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

In re

Oklahoma ProCure Management, LLC,

Debtor.⁴

Chapter 11

Case No. 18-12622 (MFW)

Re: D.I. _____

PLEASE TAKE NOTICE that, on November 21, 2018, that Oklahoma ProCure Management, LLC, the above-captioned debtor and debtor in possession (the “Debtor”), filed the *Debtor’s Motion For Entry Of: (I) Order (A) Granting Relief, In Part, From Compliance With Del. Bankr. L.R. 6004-1, (B) Approving Certain Noticing Procedures In Connection With Proposed Private Sale Of Debtor’s Assets And Business, (C) Approving Assumption And Assignment Procedures For Proposed Sale, (D) Scheduling The Sale Hearing And Fixing Certain Related Dates And (E) Granting Related Relief; And (II) Order (A) Approving A Private Sale Of Substantially All Of The Debtor’s Assets, Other Than Certain Excluded Assets, Free And Clear Of Liens, Claims And Interests Thereunder, (B) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (C) Granting Related Relief [D.I. _____]* (the “Sale Motion”),⁵ with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”): (i) approving an asset purchase agreement (together with all exhibits and schedules thereto, as amended from time to time, the “Purchase Agreement”) between the Debtor, as Seller, and The Oklahoma Proton Center LLC (the “Buyer”), as Buyer; (ii) approving the Sale of substantially all of the Debtor’s assets, other than the Excluded Assets, free and clear of liens, claims, encumbrances, and interests (collectively, “Interests”), other than certain Interests that may be assumed by Buyer in accordance with the express terms of the Purchase Agreement; (iii) approving the Debtor’s assumption, assignment of, and the agreed Cure Amount (as defined herein) for, all effective upon the closing of the Sale, the IBA Service Agreement, by and between IBA Proton Therapy, Inc. (“IBA”) and the Debtor; (iv) approving the Debtor’s assumption and assignment of, and the Cure Amount for, the Ground Lease Agreement, by and between INTEGRIS Realty Corporation (“INTEGRIS Realty”), as Lessor, and the Debtor, as Lessee; (v) approving the assumption and assignment of, and fixing the Cure Amounts for, those Other Contracts and Leases to be assumed and assigned to the Purchaser in accordance with the Assumption and Assignment Procedures and the Purchase Agreement, effective upon closing of the Purchase Agreement; and (vi) granting related relief.

⁴ The Debtor in this case, along with the last four digits of the Debtor’s federal EIN, is Oklahoma ProCure Management, LLC (9763). The Debtor’s mailing address is 5901 W. Memorial Road, Oklahoma City, Oklahoma 73142.

⁵ Capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that, on [], 2018, the Court entered an order [D.I._____] (the “Procedures Order”), granting certain of the relief sought in the Sale Motion, including, among other things, approving procedures for the designation of the assumption and assignment of the Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Procedures Order, a hearing will be held before the Honorable Mary F. Walrath, United States Bankruptcy Judge, on [] (**prevailing Eastern Time**), in Courtroom 4 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the “Potential Assignment Notice”) because you or one of your affiliates may be a counterparty to one or more of the Contracts and Leases with the Debtor as set forth on Exhibit A attached hereto (the “Potentially Assigned Lease/Contract Schedule”).⁶ If the Court enters the Sale Order, the Debtor **may** assume and assign to the Buyer or reject the Contract and/or Lease listed on the Potentially Assigned Lease/Contract Schedule, to which you are a counterparty, either as of the Closing Date or a later date pursuant to the Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that the Debtor has determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts and Leases (the “Cure Amounts”) are in the total amount as set forth on the Potentially Assigned Lease/Contract Schedule attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtor to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Buyer you must file with the Court and serve an objection (an “Objection”) on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on [], 2018** (the “Objection Deadline”): (a) the Debtor, 5901 W. Memorial Rd., Oklahoma City, Oklahoma 73142; (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16th Fl., Wilmington, DE 19801, Attn: Gregory Werkheiser, Esq., counsel to the Debtor; (b) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda Richenderfer, Trial Attorney; (c) Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY, 10020, Attn: Brian Trust, Esq. and Joaquin M. C de Baca, Esq., counsel to the Agent; (d) Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, Attn: D. Christopher Carson, Esq., and 1201 N. Market St., Suite 1407, Wilmington, DE 19801, Attn: J. Cory Falgowski, Esq., counsel to the Buyer; and (e) counsel of record to any official committee

⁶ This Potential Assignment Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Potential Assignment Notice is not an admission by the Debtor that any such contract or lease is executory or unexpired.

of unsecured creditors appointed in the Chapter 11 Case. All Objections must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (iii) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Objection shall be deemed to have consented to the assumption and assignment of the Contract or Lease to the Buyer, and the Cure Amounts proposed by the Debtor in this Potential Assignment Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtor's cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtor or its estate (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court), provided, however, that the Debtor reserves the right, with the consent of the Buyer and the Agent, to adjourn the hearing to a date or dates to be determined with respect to any objection as to the cure amount applicable to a Contract or Lease.

PLEASE TAKE FURTHER NOTICE that the Debtor hereby reserves all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Purchase Agreement, including the Potentially Assigned Lease/Contract Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Potential Assignment Notice shall not be deemed to be an assumption, rejection, or termination of any of the Contracts and Leases. Moreover, the Debtor explicitly reserves its rights to reject or assume any of the Contract and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the Debtor that may arise under such Contracts and Leases, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtor that may arise under such Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto) and the proposed Sale Order may be inspected at the offices of the Clerk of the Court during normal business hours or downloaded from the Court's electronic docket at www.deb.uscourts.gov. Please note that prior registration with the PACER service center and payment of a fee may be required to access such documents. Parties in interest may sign up for a PACER account by visiting the PACER website at pacer.psc.uscourts.gov or by calling (800) 676-6856.

Dated: _____, 201__
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/

Gregory W. Werkheiser (No. 3553)

Daniel B. Butz (No. 4227)

Paige N. Topper (No. 6470)

1201 N. Market Street, 16th Floor

P.O. Box 1347

Wilmington, Delaware 19899-1347

Telephone: (302) 658-9200

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*Counsel to the Debtor and
Debtor in Possession*

Exhibit 2
[Sale Notice]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Oklahoma ProCure Management, LLC,

Debtor.¹

Chapter 11

Case No. 18-12622 (MFW)

Re: D.I. _____

NOTICE OF SALE.

PLEASE TAKE NOTICE that, on November 21, 2018, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Debtor’s Motion For Entry Of: (I) Order (A) Granting Relief, In Part, From Compliance With Del. Bankr. L.R. 6004-1, (B) Approving Certain Noticing Procedures In Connection With Proposed Private Sale Of Debtor’s Assets And Business, (C) Approving Assumption And Assignment Procedures For Proposed Sale, (D) Scheduling The Sale Hearing And Fixing Certain Related Dates And (E) Granting Related Relief; And (II) Order (A) Approving A Private Sale Of Substantially All Of The Debtor’s Assets, Other Than Certain Excluded Assets, Free And Clear Of Liens, Claims And Interests Thereunder, (B) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (C) Granting Related Relief [D.I. ___]* (the “Sale Motion”)², with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”): (i) approving an asset purchase agreement (together with all exhibits and schedules thereto, as amended from time to time, the “Purchase Agreement”) between the Debtor, as Seller, and The Oklahoma Proton Center LLC (the “Buyer”), as Buyer; (ii) approving the Sale of substantially all of the Debtor’s assets, other than the Excluded Assets, free and clear of liens, claims, encumbrances, and interests (collectively, “Interests”), other than certain Interests that may be assumed by Buyer in accordance with the express terms of the Purchase Agreement; (iii) approving the Debtor’s assumption, assignment of, and the agreed Cure Amount (as defined herein) for, all effective upon the closing of the Sale, the IBA Service Agreement, by and between IBA Proton Therapy, Inc. (“IBA”) and the Debtor; (iv) approving the Debtor’s assumption and assignment of, and the Cure Amount for, the Ground Lease Agreement, by and between INTEGRIS Realty Corporation (“INTEGRIS Realty”), as Lessor, and the Debtor, as Lessee; (v) approving the assumption and assignment of, and fixing the Cure Amounts for, those Other Contracts and Leases to be assumed and assigned to the Purchaser in accordance with the Assumption and Assignment Procedures and the Purchase Agreement, effective upon closing of the Purchase Agreement; and (vi) granting related relief.

¹ The Debtor in this case, along with the last four digits of the Debtor’s federal EIN, is Oklahoma ProCure Management, LLC (9763). The Debtor’s mailing address is 5901 W. Memorial Road, Oklahoma City, Oklahoma 73142.

² Capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that, consistent with the procedures approved by the Court by entry of an order on [], 2018 [D.I.] (the “Procedures Order”) a hearing will be held before the Honorable Judge Walrath, United States Bankruptcy Judge, on [] (**prevailing Eastern Time**), in Courtroom 4 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of this chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that, the deadline to file objections, if any, to the transactions contemplated by the Purchase Agreement or to entry of the Sale Order is [●], **2018 at [4:00 p.m.] (Prevailing Eastern Time)** (the “Objection Deadline”). Objections, if any, must: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (iv) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtor, 5901 W. Memorial Rd., Oklahoma City, Oklahoma 73142; (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16th Fl., Wilmington, DE 19801, Attn: Gregory Werkheiser, Esq., counsel to the Debtor; (b) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda Richenderfer, Trial Attorney; (c) Mayer Brown LLP, 1221 Avenue of the Americas, New York, NY, 10020, Attn: Brian Trust, Esq. and Joaquin M. C de Baca, Esq., counsel to the Agent; (d) Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, Attn: D. Christopher Carson, Esq., and 1201 N. Market St., Suite 1407, Wilmington, DE 19801, Attn: J. Cory Falgowski, Esq., counsel to the Buyer; and (e) counsel of record to any official committee of unsecured creditors appointed in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE IN ACCORDANCE WITH THE PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto) and the proposed Sale Order may be inspected at the offices of the Clerk of the Court during normal business hours or downloaded from the Court’s electronic docket at www.deb.uscourts.gov. Please note that prior registration with the PACER service center and payment of a fee may be required to access such documents. Parties in interest may sign up for a PACER account by visiting the PACER website at pacer.psc.uscourts.gov or by calling (800) 676-6856.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.

Dated: _____, 201__
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/

Gregory W. Werkheiser (No. 3553)

Daniel B. Butz (No. 4227)

Paige N. Topper (No. 6470)

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