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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: NEW RITE AID, LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 25-14861 (MBK) (Jointly Administered)

DEBTORS' REPLY IN SUPPORT OF SALE OF THRIFTY ASSETS AND CERTAIN PHARMACY ASSETS

The above-captioned debtors and debtors in possession (collectively, the "Debtors" or "Rite Aid") hereby submit this reply (this "Reply") in support of the Proposed Sale Orders.[2] In

[1] The last four digits of Debtor New Rite Aid, LLC's tax identification number are 1843. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://restructuring.ra.kroll.com/RiteAid2025. The location of Debtor New Rite Aid, LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 200 Newberry Commons, Etters, Pennsylvania 17319.

[2] The "Proposed Sale Orders" refer collectively to the *Order (I) Authorizing the Debtors to Enter Into and Perform Under the [Purchaser Name] Asset Purchase Agreement, (II) Approving the Sale of Purchased Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts in Connection Therewith, and (IV) Granting Related Relief*, Docket No. 1068, Ex. A (the "Thrifty Sale Order") and the *Order (I) Authorizing the Debtors to Enter Into and Perform Under the KPH Healthcare Services Asset Purchase Agreement, (II) Approving the Sale of Purchased Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, and (III) Authorizing Assumption and Assignment of Certain Executory Contracts in Connection Therewith, and (IV) Granting Related Relief*, Docket No. 1068, Ex. C (the "KPH Sale Order").

further support of the Proposed Sale Orders and this Reply, the Debtors incorporate by reference the *Declaration of Marc Liebman, Chief Transformation Officer of the Debtors, in Support of Debtors' Chapter 11 Petitions and First Day Motions*, Docket No. 24 (the "First Day Declaration"), the *Declaration of Adam Rifkin in Support of the Debtors' Bidding Procedures Motion*, Docket No. 20, the *Declaration of Adam Rifkin in Support of the Debtors' Omnibus Reply in Support of Sale of Pharmacy Assets*, Docket No. 447 (the "Pharmacy Assets Sale Declaration"), the *Declaration of Adam Rifkin in Support of Debtors' Reply in Support of Sale of Thrifty Assets and Certain Pharmacy Asset* (the "Rifkin Sale Declaration"), filed contemporaneously herewith; the *Declaration of Marc Liebman, Chief Transformation Officer of the Debtors, in Support of Debtors' Reply in Support of Sale of Thrifty Assets and Certain Pharmacy Assets* (the "Liebman Sale Declaration"), filed contemporaneously herewith; the *Declaration of Elise S. Frejka, CIPP/US in Support of Entry of the KPH Sale Order*, Docket No. 1150 (the "Frejka Declaration"), the *Declaration of Hilton Schlosberg on Behalf of Hilrod Holdings, L.P. in Support of Certain Findings in the Thrifty Proposed Sale Order* (the "Purchaser Declaration"), filed contemporaneously herewith, and the *Declaration of Sean A. Mitchell in Support of Debtors' Reply in Support of Sale of Thrifty Assets and Certain Pharmacy Assets* (the "Mitchell Declaration"), filed contemporaneously herewith, and respectfully state as follows:

PRELIMINARY STATEMENT[3]

1. The Debtors are on the verge of consummating the sale of their Thrifty Ice Cream business and related assets (the "Thrifty Assets") for $19.2 million, more than double the $8

[3] Capitalized terms used herein but not defined shall have the meaning given to them in the Sale Motion or the *Order (I) Approving the Auction and Bidding Procedures, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, (VI) Authorizing (A) the Sale of Assets and (B) Shortened Notice With Respect Thereto, and (VII) Granting Related Relief*, Docket No. 473 (the "Bidding Procedures Order"), as applicable.

million price offered at the commencement of the Thrifty Assets Auction (defined below), plus the payment of cure costs and assumption of certain assumed liabilities by Hilrod Holdings L.P. ("Hilrod"), the successful bidder for the Thrifty Assets. This is a resounding success.

2. The only outstanding objection, Docket No. 1132 (the "Skyline Objection"), to the proposed sale to Hilrod is from a frustrated bidder, Skyline Rocky Road Acquisition, LLC ("Skyline"). Skyline lacks standing to object, and its objection is meritless in any event. Skyline asserts that the Court should reject the proposed sale to Hilrod and instead "direct" the Debtors to accept a bid (the "Skyline Bid") submitted by Skyline and its purported co-bidder, Optimal Investment Group Inc. ("OIG"), after the Debtors had executed an asset purchase agreement with Hilrod (the "Hilrod APA") and announced Hilrod as the successful bidder, because the Skyline bid proposes a purchase price of $850,000 more than the bid represented by the Hilrod APA.

3. As explained below, the Debtors believe that the transactions contemplated by the Hilrod APA represent the highest or otherwise best offer for the Thrifty Assets, and that it is squarely within the Debtors' business judgment to continue with its executed APA and seek Court approval thereof. The Debtors do not believe it is prudent to exercise the fiduciary out and terminate the Hilrod APA, as Skyline demands. The Skyline bid was developed and proposed in clear violation of the Bidding Procedures, and threatens to undermine the integrity of the Thrifty Assets Auction. Skyline has also failed to demonstrate its financial wherewithal to close to the Debtors' satisfaction. Accordingly, the Court should overrule the Skyline Objection, and enter the Thrifty Sale Order.

4. Separately, the Debtors also seek approval to sell certain Pharmacy Assets (together with the Thrifty Assets, the "Purchased Assets") to KPH Healthcare Services, Inc. ("KPH" and, together with Hilrod, the "Purchasers"), as set forth in the Notice of Successful Bidders (as defined

below) and the asset purchase agreement between KPH and the Debtors attached thereto (the "KPH APA" and, together with the Hilrod APA, the "Purchase Agreements").

5. For the reasons set forth herein and in the Liebman Sale Declaration, Rifkin Sale Declaration, and the Purchaser Declaration, each of the transactions contemplated by the Purchase Agreements satisfies the requirements of section 363 of the Bankruptcy Code, and consummation of the transactions set forth in the Purchase Agreements is in the best interests of the Debtors' estates and other parties in interest. The Debtors respectfully request that the Court enter each of the Proposed Sale Orders and authorize the Debtors to enter into each Purchase Agreement and to take such actions necessary to consummate the transactions contemplated thereby.

THE SALES AND MARKETING PROCESS FOR THE THRIFTY ASSETS

I. The Sales Process Leading Up to the Thrifty Assets Auction

6. As described in greater detail in the Rifkin Sale Declaration and Pharmacy Assets Sale Declaration, the Debtors commenced these chapter 11 cases to conclude their prepetition marketing process for an orderly and value maximizing sale of some, all, or substantially all of their assets. Following the Petition Date, the Debtors continued their marketing process in accordance with the Bidding Procedures. On May 14, 2025, the Debtors commenced an auction for the sale of their Pharmacy Assets (the "Pharmacy Assets Auction"), after which, on May 21, 2025, the Court entered orders approving various purchase agreements pursuant to which Pharmacy Assets related to over 810 Rite Aid locations were awarded to various buyer parties thereto. Docket Nos. 469, 470 & 472 (the "Pharmacy Assets Sale Orders"). The Debtors continue to market their remaining Pharmacy Assets for sale.

7. After concluding the sales process for the vast majority of the Debtors' Pharmacy Assets, the Debtors focused their attention on the Remaining Assets, including the Thrifty Assets.

Thirty-six potential purchasers for the Thrifty Assets executed confidentiality agreements with the Debtors, and, of those parties, approximately 36 were provided access to a virtual data room that included extensive information on such assets. Rifkin Sale Decl. ¶ 9. Ultimately, six bidders submitted Qualified Bids for the Thrifty Assets by the Qualified Bid deadline of June 18, 2025, five of which were going concern bids that proposed to acquire and operate the Thrifty business as a whole, and one bid which was for certain Thrifty Assets but not the business as a whole. *Id.* ¶ 12. Thereafter, the Debtors, in consultation with the Consultation Parties, determined to hold an auction for the Thrifty Assets commencing on June 24, 2025 at 11:00 a.m. (prevailing Eastern Time) by videoconference (the "Thrifty Assets Auction"), described below in Section III.

II. The Bidding Procedures and Auction Rules Expressly Prohibit Communication with Other Bidders Absent Prior Written Consent of the Debtors

8. The Bidding Procedures employed in these chapter 11 cases, like the bidding procedures in substantially all, if not all other chapter 11 cases that includes a formal sales process, contain a customary prohibition on bidder-to-bidder communication without the prior written consent of the Debtors. Specifically, they provide:

> (i) The Acceptable Bidder must represent in writing (i) that it has not engaged in any collusion with respect to any Bids or the Sale Transactions, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price, and (ii) that it agrees not to engage in any collusion with respect to any Bids, the Auctions, or the Sale Transactions. This requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors' prior written consent (email shall suffice) . . . . Bidding Procedures § IV.p; and
>
> (ii) Each Qualified Bidder will be required to confirm on the record [of the auction] that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transactions. This requirement does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent. Bidding Procedures § IX, ¶ 36(l).

9. In advance of the Thrifty Assets Auction, the Debtors reiterated certain rules contained in the Bidding Procedures, including the prohibition against communication between bidders without the consent of the Debtors. Specifically:

(i) The Debtors distributed an email to each Qualified Bidder the evening before the Thrifty Assets Auction stating "[c]ollusion among bidders is strictly prohibited. Bidders must avoid any collaboration, strategizing, or communication with other bidders regarding purchase price, purchase mechanics, or auction strategy, unless expressly authorized with the prior written consent of the Debtors" and "***By participating in the auction and submitting a bid, you are agreeing to each of the above rules and to comply with the Bidding Procedures.***" (emphasis in the original) Mitchell Decl., Ex. C;

(ii) At the commencement of the auction, the Debtors stated that "[y]our bid must not be based on any collusion and you will refrain from collusion during the auction. That includes collaboration, strategizing, or other communication with other bidders during the auction, including discussions of purchase price, purchase mechanics, auction strategy, unless it's otherwise expressly authorized by the debtors; and you're bound by these rules." Mitchell Decl., Ex. D (Auc. Tr. at 8:10–17); and

(iii) In requesting that each bidder affirm the rules of the Thrifty Assets auction, the Debtors stated that each bidder can say "we affirm", and that such affirmation means that "the bid is not based on collusion; that you intend to refrain from collusion during the auction; that your offer is a good faith, bona fide offer that may not be modified, amended, or withdrawn, except as expressly provided in the bidding procedures; and that you agree to serve as a backup bidder if a qualified bid is selected as the next highest or otherwise best bid."[4] Mitchell Decl., Ex. D. (Auc. Tr. at 8:23–9:6).

Each bidder, including Skyline and OIG, affirmed they would abide by these rules. Mitchell Decl., Ex. D (Auc. Tr. at 9:20–23 (affirmation of OIG); 10:1–5 (affirmation of Skyline)).

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[4] With respect to backup bidders, the Bidding Procedures also provided that, by submitting a Qualified Bid, such bidder may be chosen by the Debtors as a backup bidder. *See* Bidding Procedures § X. ¶ 43 ("The Debtors expressly reserve all rights and remedies with respect to . . . the ability to designate any Qualified Bidder as the back-up bidder for any applicable Assets.")

III. The Thrifty Assets Auction

10. After receiving and evaluating the bids submitted for the auction (the "Auction Bids"), the Debtors determined that a going concern Auction Bid of $8,000,000 in cash, plus the assumption of assumed liabilities and payment of cure amounts, and an outside date for closing (the "Outside Date") of July 31, 2025, would serve as the starting bid (the "Starting Bid") for the auction. Rifkin Sale Decl. ¶ 13. The Debtors further determined that there would be an incremental overbid requirement of $500,000 at the auction, subject to modification in accordance with the Bidding Procedures. Rifkin Sale Decl. ¶ 14. The Debtors distributed information about the Starting Bid, the applicable asset purchase agreement, and the incremental overbid requirement of $500,000 to each party submitting an Auction Bid in advance of the auction.

11. On June 24, 2025, the Debtors commenced the Thrifty Assets Auction. The bids for the Thrifty Assets increased throughout the auction and bidders were eliminated throughout the auction, including Skyline, whose last bid was for $14.5 million in cash, plus assumed liabilities and cure costs. Ultimately, only two bidders remained, each of whom were submitting going concern bids: Hilrod, who had bid $18.5 million in cash, plus assumed liabilities and cure amounts, and an Outside Date of July 22, 2025; and OIG, who submitted a subsequent bid of $19.0 million in cash, plus assumed liabilities and cure amounts, and an Outside Date of August 1, 2025. After a brief recess, the Debtors determined that the bid from OIG was the then-prevailing highest or best offer for the Thrifty Assets, and after a further brief recess, instructed Hilrod and OIG to submit their best and final bids via email to the Debtors' advisors. Rifkin Sale Decl. ¶ 16.

12. Following those instructions, Hilrod submitted a bid of $19,050,000, with an Outside Date of July 22, 2025, and OIG submitted a bid of $19,126,000, also with an Outside Date of July 22, 2025. The Debtors went back on the record to adjourn the auction, and indicated they would be in contact with Hilrod and OIG on next steps. Rifkin Sale Decl. ¶ 17.

IV. Post-Auction Adjournment Developments and Selection of the Thrifty Assets Successful Bidder and OIG as Backup Bidder

13. Following the adjournment of the Thrifty Assets Auction, the Debtors' advisors spoke with representatives from both Hilrod and OIG to encourage them to improve their bids, Rifkin Sale Decl. ¶ 18, as well as provide additional support of their financial wherewithal to consummate the proposed transaction if declared the winning bidder. Given that the current price for the Thrifty Assets—over $19 million—was more than double that of the $8 million Starting Bid, the Debtors were focused on ensuring that both bidders still had the financial wherewithal to close a transaction at this substantially higher price, and that the Debtors would be protected in the event a bidder was unable to close on a transaction.

14. These conversations were successful, and that evening, Hilrod submitted an updated bid that (i) increased the cash purchase price to $19,200,000 and (ii) agreed to provide (a) a non-refundable deposit of $4 million by 5:00 p.m. (ET) on June 26, 2025 and (b) a deposit equal to the balance of the purchase price by 5:00 p.m. (ET) on July 2, 2025. Rifkin Sale Decl. ¶ 19. If either deposit is not timely made, the Debtors would be permitted to terminate the asset purchase agreement, and keep any deposit already made.

15. In contrast, the Debtors, in consultation with their advisors, were not as confident in OIG's financial wherewithal to consummate the transaction, which concern was later corroborated by counsel to OIG. *See* Docket No. 1132-1 ¶ 4 (the "Rostamian Declaration") (acknowledging OIG faced liquidity constraints with respect to its bid, and that is among the reasons why it engaged with Skyline as a co-bidder, as discussed further below).

16. Accordingly, the Debtors, in consultation with their advisors and the Consultation Parties, determined that Hilrod was the Successful Bidder. The Debtors finalized the Hilrod APA, which was executed by the parties on June 25, 2025. Furthermore, and not withstanding OIG's

actions discussed below, the Debtors determined that the bid of $19,126,000 from OIG submitted on June 24, 2025 was the second highest or otherwise best bid for the Thrifty Assets, and chose that bid as the backup bid, and OIG as the backup bidder (the "Backup Bidder"). On June 26, 2025, the Debtors filed the Notice of Successful Bidders, designating Hilrod as the Successful Bidder, and OIG as the Backup Bidder. That same day, Hilrod deposited $4 million with the Debtors.

V. Skyline and OIG's Improper Conduct After Adjournment of the Auction

17. After the auction had been adjourned and the Debtors had executed the Hilrod APA, on June 26, 2025, Skyline emailed the Debtors' advisors to write that it had discussions with another bidder in an effort to support a higher bid. Mitchell Decl., Ex. A. The email represented that those discussions did not prove fruitful at that time, but that, with the Debtors' consent, Skyline would sign an asset purchase agreement for the Thrifty Assets with a purchase price of $20 million. *Id.* The Debtors' advisors responded that the Bidding Procedures did not permit Skyline to speak with other parties, and that Skyline should stop having any discussions with the other bidder. *Id.* Skyline acknowledged receipt of that email. *Id.*

18. Like Skyline, OIG also contacted the Debtors' advisors to, among other things, request that it be permitted to submit a joint bid with Skyline. Mitchell Decl., Ex. B. This request was denied, which denial was subsequently confirmed by Skyline via email. *Id.*

19. Even though the Debtors and their professionals expressly denied permission to both Skyline and OIG to communicate with one another regarding the Thrifty Asset sales process (points which both Skyline and a representative of OIG acknowledge), Skyline and OIG continued to collaborate and now purport to submit a joint bid for the Thrifty Assets, in plain violation of the Bidding Procedures. Skyline Obj. ¶ 6 (acknowledging submission of a bid with "joint participation

by both OIG and Skyline"); Rostamian Decl. ¶ 5 (acknowledging requesting to submit a new bid from OIG and Skyline, as a "liquidity solution relative to timing of capital"). While the Rostamian Declaration asserts that a representative of the Debtor stated that OIG "could submit the new Bid from OIG with Skyline and [the Debtor representative] would convey it to the Debtor and Consultation Parties as fiduciaries" (at ¶ 4), the Debtors did not, and have never consented the collaboration of Skyline and OIG—a point Mr. Rostamian previously acknowledged in an email to the Debtors' representatives on June 26, 2025. Mitchell Decl., Exh. B (email from Saul Rostamian to Sean Mitchell stating that "You didn't give verbal consent on your call w/me.").

20. On June 26, 2025, counsel to ***OIG*** submitted to the Debtors a proposed execution version of a Thrifty Assets purchase agreement between the Debtors and ***Skyline***, with a purchase price of $20,050,000 (the "Skyline APA"). At this point, the Debtors already had executed the Hilrod APA and designated Hilrod as the Successful Bidder.

21. While Skyline characterizes this bid as a joint bid between Skyline and OIG, Skyline Obj. ¶ 5, both the asset purchase agreement submitted by OIG on June 26 and attached declaration of Jeremy May, Skyline Objection, Ex. C (the "May Declaration"), list only "Skyline Rocky Road Acquisition, LLC" as a party to the purchase agreement. Neither Skyline nor OIG has produced any evidence that OIG would be a party to or otherwise be bound to support the obligations of Skyline under the Skyline APA.

22. Furthermore, evidence of Skyline's financial wherewithal was a limited guarantee submitted by Skyline Investors I, LP ("SII"), a purported 100% owner of Skyline, and Standard Equity Holdings LP ("SEH"). Under the guarantee, SII and SEH agreed to guarantee on a several but not joint basis 34.24% and 65.76% of Skyline's obligations under the Skyline APA—in other words, neither of those entities is guaranteeing the entirety of the purchase price, but rather are

obligated to fund approximately one-third (in the case of SII) or two-thirds (for SEH), making both entities' ability to fund relevant to an assessment of their bid. The submitted bid did not include any information showing that Skyline had any assets, nor did it make any demonstration that SII or SHE had the financial wherewithal to close.

23. Skyline's Objection provided further evidence of Skyline's financial wherewithal, which consisted of (i) a bank account statement from SII showing an intraday balance of $3.4 million as of June 27, (ii) availability of SII under a line of credit of $17.8 million as of June 17, and (iii) a bank statement from SEH, a purported affiliate of SII, showing a pending but not yet received $24 million deposit as of June 27, 2025, *see* May Declaration, Exh. B. The Debtors are not aware of the source of funds for this in-flight deposit. Neither SII or SEH has submitted any balance sheets or other demonstration of any other assets beyond the limited information attached to the May Declaration.

VI. The Debtors Determine Not to Exercise Their Fiduciary Out to Pursue the Skyline APA

24. The Hilrod APA (i) provides the Debtors a right to terminate the Hilrod APA if they determine that proceeding with the transactions contemplated by the Hilrod APA or failing to terminate the Hilrod APA would be inconsistent with their fiduciary duties (the "Fiduciary Out"), Hilrod APA § 9.1(iv), and (ii) preserves the Debtors' right to pursue any transaction or restructuring strategy that, in the Debtors' business judgment, would maximize the value of their estates, *id.* § 9.7. After receipt of the Skyline APA, the Debtors, in consultation with their advisors, determined not to exercise their Fiduciary Out to terminate the Hilrod APA and enter into the Skyline APA. As explained in the Liebman Sale Declaration, this decision was based on, among other things, (a) the confidence the Debtors have that Hilrod will close the transactions contemplated by the Hilrod APA on the timeframe provided by the Hilrod APA, (b) the protection

provided to the Debtors by the $4 million deposit if Hilrod does not close, (c) the repeated violations of the Bidding Procedures committed by Skyline following adjournment of the Thrifty Assets Auction, and (d) uncertainty regarding Skyline's ability to close.

THE SALE OF CERTAIN PHARMACY ASSETS TO KPH

25. After entry of the Pharmacy Assets Sale Orders, the Debtors continued to market and sell their remaining Pharmacy Assets. As a result of such efforts, on June 17, 2025, the Debtors, in consultation with the Consultation Parties, entered into the KPH APA.

THE DEBTORS PROVIDED NOTICE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER

26. The Debtors provided notice to each party entitled to such notice in accordance with the Bidding Procedures and the Bidding Procedures Order, including each counterparty to the executory contracts and unexpired leases proposed to be assumed and assigned to the Purchasers.[5] Accordingly, the Debtors submit that no further notice need be given of the Sale Transactions, Proposed Sale Orders, or the proposed assumption and assignment to the Purchasers of the applicable executory contracts and unexpired leases.

OBJECTIONS

27. Two parties have filed responsive pleadings to the Thrifty Sale Order: Skyline; and Blue Jay Center, LLC, one of the lessors to Thrifty Payless, Inc., a Debtor entity that is a Seller under the Hilrod APA. The Debtors have conferred with counsel to Blue Jay Center, LLC and

[5] *See, e.g., Notice of Filing of Proposed Orders Authorizing and Approving the Sale of Certain of the Debtors' Assets, with Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances, and (III) Granting Related Relief*, Docket No. 1068, for which an affidavit of such service was filed at Docket No. 1149; *Notice of (I) Successful Bidders and Backup Bidder, and (II) Adjournment of Remaining Assets Auction*, Docket No. 1113 (the "Notice of Successful Bidders"), for which an affidavit of such service was filed at Docket No. 1152; *Notice of Potentially Assumed Executory Contracts and Unexpired Leases*, Docket No. 1119 (i.e., the cure notice in connection with the executory contracts and unexpired leases that constitute Thrifty Assets proposed to be sold to Hilrod), for which an affidavit of such service was filed at Docket No. 1151; and Docket No. 1151, Ex. F (indicating that cure notices for the leases proposed to be assumed and assigned to KPH have been served on the landlords).

believe that its reservation of rights has been resolved. No party has formally objected to the KPH Sale Order.[6]

28. Skyline objects to the proposed sale of the Thrifty Assets to Hilrod, arguing that its joint bid with OIG constitutes the highest and best offer for the assets. Skyline Obj. ¶ 9. Specifically, Skyline asserts that after the auction process, Skyline and OIG submitted a final bid of $20,050,000 reflected in the Skyline APA which is $850,000 higher than Hilrod's bid and has equivalent terms and unconditional financial backing. *Id.* Skyline contends that the Debtors have improperly refused to accept this superior bid and instead designated Hilrod as the successful bidder, and therefore requests that the Court deny the sale to Hilrod and instead direct the Debtors to designate the Skyline APA as the winning bid. *Id.* This objection should be overruled.

REPLY TO OBJECTION OF SKYLINE

A. The Designation of the Hilrod APA as the Successful Bid for the Thrifty Assets Is a Proper Exercise of the Debtors' Business Judgment and the Debtors' Prudently Exercised their Business Judgement Not to Exercise their Fiduciary Out and Terminate the Hilrod APA

29. Under section 363(b)(1), a debtor is permitted to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts approve asset sales where the sale "constitutes a reasonable and sound exercise of the Debtor's business judgment[.]" *In re Dura Automotive Sys., Inc.*, 2007 WL 7728109, at *5 (Bankr. D. Del. Aug. 15, 2007). The Third Circuit has made clear that a debtor's business judgment is entitled to substantial deference. *See, e.g.*, *Stanizale* v. *Nachtomi* (*In re Tower Air, Inc.*), 416 F.3d 229, 234 (3d Cir. 2005) (indicating the "business judgment rule is a presumption that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief

[6] The Debtors did receive an informal objection to the Proposed Sale Orders from the Federal Trade Commission, which objection has been resolved by the inclusion of certain language in the Proposed Sale Orders.

that their actions are in the corporation's best interest") (internal quotations omitted). The business judgment rule shields a debtor's management decisions from judicial second-guessing.

30. Debtors, in their business judgment, may consider factors other than purchase price in determining which offer is highest or best, including the certainty of closing and counterparty risk. *See In re Bakalis*, 220 B.R. 525, 533 (Bankr. E.D.N.Y. 1998) (holding it was appropriate that the debtors determined that a bidder with a cash purchase price of $10.5 million was the winning bidder over another bidder with a cash purchase price of $11.2 million, because (i) the $10.5 million was on deposit in a separate account available for payment at closing, (ii) relatively quick regulatory approval of the $10.5 million "seemed likely," and (iii) "in the main, because of the perceived certainty and estimated rapidity with which the [$10.5 million] transaction would close."); *In re Scimeca Found., Inc.*, 497 B.R. 753, 779 (Bankr. E.D. Pa. 2013) (holding it was "within the trustee's sound business judgment to accept a somewhat lower all-cash offer with no contingency").

31. At the time the Debtors filed the Notice of Successful Bidders, the only bids before them were the bid of $19,200,000 represented by the Hilrod APA, and the bid of $19,126,000 submitted by OIG. The Debtors and their advisors were confident that Hilrod has the financial wherewithal, and is highly motivated, to close the transaction at a purchase price of $19,200,000. Liebman Sale Decl. ¶ 12. Given the higher purchase price offered by Hilrod, the $4 million deposit made by Hilrod, and the greater certainty of closing as compared to the OIG bid, the Debtors determined, in consultation with their advisors and the Consultation Parties, to execute the Hilrod APA and declare Hilrod the Successful Bidder. Rifkin Sale Decl. ¶ 21. The Debtors also determined, in consultation with the Consultation Parties, to declare OIG as the Backup Bidder.

32. Furthermore, even when compared against the Skyline APA, it is the Debtors' business judgment that it is consistent with their fiduciary duties not to exercise their fiduciary out to pursue the Skyline APA. The Debtors believe that, given the profile of Hilrod's general partner, Hilton Schlosberg, CEO of Monster Energy Corporation, the $4 million deposit already made, and Hilrod's conduct to date in the sales process and auction, Hilrod is a more attractive buyer than Skyline. Liebman Sale Decl. ¶ 12. On the other hand, the uncertainty of Skyline's financing at its current proposed purchase price, Liebman Sale Decl. ¶ 13 coupled with its flagrant, repeated disregard of the Bidding Procedures and the continued uncertainty surrounding whether its bid is joint with OIG or only a bid of Skyline,[7] provide more than enough justification for the Debtors to prefer to work with Hilrod toward closing the sale of the Thrifty Assets. This is particularly true in light of the difference in purchase price between the two bids, which amounts to less than 5% of the total purchase price.

33. Accordingly, continuing along the path of a proposed sale to Hilrod represents a sound exercise of the Debtors' business judgment. As further evidenced by the Rifkin Sale Declaration and the Liebman Sale Declaration, the Debtors have exercised their business judgment in a fair, reasonable, and responsible matter throughout the sale process. The record is clear that the Debtors and their advisors left no stone unturned throughout this marketing process. The Debtors engaged in a due diligence process for potential bidders, and a transparent, robust, and efficient marketing process. Following this robust process, the Debtors, with the assistance of their advisors, determined that Hilrod's bid was the highest or otherwise best bid for the Thrifty Assets. Rifkin Sale Decl. ¶¶ 21–22.

[7] As the Skyline APA lists only Skyline as a party thereto, yet both Skyline and OIG continue to refer to the Skyline bid as a joint bid, the Debtors are left to wonder whether there is an undisclosed agreement or other financial arrangement between OIG and Skyline in connection with such bid, in further violation of, at a minimum, the Bidding Procedures.

34. The proposed sale to KPH likewise reflects the highest or otherwise best bids received for the applicable Pharmacy Assets. Rifkin Sale Decl. ¶ 26. Such transaction will also ensure the prompt and orderly transition of prescription files to avoid any disruption to essential healthcare services on which the Debtors' customers rely. Consequently, the transactions contemplated by the Purchase Agreements should be approved and the Court should enter each of the Proposed Sale Orders.

B. Skyline Lacks Standing to Object as a Frustrated Bidder

35. The Court need not even reach the merits of Skyline's objection because Skyline lacks standing to object to the sale. Under the Bankruptcy Code, only a "party in interest" has a right to be heard "on any issue in a case under [Chapter 11]." 11 U.S.C. § 1109(b). "It is a familiar maxim of bankruptcy law that a disappointed bidder lacks standing to challenge a sale except for matters relating to the fundamental fairness of the process." *In re MTE Holdings LLC*, 2021 WL 3743201, at *8 (Bankr. D. Del. Aug. 17, 2021); *In re AIO US Inc.*, No. 24-11836 (Bankr. D. Del. June 6, 2025), ECF No. 1125 at *19 ("Courts have long held . . . that a disappointed bidder in a bankruptcy auction generally lacks standing to challenge the sale—except to the extent that the challenger calls into question the 'intrinsic fairness' of the sale process.")); *In re Quanalyze Oil & Gas Corp.*, 250 B.R. 83, 89 (Bankr. W.D. Tex. 2000) ("A competing bidder normally lacks standing to even challenge a sale . . . .").

36. This restriction is because the rules governing asset sales "are ones that are intended to protect the estate rather than to protect other bidders." *In re MTE*, 2021 WL 3743201, at *8; *accord, e.g.*, *Squire v. Scher*, 2006 WL 8449131, at *6 (S.D. Ohio May 5, 2006) ("To permit PSC, as an unsuccessful bidder, to challenge the Sale Order under these circumstances undermines the policy of the Bankruptcy Code to protect the creditors of such estates and not prospective purchasers.").

37. Skyline raises no objection to the integrity of the auction process. Instead, it challenges only the Debtors' business judgment in selecting the highest or best bid. That is not a matter that falls within the fundamental fairness exception. *See, e.g.*, *In re Nortel Networks Inc.*, No. 09-10138 (Bankr. D. Del. Dec. 2, 2009), Docket No. 2122 at 197 ("[I]t's my ruling that [the unsuccessful bidder] does not have standing in this case. It is an unhappy bidder, which the case has made clear. It does not provide standing"). Accordingly, Skyline lacks standing as a disappointed bidder and that alone is grounds to overrule Skyline's objection.

C. Importance of Debtors' Credibility in the Sale of the Remaining Assets

38. The Debtors have also considered the fact that Skyline and OIG violated the Bidding Procedures and Thrifty Assets Auction rules as an additional reason to decline to exercise their fiduciary out under the Hilrod APA.

39. The integrity and finality of the auction process is an important consideration, particularly where the debtors have additional auctions and asset sales planned. *See In re Bigler, LP*, 443 B.R. 101, 115 (Bankr. S.D. Tex. 2010) ("Reneging on clearly established and properly conducted procedures in order to generate some additional dollars for the estate undermines the integrity of the judicial process; indeed, it can undermine the integrity and reputations of the individual litigants and lawyers. The public in general, and all participants at auctions in particular, need to have confidence in the judicial system."). Reopening bidding or reneging on a publicly announced winning bidder undermines the confidence of market participants and makes it more difficult to maximize value to the bankrupt estate. *See In re Edwards*, 228 B.R. 552, 562 (Bankr. E.D. Pa. 1998) ("[W]e think that the important notions of finality and regularity in judicial auctions are appeased if the court acts consistently with the rules by which the particular sale is conducted and in compliance with the bidders' reasonable expectations."). Undermining finality not only

disrupts the current sale but also deters future bidders, making it more difficult to maximize value in subsequent auctions.

40. Here, Skyline's repeated violations of the Bidding Procedures and the auction rules would undermine the integrity and reliability of the bankruptcy auction process, sending a message to market participants that even a publicly designated winning bid and executed agreement are not secure. As the Debtors intend to conduct future auctions for unsold Remaining Assets in these chapter 11 cases, this is a particularly relevant concern. Introducing such unpredictability would discourage future bidders and may chill competitive bidding, thus reducing value for the Debtors' estates. It may also lead to less orderly and less competitive auctions in future cases. Accordingly, the Debtors are justified in considering Skyline's post-auction conduct in choosing Hilrod as the Successful Bidder and declining to exercise their Fiduciary Out to pursue the Skyline Bid.

D. The Sale Transactions and the Purchase Agreements of the Successful Bidders Were Negotiated in Good Faith and Each Successful Bidder is Entitled to the Protections of Section 363(m) and 363(n) of the Bankruptcy Code

41. Within the Third Circuit, a good faith purchaser is one who purchases assets for value and in good faith. "The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147 (3d Cir. 1986).

42. Each Successful Bidder's (i) conduct during the marketing process and, with respect to Hilrod, the Thrifty Assets Auction, and (ii) each Purchase Agreement, satisfies this standard. There is no evidence of fraud, misconduct, or any lack of integrity by any Purchaser in the sale process. The record demonstrates that each Purchase Agreement resulted from arm's-length negotiations in connection with the Court-approved sales and marketing process. Rifkin

Sale Decl. ¶ 23. Further, there is no evidence of collusive conduct between the Successful Bidders and any person or entity, including the Debtors and other bidders, with respect to the Sales of the assets subject to the Purchase Agreements. *Id.* There is no evidence to suggest that the sale price was controlled by an agreement among potential bidders, and there are no agreements between any Purchaser and the Debtors, except for the Purchase Agreements and certain non-disclosure agreements entered into between each Successful Bidder and the Debtors during the sales process. Rifkin Sale Decl. *Id.*

43. Specifically, with respect to the Thrifty Assets, the Debtors received and evaluated multiple bids for such assets, and the Thrifty Assets Auction was robust, competitive, and transparent, with all bidders afforded a reasonable opportunity to conduct diligence and participate. Rifkin Sale Decl. ¶ 23. The final purchase price achieved—$19.2 million—was more than double the Starting Bid, further demonstrating the competitive nature of the process. Rifkin Sale Decl. ¶¶ 13, 19. Hilrod also demonstrated substantial financial wherewithal and motivation to close, including providing a $4 million non-refundable deposit and evidence of significant assets, and has actively engaged with the Debtors' advisors to ensure a prompt and certain closing. Rifkin Sale Decl. ¶¶ 19, 21.

44. Accordingly, the Debtors believe that each Successful Bidder has conducted itself in good faith and did not engage in collusion, and thus, is entitled to the protections of section 363(m) and 363(n) of the Bankruptcy Code.

E. The Proposed KPH Sale Satisfies Section 363(b)(1)(A) of the Bankruptcy Code, and Appointment of a Consumer Privacy Ombudsman is Not Required

45. The KPH sale should be approved because it involves the transfer of pharmacy assets, specifically patient prescriptions and related data, in a manner that fully complies with both Rite Aid's Patient Privacy Policy and the requirements of HIPAA. These assets are protected

health information (PHI). The Patient Privacy Policy, which governs PHI, expressly permits the use and disclosure of PHI for healthcare operations, including the sale or transfer of pharmacy locations and associated data, and does not require patient opt-in or provide a right to opt out in these circumstances. Frejka Decl. ¶¶ 10, 12–13. HIPAA similarly allows covered entities like Rite Aid to disclose PHI for treatment, payment, healthcare operations, and in response to court orders, and specifically includes the sale or transfer of all or part of a covered entity as a permitted healthcare operation. Frejka Decl. ¶¶ 15–17. The sale is consistent with Rite Aid's longstanding practices and privacy policies, which have not materially changed with respect to the transfer of PHI, and is necessary to maintain continuity of care for patients following the closure or transfer of pharmacy locations. Frejka Decl. ¶¶ 14, 18–19. Thus, the transaction is legally and ethically sound, supporting Court approval.

F. The Stay Under Bankruptcy Rules 6004(h) and 6006(d) Should be Waived

46. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise." Similarly, Bankruptcy Rule 6006(d) provides that "[u]nless the court orders otherwise, an order authorizing the trustee to assign an executory contract or unexpired lease under §365(f) is stayed for 14 days after the order is entered." The Debtors request that each Proposed Sale Order be effective immediately upon its entry by providing that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) are waived, subject to the terms thereof. As set forth in the Rifkin Sale Declaration, the outside closing date for the Hilrod APA is July 22, 2025, although the parties may close earlier than that. Further, with respect to the transactions contemplated by the KPH APA, as described previously, the value of the Debtors' prescription files sharply deteriorates with the passage of time between the announcement and closing of a sale, First Day Decl. ¶ 52, and an efficient and prompt transition of customers' prescriptions best ensures

continuity of the pharmacy services that Rite Aid provides its customers. *Id.* ¶ 78. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d), subject to the terms of the Proposed Sale Orders.

RESERVATION OF RIGHTS

47. The Debtors reserve their rights to present additional evidence and legal argument at the Sale Hearing in response to any of the matters raised in the Objections.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (a) enter the Proposed Sale Orders, (b) overrule the Skyline Objection, and (c) grant such other and further relief as the Court deems just and proper.

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Dated: June 30, 2025

/s/ *Michael D. Sirota*

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