

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

In re:

LVI INTERMEDIATE HOLDINGS, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 20-11413 (KBO)

(Jointly Administered)

Re: D.I. 65, 70 and 168

**ORDER (A) APPROVING BID PROCEDURES RELATING TO THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (B) ESTABLISHING
PROCEDURES IN CONNECTION WITH THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) APPROVING
NOTICE PROCEDURES, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the "**Motion**")² of the Debtors, pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Local Rules 2002-1 and 6004-1, for entry of an order: (i) approving the bid procedures in the form annexed hereto as **Exhibit 1** (as amended or modified, the "**Bid Procedures**") to be implemented in connection with a sale (the "**Sale**") of all or substantially all of the assets of the Debtors (the "**Assets**"); (ii) establishing procedures in connection with the Debtors' assumption and assignment to the Successful Bidder or Backup Bidder of certain executory contracts and unexpired leases (each an "**Assumed Contract**" and, collectively, the "**Assumed Contracts**") and the corresponding cure amounts (the "**Cure Amounts**") required to be paid in connection with the

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: LVI Intermediate Holdings, Inc., (7674); Total Vision Institute, LLC (7571); QualSight, LLC (3866); The LASIK Vision Institute, LLC (7564); Cataract Vision Institute, LLC (7697); Healthcare Marketing Services, LLC (9982); Cataract Vision Institute Florida, LLC (3423); TLC Vision Center Holdings, LLC (5400); TLC Whitten Laser Eye Associates, LLC (0182); TLC Vision Centers, LLC (8271); TruVision, LLC (3399); TruVision Contacts, LLC (3399); Laser Eye Surgery, LLC (3448); TLC Laser Eye Centers (Refractive I), LLC (2702); TLC The Laser Center (Pittsburgh) L.L.C. (2881); TLC The Laser Center (Indiana) LLC (8456); TLC The Laser Center (Institute), LLC (0959); and LVI Missouri, LLC (7088). The Debtors' executive headquarters are located at 1555 Palm Beach Lakes Blvd., Suite 600, West Palm Beach, Florida 33401.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Motion or the Bid Procedures, as applicable.

assumption and assignment, (iii) approving the notice procedures (the "**Notice Procedures**") to advise parties in interest and Potential Bidders of the Bid Procedures, the auction of the Assets (the "**Auction**"), the sale hearing for the Assets (the "**Sale Hearing**"), and the Debtors' intent to assume and assign to the Successful Bidder or Backup Bidder the Assumed Contracts and the corresponding Cure Amounts; and (iv) granting related relief; the Court, having determined that the relief provided herein is in the best interests of the Debtors, their estates, creditors and other parties in interest and calculated to result in the highest or otherwise best offer for the Assets, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and all objections and responses to the Motion having been resolved and otherwise withdrawn or overruled; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these Chapter 11 Cases; and after due deliberation thereon; and good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion and the transactions contemplated therein 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). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The Motion and the Bid Procedures comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

C. The notice given by the Debtors of the Motion and the hearing with respect to the Motion constitutes proper, timely, adequate and sufficient notice thereof and complies with the Bankruptcy Code, the Bankruptcy Rules and applicable Local Rules, and no other or further notice is necessary, except as set forth herein with respect to the Auction and Sale Hearing.

D. A reasonable opportunity to object or be heard regarding the relief provided herein with respect to the Motion has been afforded to parties in interest.

E. The proposed Notice Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Bid Procedures to be employed in connection therewith and the Sale Hearing.

F. The Notice of Assumption and Assignment is reasonably calculated to provide all counterparties to Assumed Contracts with proper notice of the potential assumption and assignment of their respective Assumed Contract(s) and any Cure Amount(s) relating thereto, provided, however, that the mere listing of any Assumed Contract on the Notice of Assumption and Assignment does not require or guarantee that such Assumed Contract will be assumed and assigned, and all rights of the Debtors with respect to such Assumed Contracts are reserved.

G. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bid Procedures, (ii) the scheduling of the Auction and the Sale Hearing, (iii) the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts, and (iv) related deadlines in connection with each of the foregoing.

H. The Bid Procedures are reasonably designed to enable the Debtors to receive bids for the Assets and represent the best method for maximizing the realizable value of the Assets and serve to maximize estate value for the benefit of all of the Debtors' stakeholders and parties in interest.

I. Entry of this Bid Procedures Order and the granting of the relief set forth herein are in the best interests of the Debtors, their estates, creditors and other parties in interest.

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion as it relates to the Bid Procedures and the scheduling of and notice to be approved with respect to the Auction and the Sale Hearing is granted and approved as set forth in this Bid Procedures Order.

2. All objections and responses to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

3. The Bid Procedures, attached hereto as **Exhibit 1**, are incorporated herein and approved in their entirety, and shall apply with respect to the sale of the Assets. The failure to specifically include or reference a particular provision of the Bid Procedures in this Bid Procedures Order shall not diminish or impair the effectiveness of such provision. The Debtors are authorized to take all actions necessary or appropriate to implement the Bid Procedures. In the event of an inconsistency between this Bid Procedures Order and the Bid Procedures, this Bid Procedures Order shall prevail.

4. The Debtors are hereby authorized to pursue a Sale of the Assets in accordance with the Bid Procedures.

5. In the event that following consultation with the Consultation Parties and prior to the Auction, the Debtors select one or more Stalking Horse Bid(s) of any Stalking Horse Bidder(s) to serve as the Stalking Horse Bid(s), the Debtors are authorized to seek court approval on an expedited basis of the Stalking Horse Bid(s), Stalking Horse Bidder(s), and, with the consent of the DIP Agent, customary bid protections for the Stalking Horse Bidder(s) and appropriate adjusted overbid amounts as additional conditions to submitting a Qualified Bid. If a Stalking Horse Bidder(s) is selected, the Debtors shall file a motion to approve the Stalking Horse Bidder(s)

(a “**Stalking Horse Approval Motion**”) by no later than **July 6, 2020** (the “**Bid Protections Motion Deadline**”). If the Debtors file a Stalking Horse Approval Motion, the Court will hold a hearing on the Stalking Horse Approval Motion on **July 13, 2020 at 11:00 a.m.** (prevailing Eastern Time) (the “**Bid Protections Hearing**”). Any objection to the Stalking Horse Approval Motion shall be filed by **July 10, 2020 at 4:00 p.m.** (prevailing Eastern Time) (the “**Bid Protections Objection Deadline**”).

6. If no Stalking Horse Bidder(s) is selected, if the Debtors, in their discretion and with the consent of the DIP Agent, decide to offer up to the Maximum Expense Reimbursement (on a per-bidder basis) to one or more Qualified Bidder(s), the Debtors shall file a motion for such approval to offer such a Maximum Expense Reimbursement (on a per-bidder basis) to one or more Qualified Bidder(s) (an “**Expense Reimbursement Motion**”), by the Bid Protections Motion Deadline. Any such expense reimbursement shall be funded by the DIP Agent under the DIP Credit Agreement or shall be otherwise paid to the Qualified Bidder(s) with proceeds from the Sale. If an Expense Reimbursement Motion is filed by the Bid Protections Motion Deadline, the Debtors may schedule it to be heard at the Bid Protections Hearing, and any objections thereto shall be filed by the Bid Protections Objection Deadline.

7. As further described in the Bid Procedures, the deadline for submitting Written Offers for the Assets (the “**Bid Deadline**”) is **July 20, 2020 at 4:00 p.m.** (prevailing Eastern Time). If a Stalking Horse Bidder(s) is approved, the Bid Deadline will be treated as the deadline to submit qualifying overbids, as will be defined in the Stalking Horse Bidder(s) approval order (“**Qualifying Overbids**”).

8. If there are two or more Qualified Bids (or, in the event a Stalking Horse Bidder(s) is approved, one or more Qualifying Overbids) received in accordance with the Bid Procedures,

the Auction shall take place on **July 23, 2020 at 9:30 a.m.** (prevailing Eastern Time) at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, or such other place, including by telephone or video conference, as selected by the Debtors, after consultation with the Consultation Parties, and time as the Debtors shall notify all parties in interest attending the Auction.

9. The Auction shall be conducted in accordance with the Bid Procedures.

10. The Auction will be conducted openly.

11. Bidding at the Auction will be transcribed. If the Auction is conducted, the Debtors shall file a notice with the Court of the winning bidder by **July 24, 2020 at 12:00 p.m.** (prevailing Eastern Time), or as soon as practicable thereafter.

12. The Sale Hearing shall be held before this Court on **July 28, 2020 at 1:00 p.m.** (prevailing Eastern Time) or as soon thereafter as counsel and interested parties may be heard. Except for objections relating to the conduct of the Auction, including the Debtors' determination of the highest and best bid ("**Auction Objections**") and objections to adequate assurance of future performance by non-Debtor contract counterparties under section 365 of the Bankruptcy Code ("**Adequate Assurance Objections**"), objections, if any, to the Sale of the Assets and/or the relief requested in the Debtors' motion to approve the Sale, other than the relief approved in this Order, must be in writing and filed with the Court on or before **July 21, 2020 at 4:00 p.m.** (prevailing Eastern Time) and be served such that they are actually received by the following parties (collectively, the "**Notice Parties**"): (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: David Dean and Norman L. Pernick, e-mail: DDean@coleschotz.com and NPernick@coleschotz.com; (ii) counsel to the Prepetition Senior Agent and the DIP Agent, Randall Klein, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300,

Chicago, Illinois 60603, Randall.Klein@goldbergkohn.com and Robert J. Dehney, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, rdehney@mnat.com; (iii) proposed counsel to the Committee, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attn: Todd M. Goren, Esq., Mark A. Lightner, Esq. and Andrew Kissner, Esq.; tgoren@mofo.com, mlightner@mofo.com, akissner@mofo.com); and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo, Esq. and Brya M. Keilson, Esq.; emonzo@morrisjames.com, bkeilson@morrisjames.com); and (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building & Courthouse, 844 N. King Street, Room 2207, Wilmington, DE 19801 (Attn: Richard L. Schepacarter, Esq.), email: Richard.schepacarter.usdoj.gov. Auction Objections, if any, must be made and filed with the Court on or before **July 27, 2020 at 12:00 p.m.** (prevailing Eastern Time), and be served such that they are actually received by the Notice Parties. Adequate Assurance Objections, if any, may be made by non-Debtor contract counterparties up to and including at the Sale Hearing.

13. The notice procedures described in subparagraphs (a) - (e) below are approved and shall be good and sufficient, and no other or further notice shall be required if given as follows:

a. On or before three (3) business days after entry of this Bid Procedures Order, or as soon thereafter as such parties can be identified, the Debtors will cause a notice in substantially the form annexed hereto as **Exhibit 2** (the "**Notice of Bid Procedures, Auction Date and Sale Hearing**"), to the following: (i) the Office of the United States Trustee; (ii) counsel to the DIP Agent; (iii) all taxing authorities in the states where the Debtors are located, including the Internal Revenue Service, and all other federal, state and local taxing and regulatory authorities known to the Debtors to assert jurisdiction over the Debtors and which are reasonably expected by the Debtors to have claims, contingent or otherwise, in connection with the ownership of the Assets, or to have any known interest in the relief requested by the Motion; (iv) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002; (v) all persons known or reasonably believed by the Debtors to have asserted any lien, claim, encumbrance, right of first refusal, or other interest in or upon any of the Assets;

(vii) the non-Debtor parties to the Assumed Contracts; (viii) all persons known or reasonably believed to have expressed an interest in acquiring the Assets within the last four (4) months; (ix) the United States Attorney's office; (x) Attorneys General in the states where the Debtors are located; and (xi) all parties to any litigation involving the Debtors.

b. On or before seven (7) days after entry of this Bid Procedures Order, subject to applicable submission deadlines, the Debtors will publish an abbreviated version of the Notice of Bid Procedures, Auction Date and Sale Hearing once in one or more national publications that the Debtors, in their business judgment, deem appropriate.

c. On or before five (5) business days after the entry of the Bid Procedures Order, the Debtors shall serve by first class mail or hand delivery, a notice, substantially in the form attached hereto as **Exhibit 3**, of the potential assumption and assignment of the Assumed Contracts (the "**Notice of Assumption and Assignment**") on all non-Debtor parties to the Assumed Contracts, and their counsel, if known. The Notice of Assumption and Assignment (or a Supplemental Notice of Assumption and Assignment (defined below)) shall (i) identify the calculation of the Cure Amounts that the Debtors believe must be paid to cure all prepetition defaults under the Assumed Contracts, and (ii) provide instructions for the timing and procedure governing the filing of any objections to (a) the proposed Cure Amounts and (b) the proposed assumption and assignment of any Assumed Contract in connection with the Sale, as approved by the Bankruptcy Court in the Bid Procedures Order. In addition, if the Debtors identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or Backup Bidder, as applicable, that are not included in the original Notice of Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a "**Supplemental Notice of Assumption and Assignment**") to the applicable counterparties to such additional Assumed Contracts.

d. In addition to the foregoing, electronic notification of the Motion, the Bid Procedures Order, the Notice of Bid Procedures, Auction Date and Sale Hearing, and the Notice of Assumption and Assignment, will be posted on: (i) the main case docket on the Bankruptcy Court's electronic case filing (ECF) website; and (ii) the case management website maintained by the Debtors' claims and noticing agent, www.donlinrecano.com/lvi.

14. The Notice of Bid Procedures, Auction Date and Sale Hearing and the Notice of Assumption and Assignment to be issued in connection with the proposed Sale of the Assets, substantially in the forms annexed hereto as **Exhibits 2 and 3**, respectively, are approved.

15. Unless the non-Debtor party to an Assumed Contract files an objection (the "**Contract Objection**") to (a) their scheduled Cure Amount and/or (b) to the proposed assumption

and assignment of such Assumed Contract, as applicable, by **4:00 p.m. (prevailing Eastern Time) on July 15, 2020** for any Assumed Contract listed in the Notice of Assumption and Assignment or **within ten (10) days of receipt of a Supplemental Notice of Assumption and Assignment** for any Assumed Contract set forth in a Supplemental Notice of Assumption and Assignment (the "**Contract Objection Deadline**") and serves a copy of the Contract Objection so as to be received no later than the Contract Objection Deadline on the Notice Parties, then such non-Debtor party (i) will be forever barred and estopped from objecting to the Cure Amount and the Debtors and the Successful Bidder or Backup Bidder, as applicable, shall be entitled to rely solely upon the Cure Amount, and (ii) if the Assumed Contract is identified as an Asset to be acquired by the Successful Bidder or Backup Bidder, as applicable, will be deemed to have consented to the assumption and assignment of such Assumed Contract and will be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or the Backup Bidder, as applicable, or any other assignee of the relevant Assumed Contract that any additional amounts are due or defaults exist, or conditions to assumption and assignment must be satisfied, under such Assumed Contract. Notwithstanding the foregoing, as provided below, each non-Debtor party to such Assumed Contract shall retain the right to raise Adequate Assurance Objections up to and including at the Sale Hearing.

16. If a Contract Objection challenges a Cure Amount (or asserts any other objection to assumption and assignment of an Assumed Contract), the Contract Objection must set forth the Cure Amount being claimed by the objecting party with appropriate documentation in support thereof, and specify (with appropriate supporting documentation) the factual and legal basis for any other objection.

17. Notwithstanding anything to the contrary contained in this Bid Procedures Order, prior to or after the closing of the Sale, as set forth further in paragraph 18 below, the Successful Bidder or Backup Bidder, as applicable, may elect to add or exclude any Assumed Contract from the list of Assets to be acquired.

18. Upon receipt of a timely filed Contract Objection, the Debtors, with the consent of the Successful Bidder or Backup Bidder, as applicable, are authorized, but not directed, to resolve any Contract Objection by mutual agreement with the objecting counterparty to any Assumed Contract without further order of the Court. In the event that the Debtors and any objecting party are unable to resolve consensually any timely filed Contract Objection, the Court will resolve any such Contract Objection at the Sale Hearing or at such other hearing as selected by the Successful Bidder or Backup Bidder, as applicable. A hearing regarding the Cure Amount, if any, may be continued until after the closing of the Sale at a time to be determined by the Successful Bidder or Backup Bidder, as applicable.

19. In the event that such Contract Objection has not been resolved prior to the closing of the Sale (whether by order of the Court or mutual agreement between the Debtors, the non-Debtor party, and the Successful Bidder or Backup Bidder, as applicable) the Successful Bidder or Backup Bidder, as applicable, may elect in their sole and absolute discretion to proceed by one of the following options: (i) treat such non-Debtor party's Contract as property excluded from the Assets (an "**Excluded Contract**"); or (ii) temporarily treat the contract as an Excluded Contract (a "**Designated Contract**"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Contract as an Assumed Contract or Excluded Contract within ten (10) business days after resolution of the Contract Objection (whether by order

of the Court or mutual agreement between the Debtors, the non-Debtor party, and the Successful Bidder or Backup Bidder, as applicable).

20. Within one (1) day after the conclusion of the Auction for the Assets, the Debtors will file a statement with the identity of the Successful Bidder and Backup Bidder for the Assets, and serve such statement on the United States Trustee in satisfaction of Federal Rule 6004(f)(1).

21. Within one (1) day after the conclusion of the Auction for the Assets, the Debtors will serve a notice identifying the Successful Bidder and Backup Bidder to the non-Debtor parties to the Assumed Contracts that have been identified in such Successful Bid and Backup Bid. The non-Debtor parties to such Assumed Contracts will have until the commencement of the Sale Hearing (the "**Adequate Assurance Objection Deadline**") to object to the assumption and assignment of such Assumed Contract solely on the issue of whether the Successful Bidder or Backup Bidder, as applicable, can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

22. Except as otherwise provided in this Bid Procedures Order, the Debtors, in their business judgment, further reserve the right as they may determine in their sole discretion after consultation with the DIP Agent and the Committee to be in the best interests of their estates, subject to conformity with the Bid Procedures, to: (a) determine which Potential Bidders are Qualified Bidders; (b) determine which Written Offers are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal, the Successful Bid, and which is the next highest or otherwise best proposal, the Backup Bid; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bid Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (e) waive terms and conditions set forth herein with respect to all Qualified Bidders; (f) impose

additional terms and conditions with respect to all Qualified Bidders; (g) extend the deadlines set forth herein; (h) adjourn or cancel the Auction and/or Sale Hearing, provided that the Debtors shall use reasonable efforts to provide notice of adjournment or cancellation to all Qualified Bidders 24 hours prior to the commencement of the Auction; and (i) modify the Bid Procedures or withdraw the request to sell the Assets to the Successful Bidder or Backup Bidder, as applicable, at any time with or without prejudice.

23. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and this Bid Procedures Order shall be effective immediately upon its entry.

24. All time periods set forth in this Bid Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

25. In the event the Debtors adjourn the Auction, the Debtors will promptly file a notice of adjournment on the docket in these Chapter 11 Cases.

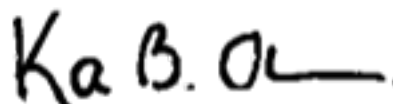
26. The Debtors shall provide the information submitted by Potential Bidders regarding adequate assurance of future performance to any landlord and to the issuers of any surety bonds, that request such information in writing to Debtors' counsel, within one (1) business day of receipt of such request by the Debtors.

27. Notwithstanding anything to the contrary contained herein or in the Bid Procedures, nothing herein or in the Bid Procedures shall modify the terms and conditions of the Financing Order in connection with any sales of any assets of the Debtors. Nothing herein shall amend or modify any provisions, terms, or conditions of the Financing Order or Postpetition Documents (as defined in the Financing Order), and, without limiting the foregoing, the rights of the DIP Agent and the lenders under the DIP Credit Agreement and the Prepetition Senior Agent and the Prepetition Lenders in connection with any sales of the Debtors' assets, including credit bidding

rights and rights to accept non-cash consideration, are incorporated herein by reference; provided, however, that for the avoidance of doubt, any right to credit bid shall be subject to section 363(k) of the Bankruptcy Code.

28. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Bid Procedures Order.

Dated: June 25th, 2020
Wilmington, Delaware

A handwritten signature in black ink, appearing to read "Ka B. Owens", with a stylized flourish at the end.

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

BID PROCEDURES

These bid procedures (the "**Bid Procedures**") set forth the process by which LVI Intermediate Holdings, Inc. and its affiliated debtors and debtors-in-possession (collectively, the "**Debtors**"), in the jointly administered chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), Case No. 20-11413 (KBO), shall market to interested parties and conduct a sale (the "**Sale**") by auction (the "**Auction**") of all or substantially all of their assets (the "**Assets**"). The Sale will be subject to bidding as set forth herein and subject to the approval of the Bankruptcy Court, pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "**Bankruptcy Code**").

On June ___, 2020, the Debtors filed *Debtors' Motion for Entry of Order (I)(A) Approving Bid Procedures Related to the Sale of all or Substantially all of the Assets of the Debtors, (B) Establishing Procedures in Connection with the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) Approving Notice Procedures, and (D) Granting Related Relief; and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing Assumption and Assignment of Unexpired Leases and Executory Contracts and (C) Granting Related Relief* (the "**Motion**"), which was heard by the Bankruptcy Court on June 25, 2020 with respect to the Bid Procedures (the "**Bidding Procedures Hearing**"), and (ii) is scheduled to be heard on July 28, 2020 (or at such other time as the Bankruptcy Court may determine) with regard to all other matters related to the Motion (the "**Sale Hearing**").

Following the Bidding Procedures Hearing, the Bankruptcy Court entered an *Order (A) Approving Bid Procedures Relating to the Sale of all or Substantially all of the Assets of the Debtors, (B) Establishing Procedures in Connection with the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Approving Notice Procedures, and (D) Granting Related Relief* (the "**Bid Procedures Order**"), approving these Bid Procedures. The Debtors reserve the right to modify, with the consent of the DIP Agent, the Bid Procedures provided that any such modification shall not be inconsistent with the Bid Procedures Order.

The Debtors will make available a form of asset purchase agreement (the "**Purchase Agreement**") that will serve as the basis for bids in connection with this process. Capitalized terms used in these Bid Procedures and not otherwise defined shall have the meanings ascribed to such terms in the Purchase Agreement.

Any party desiring to obtain a copy of the Purchase Agreement and a form of Non-Disclosure Agreement (as defined below) or other information regarding the sale process may do so by contacting the Debtors' investment banker, Raymond James & Associates, Inc. ("**Raymond James**") at:

Geoffrey Richards
Raymond James & Associates, Inc.
277 Park Avenue
New York, NY 10172
e-mail: geoffrey.richards@raymondjames.com

Rory Keenan
Raymond James & Associates, Inc.
277 Park Avenue
New York, NY 10172
e-mail: rory.keenan@raymondjames.com

The Debtors provide these Bid Procedures for use by Potential Bidders (defined below) and Qualified Bidders (defined below) in submitting bids proposing a transaction to purchase or otherwise acquire the Assets, and, as necessary, qualifying for and participating in the Auction.

1. Important Dates

- **Deadline to Select Stalking Horse:** July 6, 2020;
- **Hearing on Approval of Stalking Horse Agreement, if Any:** July 13, 2020 at 11:00 a.m.;
- **Bid Deadline/Overbid Deadline:** July 20, 2020 at 4:00 p.m. (prevailing Eastern Time) (the "**Bid Deadline**");
- **Selection of Qualified Bidder(s)/Qualify Overbidder(s):** no later than 4:00 p.m. (prevailing Eastern Time) one (1) day preceding the Auction;
- **Auction:** July 23, 2020 at 9:30 a.m. (prevailing Eastern Time) at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, or such other place, including by telephone or video conference, as selected by the Debtors after consultation with the Consultation Parties;
- **Selection of Successful Bidder(s) and Backup Bidder(s) (each as defined below):** at the conclusion of the Auction;
- **Sale Hearing to seek authorization to sell the Assets to such Successful Bidder(s):** July 28, 2020 at 1:00 p.m. (prevailing Eastern Time); and
- **Closing Date:** As soon as practicable after July 28, 2020.

2. Assets to be Sold

The Debtors seek to sell substantially all of the Assets, whether in whole or in separate lots.

3. Qualified Bidders, Non-Disclosure Agreements and Access to Data Room

Any person or entity wishing to bid on the Assets (each a "**Potential Bidder**") must execute and deliver (unless previously delivered) to the Debtors a confidentiality and non-disclosure agreement (a "**Non-Disclosure Agreement**") in form and substance acceptable to the Debtors.

The Debtors, in their discretion, will afford a Potential Bidder who executes and delivers a Non-Disclosure Agreement and demonstrates to the Debtors a reasonable certainty of the ability to close the Sale in a timely manner (including the financial capability to close the Sale and the ability to obtain any necessary governmental, licensing, regulatory, or other approvals that are necessary for such Sale, if any), due diligence access or such additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate, including, without limitation, access to the Debtors' confidential electronic data room, reasonable access, during normal business hours, to the Debtors' management, and access to all relevant information regarding the Assets reasonably necessary to enable a Potential Bidder to evaluate the proposed Sale; provided that any such Potential Bidder has evidenced the financial wherewithal and ability to consummate the Sale. Raymond James will coordinate all due diligence access and requests for additional information from such Potential Bidders. The Debtors shall not be obligated to furnish any due diligence information after the conclusion of the Auction other than to the Successful Bidder (defined below) or any Backup Bidder. Neither the Debtors, their counsel nor their advisors are responsible for, or will bear liability with respect to, any information obtained by Potential Bidders in connection with due diligence. Notwithstanding anything contained herein to the contrary, to the extent the Debtors believe that providing access to Potential Bidders to certain sensitive commercial information is not advisable, the Debtors, in their business judgment, will decide what, if any, diligence information to make available to a particular Potential Bidder, and neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever to any party.

A **"Qualified Bidder"** is any Potential Bidder that (a) delivers to the Debtors a Non-Disclosure Agreement, (b) demonstrates to the Debtors a reasonable certainty of the ability to close the Sale in a timely manner (including the financial capability to close the Sale and the ability to obtain any necessary governmental, licensing, regulatory, or other approvals that are necessary for such Sale, if any), and (c) submits a Written Offer (as defined below) that is deemed a Qualified Bid as set forth below, *provided, however*, that the Debtors may waive one or more requirements for a Qualified Bidder in consultation with the Consultation Parties. As promptly as practicable after a Potential Bidder delivers a Non-Disclosure Agreement and submits a Written Offer, and in any event not later than 4:00 p.m. (prevailing Eastern Time) one (1) day preceding the Auction, the Debtors shall determine, and the Debtors shall notify the Potential Bidder in writing, whether the Potential Bidder is a Qualified Bidder. Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate the proposed Sale. Subject to section 363(k) of the Bankruptcy Code, for purposes of these Bid Procedures, a Bid by the Prepetition Senior Agent, the DIP Agent, or such an entity that may be formed by the Prepetition Senior Agent or the DIP Agent for the purpose of purchasing the Assets (collectively, the **"Agent Entities"**, and each, an **"Agent Entity"**),

respectively, shall be deemed to constitute a Qualified Bid, provided that such Bid is submitted prior to the Auction, and in such case, the Prepetition Senior Agent, the DIP Agent, or Agent Entity, respectively, shall be deemed to be a Qualified Bidder.

4. Requirements for a Qualified Bid

In order to become a Qualified Bidder and participate in the Auction, if any, a Potential Bidder must deliver to the Debtors, with a copy to counsel to the Debtor, Raymond James, and counsel to the Committee, a written offer (each, a "**Written Offer**"), which is deemed to be a Qualified Bid. To be deemed a "**Qualified Bid**," a Written Offer must meet each of the requirements listed below:

- i. Delivery: Be delivered no later than 4:00 p.m. (prevailing Eastern Time) on July 20, 2020 (the "**Bid Deadline**").
- ii. Total Consideration. Each Bid must identify the form and amount of the total consideration to be provided to the Debtors in cash and non-cash components to be paid, including assumed liabilities (the "**Bid Value**"). No consideration may be in any form other than cash unless agreed to by DIP Agent and Prepetition Senior Agent.
- iii. Minimum Bid. The cash consideration included in the Bid Value proposed by each Bid must be in an amount not less than \$27,500,000, plus any amount required to satisfy any overbid requirements that may be established by the Court in approving a stalking horse bidder(s); provided, however, that in determining the Bid Value, the Debtors will not be limited to evaluating the dollar amount of a Bid, but may also consider factors including, but not limited to, the liabilities and other obligations to be performed or assumed by the Potential Bidder, the additional administrative and prepetition claims likely to be created by such Bid in relation to other Bids, the proposed revisions to the Purchase Agreement, and other factors including, but not limited to, the speed, certainty and value of the proposed transactions; provided further, however, assumption of prepetition liabilities will only be given credit based upon the value to the Debtors resulting from the reduction of claims against the applicable Debtor's estate generally.
- iv. Executed Agreement: Be accompanied by (i) a clean and duly executed and binding asset purchase agreement (together with the exhibits and schedules thereto, a "**Modified Purchase Agreement**"), and (ii) a marked Modified Purchase Agreement reflecting any variations from the Purchase Agreement.
- v. Designation of Assumed Contracts and Leases and Adequate Assurance of Future Performance: Contain a list of any and all Assumed Contracts that are to be assumed and assigned in connection with a Sale to the extent

such list is not included in the Modified Purchase Agreement. The Potential Bidder must also include written documentation sufficient to demonstrate the Potential Bidder's ability to provide adequate assurance of future performance for the benefit of the non-Debtor parties to the Assumed Contracts on the list. Non-Debtor parties to the Assumed Contracts will have until the commencement of the Sale Hearing to object on adequate assurance grounds.

- vi. Compliance with the Restrictions on the Transfer of Personally Identifiable Information: Contain a statement that the Potential Bidder will comply with the Debtors' patient data privacy policy, restricting the transfer of personally identifiable information of its patients, as more fully set forth in the Purchase Agreement.
- vii. Proof of Financial Ability to Perform: Contain evidence of financing, access to funds or such other financial and other information that will reasonably allow the Debtors to make a determination as to such Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase Agreement, which evidence is satisfactory to the Debtors in their sole discretion, including, without limitation, such financial and other information setting forth adequate assurance under section 365 of the Bankruptcy Code in a form requested by the Debtors.
- viii. Identification of Parties to Participate: To the Debtors' satisfaction, (i) fully disclose the identity of each entity or person that will be bidding for the Assets or otherwise participating in connection with such bid, (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring some, or all, of the Assets, the parties that will bear liability for any breach by such entity, and (iii) the ability of such parties to obtain government, licensing or regulatory approval in connection with the consummation of any Sale.
- ix. Irrevocable: State that the Written Offer is irrevocable until (i) the closing of the Sale, if such Potential Bidder is deemed a Qualified Bidder, and such Qualified Bidder is designated as a Successful Bidder (as defined below), or (ii) if such Potential Bidder is deemed a Qualified Bidder, and such Qualified Bidder is designated as a Backup Bidder (as defined below), until the earlier of (x) two (2) business days after the closing of the transaction(s) by which all of the Assets that were subject to such Backup Bid (as defined below) have been transferred to one or more Qualified Bidders pursuant to these Bid Procedures and (y) thirty (30) days after the date of the Auction (the "**Backup Bid Expiration Date**").
- x. No Break-Up Fee or Expense Reimbursement: Potential Bidders are not entitled to any transaction or break-up fee, expense reimbursement, or similar type of payment; provided, however, that with the consent of DIP

Agent, and further order of the Bankruptcy Court, the Debtors may agree to pay one or more Qualified Bidders an expense reimbursement up to a maximum amount of \$500,000 (the “**Maximum Expense Reimbursement**”). Any such expense reimbursement shall be funded by the DIP Agent under the DIP Credit Agreement or shall be otherwise paid to the Qualified Bidder with proceeds from the Sale.

- xi. Contingencies: Not contain any due diligence or financing contingencies.
- xii. Authorization to Consummate Sale: Provide evidence of authorization and approval from the Potential Bidder's board of directors (or comparable governing body), if any, with respect to the submission, execution, delivery and closing of the Modified Purchase Agreement to the Debtors' satisfaction.
- xiii. Purchase Price: Provide that any cash portion of the purchase price shall be payable in U.S. dollars and will be paid in cash, cash equivalents, or such other consideration acceptable to the DIP Agent and Prepetition Senior Agent, as applicable, and the Debtors in consultation with the other Consultation Parties, provided that the purchase price must satisfy in full in cash the DIP Obligations, further provided that, notwithstanding anything to the contrary, in the event of a Bid by the Prepetition Senior Agent, the DIP Agent, or an Agent Entity, under no circumstances shall the Prepetition Senior Agent, DIP Agent, or such Agent Entity, respectively, have any obligation to pay the Purchase Price in cash, and at all times, the Prepetition Senior Agent, DIP Agent, or such Agent Entity, respectively, shall have the right, in the Prepetition Senior Agent's or DIP Agent's discretion, as applicable, to satisfy the Purchase Price either by offset against any or all of the DIP Obligations or "Obligations" (as defined in the Prepetition Credit Agreement, the "**Prepetition Obligations**") and/or, if acceptable to the DIP Agent (acting at the direction of Required Lenders under the DIP Credit Agreement, as applicable) or the Prepetition Senior Agent (acting at the direction of the Required Lenders under the Prepetition Credit Agreement, as applicable, by payment of non-cash consideration (in the form of amended and restated or replacement debt instruments).
- xiv. Good Faith Deposit: Provide a good faith deposit (the "**Good Faith Deposit**") submitted via federal wire transfer in immediately available funds in accordance with the wire instructions to be provided by the Debtors, in an amount equal to 10% of the cash purchase price set forth in the Written Offer, provided that no Good Faith Deposit shall be required in the event of a Bid by the Prepetition Agent, DIP Agent, or an Agent Entity.
- xv. Anticipated Timeline: Set forth the anticipated timeframe for obtaining any required government, regulatory or other approvals, and (ii)

consummating the Sale within the requirements of subparagraph (xvi) below.

- xvi. Agreement with Bid Procedures, Provision of Additional Information and Submission to Bankruptcy Court Jurisdiction: Include a written acknowledgement by such Potential Bidder that it agrees to the terms of the Bid Procedures; (ii) agrees to provide such other information as may be reasonably requested in writing by the Debtors prior to the Auction; and (iii) confirms that the Potential Bidder submits to the jurisdiction of the Bankruptcy Court.
- xvii. Closing Date: Provide for a closing date (the "**Closing Date**") as soon as practicable after July 28, 2020.

Between the Bid Deadline and the Auction, the Debtors may (i) negotiate or seek clarification of any Written Offer from a Qualified Bidder, (ii) request information from the Qualified Bidder, (iii) engage in discussions with the Qualified Bidder, or (iv) take such other actions contemplated under these Bid Procedures. Without the consent of the Debtors, a Qualified Bidder may not amend, modify or withdraw its Written Offer. All changes to the form of Purchase Agreement reflected in the Modified Purchase Agreement will be evaluated by the Debtors in consultation with the Consultation Parties (as defined below) and must be acceptable to the Debtors, in their business judgment. Any Good Faith Deposit accompanying a Written Offer that the Debtors determine not to be a Qualified Bid shall be returned promptly following such determination.

5. Option to Select Stalking Horse Bidder

Following consultation with the Consultation Parties, the Debtors may designate one or more stalking horse bidders ("**Stalking Horse Bidder(s)**") to serve as the stalking horse bid(s) (the "**Staking Horse Bid(s)**") at the Auction. In the event that following consultation with the Consultation Parties, the Debtors select one or more Stalking Horse Bid(s), the Debtors will select the Stalking Horse Bid(s) by July 6, 2020 and, if a Stalking Horse Bid(s) is selected, the Court will hold a hearing on approval of the Stalking Horse Bid(s) on July 13, 2020 at 11:00 a.m. (prevailing Eastern Time), at which hearing the Debtors, with the DIP Agent's consent, will seek customary bid protections for the Stalking Horse Bidder(s) and/or (b) to establish that any Qualifying Bid must exceed the Stalking Horse Bid by a certain dollar amount plus the amount of any expense reimbursement or break-up fee otherwise payable to the Stalking Horse Bidder.

6. DIP Agent and Prepetition Senior Agent

Subject to the other requirements of Section 4 hereof (exclusive of the requirements of clause 4(ix)(ii)), each of the DIP Agent, the Prepetition Senior Agent, or an Agent Entity, respectively, is a Qualified Bidder. In addition, in the case of a Qualified Bid by the DIP Agent, Prepetition Senior Agent, or an Agent Entity, such portion of the Purchase Price related to the DIP Obligations or the Prepetition Obligations, as applicable, may be satisfied by credit of all or any portion of the DIP Obligations or the Prepetition Obligations, as applicable, against such portion of the Purchase

Price, assumption of such DIP Obligations or Prepetition Obligations, as applicable, or other non-cash consideration acceptable to DIP Agent or Prepetition Senior Agent, as applicable. Prepetition Senior Agent's and Prepetition Lenders' claim on account of the Prepetition Obligations is deemed an allowed claim for purposes of Section 363(f) of the Bankruptcy Code. Notwithstanding the foregoing, if any portion of such allowed claim of Prepetition Senior Agent and Prepetition Lenders on account of the Prepetition Obligations is subsequently found by this Court to be disallowed as a result of a timely challenge to such claim in accordance with the Financing Order, then any credit bid by Prepetition Senior Agent and Prepetition Lenders will be deemed to have been made first with any portion of the Prepetition Obligations (including, but not limited to, any Prepetition Obligations that have been rolled up into the DIP Obligations) that is and remains an allowed claim.

7. Bid Deadline

All Qualified Bids must be received by each of the parties listed below prior to the Bid Deadline.

Debtors: LVI Intermediate Holdings, Inc.
1555 Palm Beach Lakes Blvd., Suite 600
West Palm Beach, FL 33401
Attention: Lisa Melamed, Interim CEO & President

Debtors' Counsel: David Dean
Cole Schotz P.C.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
e-mail: DDean@coleschotz.com

Norman L. Pernick
Cole Schotz P.C.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
e-mail: NPernick@coleschotz.com

Debtors' Investment Banker: Geoffrey Richards
Raymond James & Associates, Inc.
277 Park Avenue
New York, NY 10172
e-mail: geoffrey.richards@raymondjames.com

Rory Keenan
Raymond James & Associates, Inc.
277 Park Avenue
New York, NY 10172
e-mail: rory.keenan@raymond.james.com

The Debtors will promptly (but, in any case, within one (1) calendar day) deliver, after receipt thereof, copies of all Written Offers to counsel for the DIP Agent, the Prepetition Senior Agent, and the Committee (collectively, the "**Consultation Parties**").

8. Determination of Qualified Bidders

The Debtors, after consultation with the Consultation Parties, shall, by no later than 4:00 p.m. (prevailing Eastern Time) one (1) day prior to the Auction, (i) determine, in their business judgment, whether a Potential Bidder is a Qualified Bidder, and (ii) notify each such Potential Bidder that its Written Offer is a Qualified Bid and that such Potential Bidder is a Qualified Bidder.

9. No Break-up Fee or Bid Protections.

No Modified Purchase Agreement may include any break-up fee or expense reimbursement or other similar bid protections, absent further order of the Bankruptcy Court.

10. "As Is, Where Is"

Except as otherwise provided in the Final Purchase Agreement (as defined below), the Sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors or their estates except to the extent set forth in the Final Purchase Agreement as approved by the Bankruptcy Court. Except as otherwise provided in the Final Purchase Agreement, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of all liens, claims, interests and encumbrances (collectively, the "**Interests**") in accordance with sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale of the Assets.

Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all desired due diligence regarding the Assets prior to making its Qualified Bid, that it has relied solely upon its own independent review, investigation and inspection of any documents and/or the Assets in making its Qualified Bid, and that it did not rely upon any written or

oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bid Procedures or, as to the Successful Bidder(s) and the Backup Bidder(s), the terms of the Sale(s) as set forth in the final form of the applicable Modified Purchase Agreement(s) (the "**Final Purchase Agreement**") which shall be on terms mutually acceptable to the Successful Bidder and Backup Bidder, on the one hand, and the Debtors, on the other hand.

11. Auction

If the Debtors have determined that there are two or more Qualified Bidders, the Debtors shall conduct an Auction to determine the highest and otherwise best Qualified Bid. This determination shall take into account any factors the Debtors, in their business judgment, after consultation with the Consultation Parties, reasonably deem relevant and may include, among other things, the following: (i) the amount and nature of the consideration; (ii) the number, type and nature of any changes to the Purchase Agreement requested by each Qualified Bidder in its respective Modified Purchase Agreement; (iii) the extent to which such modifications are likely to delay closing of the Sale of the Assets and the cost to the Debtors of such modifications or delay; (iv) the total consideration to be received by the Debtors; and (v) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof.

The Auction shall commence at 9:30 a.m. (prevailing Eastern Time) on July 23, 2020, at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, or such other place, including by telephone or video conference, as selected by the Debtors, after consultation with the Consultation Parties, and continue thereafter until completed. The Debtors reserve the right to cancel or postpone the Auction. The Debtors reserve the right to not proceed with any Sale.

Except as otherwise permitted in the Debtors' discretion, only the Debtors, the DIP Agent, the Prepetition Senior Agent, the Committee, the Qualified Bidders, and any creditor or landlord that submits a written request to attend to the Debtors in advance of the Auction, and, in each case, their respective professionals shall be entitled to attend the Auction. Only a Qualified Bidder is eligible to participate in the Auction.

The Auction shall be governed by the following procedures:

- i. Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative, unless the Debtors, in consultation with the DIP Agent and the Committee, decide in their discretion that it is impractical to require in-person attendance at an auction, in which case the Debtors may conduct a virtual auction.

- ii. The Debtors, after consultation with the Consultation Parties, may waive and/or employ and announce at the Auction additional rules that are reasonable under the circumstances for conducting the Auction provided that such rules are (i) not inconsistent with the Bid Procedures Order, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, or any order of the Bankruptcy Court entered in connection with these Chapter 11 Cases, (ii) disclosed to each Qualified Bidder, and (iii) designed, in the Debtors' business judgment, to result in the highest and otherwise best offer for the Assets.
- iii. The Debtors will arrange for the actual bidding at the Auction to be transcribed. Each Qualified Bidder shall designate a single individual to be its spokesperson during the Auction.
- iv. Each Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction that it has not engaged in any collusion with the Debtors or any other third party, party in interest, or Qualified Bidder regarding these Bid Procedures, the Auction or any proposed transaction relating to the Assets.
- v. Prior to the Auction, the Debtors shall identify the highest and best of the Qualified Bids received to serve as the opening bid at the Auction (the **"Opening Qualified Bid"**). Subsequent bidding will continue in minimum increments valued at not less than \$100,000 plus the amount of any expense reimbursement or break-up fee otherwise payable in accordance with the Bid Procedures Order to the preceding Qualified Bidder with the highest Qualified Bid in cash, or such amounts to be determined by the Debtors (the **"Overbid Amount"**) after consultation with the Consultation Parties prior to, and announced at, the Auction; provided, however, that in the event of a Bid by the Prepetition Senior Agent, DIP Agent, or an Agent Entity, the Prepetition Senior Agent, the DIP Agent, or such Agent Entity may satisfy the minimum bid increment requirement by credit bidding or the assumption or otherwise satisfaction of DIP Obligations or Prepetition Obligations, as applicable.
- vi. Other than the assumption of liabilities of the Debtors, credit bids or permitted non-cash consideration described in Section 4(xiii) and Section 5 above, all bids must be in cash. All non-cash consideration described in Section 4(xiii) and Section 5 acceptable to DIP Agent and Prepetition Senior Agent in satisfaction of any portion of the DIP Obligations or the Prepetition Obligations, as applicable, will be deemed to have a value at the Auction in the amount of such DIP Obligations or Prepetition Obligations, as applicable, proposed to be so satisfied.

- vii. All Qualified Bidders shall have the right to, at any time, request that the Debtors announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Qualified Bidder, use reasonable efforts to clarify any and all questions such Qualified Bidder may have regarding the Debtors' announcement of the then-current highest and best bid.
- viii. In the Debtors' discretion, after consultation with the Consultation Parties, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase Agreement or Modified Purchase Agreement, as applicable, at the Auction in accordance with the terms and provisions of these Bid Procedures, *provided, however*, that any such modifications to the Purchase Agreement or Modified Purchase Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors as determined by the Debtors, in their business judgment, after consultation with the Consultation Parties.
- ix. Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall, as soon as practicable, after consultation with the Consultation Parties, (i) identify and determine in their business judgment the highest and best Qualified Bid for the Assets (a "**Successful Bid**" and the entity or entities submitting such Successful Bid, the "**Successful Bidder**"), (ii) advise the Qualified Bidders of such determination, (iii) require the Successful Bidder to deliver an executed Final Purchase Agreement, which reflects its bid and any other modifications submitted and agreed to during the Auction, prior to commencement of the Sale Hearing, and (iv) immediately file with the Court a designation of Successful Bidder.
- x. In addition, the Debtors will determine, after consultation with the Consultation Parties, which Qualified Bid, if any, is the next highest and best Qualified Bid to the Successful Bid and will designate such Qualified Bid as a "**Backup Bid**" in the event the Successful Bidder fails to consummate the contemplated Sale. A Qualified Bidder who submitted a Qualified Bid and is designated a Backup Bid is a "**Backup Bidder.**" Backup Bid shall remain open and binding until the Backup Bid Expiration Date. Notwithstanding the foregoing, no Qualified Bid by DIP Agent, Prepetition Senior Agent, or an Agent Entity shall be required to be a Backup Bidder.

12. Sole Qualified Bidder

If, by the Bid Deadline, the Debtors have selected only one Qualified Bidder for the Assets, after consultation with the Consultation Parties, then the Debtors shall not hold an Auction and instead, shall determine whether to request at the Sale Hearing that the Bankruptcy Court approve the Qualified Bid from the sole

Qualified Bidder. Notwithstanding anything herein to the contrary, nothing herein shall obligate the Debtors to consummate or pursue the Sale of the Assets.

13. Sale Hearing

The Sale Hearing will be held before the Honorable Karen B. Owens on July 28, 2020 at 1:00 p.m. (prevailing Eastern time) at the United States Bankruptcy Court for the District of Delaware, located in Courtroom No. 3, 6th Floor, 824 Market Street, Wilmington, DE 19801. At the Sale Hearing, the Debtors shall present the results of the Auction, if one is held, to the Bankruptcy Court and may seek approval of the Successful Bid and any Backup Bid.

Following the Sale Hearing and entry of a Sale Order approving the Sale of the Assets to a Successful Bidder, if such Successful Bidder fails to consummate the Sale for any reason, the Backup Bidder shall be designated the Successful Bidder and the Debtors shall be authorized to close such Sale with the Backup Bidder without further order of the Bankruptcy Court; *provided, however*, counterparties to any Leases for which a Backup Bidder is deemed the new Successful Bidder shall receive written notice of the identity of the Secondary Bidder being deemed the Successful Bidder, and shall have three (3) days to object to the Secondary Bidder's adequate assurance of future performance under any Lease to be assumed and assigned, with the Court to hold a subsequent hearing to determine any unresolved objections. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

14. Consummation of the Purchase

a. Closing Date; Good Faith Deposit

The Successful Bidder shall consummate the Sale contemplated by the Successful Bid (the "**Purchase**") on or before the Closing Date. If the Successful Bidder successfully consummates the Purchase by the Closing Date, such Successful Bidder's Good Faith Deposit shall be applied to the purchase price of the Purchase.

If the Successful Bidder either: fails to consummate the Purchase on or before the Closing Date, breaches the Final Purchase Agreement, or otherwise fails to perform, the Debtors shall, without further order of the Bankruptcy Court, deem such Successful Bidder to be a "**Defaulting Buyer**."

The Debtors shall be entitled to (i) retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by a Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform as may be provided for pursuant to the Final Purchase Agreement and the Sale Order.

b. Backup Purchaser

Upon a determination by the Debtors that the Successful Bidder is a Defaulting Buyer, the Debtors shall consummate a Sale with the Backup Bidder on the terms and conditions of the Backup Bid (the "**Backup Purchase**") without further order of the Bankruptcy Court.

If the Backup Bidder consummates the Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price of the Backup Purchase. In the event that the Debtors seek to consummate the Backup Purchase with the Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase, breaches the Final Purchase Agreement or otherwise fails to perform, the Debtors may, in their discretion, and without further order of the Bankruptcy Court, deem such Backup Bidder to be a Defaulting Buyer and shall be entitled to (i) retain the Good Faith Deposit as part of their damages resulting from the breach or failure to perform by the Defaulting Buyer, and (ii) seek all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform as may be provided for pursuant to the Modified Purchase Agreement and the Sale Order.

15. Return of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders consisting of cash shall be held in a non-interest bearing escrow account. Except for those of the Successful Bidder and Backup Bidder(s), the Debtors shall promptly return the Good Faith Deposits of (i) all Qualified Bidders after the Auction; and (ii) the Backup Bidder after the Backup Bid Expiration Date.

16. Reservation of Rights

The Debtors shall retain all rights to any of their assets that are not subject to the Sale that is approved by the Bankruptcy Court at the Sale Hearing.

17. Modifications

The Bid Procedures may be modified by the Debtors, after consultation with Consultation Parties, in any manner that is not inconsistent with or otherwise in contravention of the other terms of these Bid Procedures, including, without limitation, (a) waiving the terms and conditions set forth herein with respect to any or all potential bidders, (b) imposing additional terms and conditions with respect to any or all potential bidders, (c) extending the deadlines set forth herein or the date for the Auction and/or Sale Hearing (which may occur in open court); or (d) amending the Bid Procedures as they may determine to be in the best interests of their estates; *provided that* all such modifications are disclosed to all Potential Bidders (if applicable) or Qualified Bidders (if applicable) prior to or during the Auction.

EXHIBIT 2

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

In Re:

LVI INTERMEDIATE HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 20-11413 (KBO)

(Jointly Administered)

Re: D.I. _____

NOTICE OF BID PROCEDURES, AUCTION DATE AND SALE HEARING

PLEASE TAKE NOTICE THAT:

On June 4, 2020, the above-captioned debtors and debtors in possession (the "**Debtors**") filed the *Debtors' Motion for Entry of Order (I)(A) Approving Bid Procedures Related to the Sale of all or Substantially all of the Assets of the Debtors, (B) Establishing Procedures in Connection with the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) Approving Notice Procedures, and (D) Granting Related Relief; and (II)(A) Approving Sale of Debtors Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing Assumption and Assignment of Unexpired Leases and Executory Contracts and (C) Granting Related Relief* [Docket No. _] (the "**Motion**")² with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

By an order dated _____, 2020 the Bankruptcy Court approved the Bid Procedures [Docket No. _] (the "**Bid Procedures Order**"). The Debtors are seeking bids for all or substantially all of their Assets. All interested parties are invited to submit a Written Offer to purchase some or all of the Assets in accordance with the terms and conditions of the Bid Procedures attached hereto as Exhibit A and the Bid Procedures Order. The deadline to submit a Written Offer (the "**Bid Deadline**") is **July 20, 2020 at 4:00 p.m.** (prevailing Eastern Time).

Prior to the Bid Deadline, a Potential Bidder that desires to purchase the Assets shall deliver its Written Offer in accordance with the Bid Procedures. Pursuant to the Bid Procedures Order, in the event that the Debtors receive two or more Qualified Bids by the Bid Deadline, the Debtors shall conduct an Auction to determine the highest and otherwise best bid with respect to the Assets. The Auction shall commence at **9:30 a.m.** (prevailing Eastern Time) on **July 23, 2020** at the offices of Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, or at such other place, including by telephone or video conference, as selected by the

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: LVI Intermediate Holdings, Inc., (7674); Total Vision Institute, LLC (7571); QualSight, LLC (3866); The LASIK Vision Institute, LLC (7564); Cataract Vision Institute, LLC (7697); Healthcare Marketing Services, LLC (9982); Cataract Vision Institute Florida, LLC (3423); TLC Vision Center Holdings, LLC (5400); TLC Whitten Laser Eye Associates, LLC (0182); TLC Vision Centers, LLC (8271); TruVision, LLC (3399); TruVision Contacts, LLC (3399); Laser Eye Surgery, LLC (3448); TLC Laser Eye Centers (Refractive I), LLC (2702); TLC The Laser Center (Pittsburgh) L.L.C. (2881); TLC The Laser Center (Indiana) LLC (8456); TLC The Laser Center (Institute), LLC (0959); LVI Missouri, LLC (7088). The Debtors' executive headquarters are located at 1555 Palm Beach Lakes Blvd., Suite 600, West Palm Beach, Florida 33401.

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

Debtors, after consultation with the Consultation Parties, and time as the Debtors shall notify all parties in interest attending the Auction.

Objections, if any, to the Sale of the Assets to any Successful Bidder and/or the other relief requested in the Motion, other than the relief approved in the Bid Procedures Order, must be in writing and filed with the Court on or before **July 21, 2020 at 4:00 p.m.** (prevailing Eastern Time) and be served such that they are actually received by (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: David Dean and Norman L. Pernick, e-mail: DDean@coleschotz.com and NPernick@coleschotz.com; (ii) counsel to the DIP Agent and Prepetition Senior Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, IL 60603 (Attn: Randall Klein), e-mail: Randall.Klein@goldbergkohn.com and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347 (Attn: Robert J. Dehney), e-mail: rdehney@mnat.com; (iii) proposed counsel to the Committee, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attn: Todd M. Goren, Esq., Mark A. Lightner, Esq. and Andrew Kissner, Esq.; tgoren@mofo.com, mlightner@mofo.com, akissner@mofo.com); and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo, Esq. and Brya M. Keilson, Esq.; emonzo@morrisjames.com, bkeilson@morrisjames.com); and (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building & Courthouse, 844 N. King Street, Room 2207, Wilmington, DE 19801 (Attn: Richard L. Schepacarter, Esq.), email: Richard.schepacarter.usdoj.gov; *provided* that (i) objections solely with respect to the conduct of the Auction, including the Debtors' selection of the highest and best bid(s) at the Auction, may be made on or before **July 27, 2020 at 12:00 p.m.** (prevailing Eastern Time), and (ii) objections by non-Debtor counterparties to adequate assurance of future performance under section 365 of the Bankruptcy Code may be made up to and including at the Sale Hearing.

The Sale Hearing shall be conducted by the Bankruptcy Court on **July 28, 2020, at 1:00 p.m.** (prevailing Eastern Time), or on such other date as the Bankruptcy Court may direct. Requests for a copy of the Purchase Agreement or for any other information concerning the Motion or the Sale of the Assets should be directed, by written request, to the Debtors' undersigned counsel at the contact information listed below.

Dated: _____, 2020
Wilmington, Delaware

COLE SCHOTZ P.C.

Norman L. Pernick (No. 2290)
G. David Dean (No. 6403)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
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E-mail: npernick@coleschotz.com
ddean@coleschotz.com

*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT 3

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

In re:

LVI INTERMEDIATE HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 20-11413 (KBO)

(Jointly Administered)

Re: D.I. ____

**NOTICE OF (I) POTENTIAL ASSUMPTION OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (II) FIXING
OF CURE AMOUNTS, AND (III) DEADLINE TO OBJECT THERETO**

PLEASE TAKE NOTICE THAT:

On _____, 2020, the United States Bankruptcy Court for the District of Delaware entered an order [Docket No. ____] (the "**Bid Procedures Order**") on the motion (the "**Motion**")² of the above-captioned debtors and debtors-in- possession (the "**Debtors**") (i) approving the bid procedures (as modified or amended, the "**Bid Procedures**") to be implemented in connection with a sale (the "**Sale**") of all or substantially all of the Debtors' assets (the "**Assets**"), (ii) establishing procedures in connection with the Debtors' potential assumption and/or assignment to the Successful Bidder or Backup Bidder (each as defined in the Bid Procedures Order) of certain executory contracts and unexpired leases (each a "**Contract**" and, collectively, the "**Contracts**" and once assumed and assigned, an "**Assumed Contract**") and the corresponding cure amounts (the "**Cure Amounts**") to be paid in connection with the assumption and/or assignment, (iii) approving the notice procedures (the "**Notice Procedures**") to advise parties in interest and Potential Bidders (as defined in the Bid Procedures) of the Bid Procedures, the auction of the Assets (the "**Auction**"), the sale hearing for the Assets (the "**Sale Hearing**"), and the Debtors' intent to assume and/or assign to the Successful Bidder or Backup Bidder the Assumed Contracts and the corresponding Cure Amounts; and (iv) granting related relief.

Pursuant to the Bid Procedures Order, the Debtors have indicated each Contract on Exhibit A annexed hereto which may become an Assumed Contract. In addition, for each Contract, the Debtors have estimated the Cure Amounts owed under such Contract including the actual pecuniary loss to the non-Debtor party resulting from any defaults under such Contract including, but not limited to, all claims, demands, rights to refunds due to overpayments that the non-Debtor parties can assert under the Contracts whether legal or equitable, secured or unsecured, matured or

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unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate, relating to money now owing or owing in the future, arising under or out of, in connection with, or in any way relating to the Assumed Contracts calculated as of _____, 2020. The Cure Amount for an Assumed Contract represents the amount the Debtors believe must be paid, pursuant to section 365 of the Bankruptcy Code, to compensate the respective non-Debtor party in connection with the potential assumption and/or assignment of such Assumed Contract.

Objections to the Cure Amounts, whether or not such party previously has filed a proof of claim with respect to amounts due under the applicable Contract, and/or objections to the potential assumption of such Contract, must be filed with the Bankruptcy Court by and served, together with all documentation supporting such cure claim or objection, so as to be received by **July 15, 2020 at 4:00 p.m.** (prevailing Eastern Time) on (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: David Dean and Norman L. Pernick, e-mail: DDean@coleschotz.com and NPernick@coleschotz.com; (ii) counsel to the DIP Agent and Prepetition Senior Agent, Goldberg Kohn Ltd., 55 East Monroe, Suite 3300, Chicago, IL 60603, Attn: Randall Klein, e-mail: Randall.Klein@goldbergkohn.com and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, e-mail: rdehney@mnat.com; (iii) proposed counsel to the Committee, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019 (Attn: Todd M. Goren, Esq., Mark A. Lightner, Esq. and Andrew Kissner, Esq.; tgoren@mofo.com, mlightner@mofo.com, akissner@mofo.com); and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801 (Attn: Eric J. Monzo, Esq. and Brya M. Keilson, Esq.; emonzo@morrisjames.com, bkeilson@morrisjames.com); and (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building & Courthouse, 844 N. King Street, Room 2207, Wilmington, DE 19801 Attn: Richard L. Schepacarter, Esq.), email: Richard.schepacarter.usdoj.gov. In the event no objection is timely filed with respect to a Contract, the non-Debtor counterparty to such Contract shall be deemed to have consented to the Cure Amount proposed by the Debtors. Notwithstanding the foregoing, as provided below, each non-Debtor party to such Assumed Contract shall retain the right to object, at the Sale Hearing, to the assumption and assignment of its Assumed Contract based solely on the issue of whether the Successful Bidder or Backup Bidder, as applicable, can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

The Debtors and the Successful Bidder or Backup Bidder, as applicable, reserve the right to designate which, if any, executory contracts or unexpired leases will be assumed and assigned. Inclusion of a contract or lease on Exhibit A hereto does not indicate that the Successful Bidder or Backup Bidder, as applicable, will determine to have the Debtors assume and seek assignment of such contract or lease. The Debtors may seek to have any Contract that is not designated to become an Assumed Contract, by the Debtors and the Successful Bidder or Backup Bidder, as applicable, be rejected at the Sale Hearing.

The inclusion of a contract or lease on Exhibit A hereto shall not constitute or be deemed a determination or an admission by the Debtors that such document is in fact, an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

A hearing to consider approval of the Sale and to determine the Cure Amounts and assumption or assignment issues for any non-Debtor parties to Assumed Contracts that filed objections and that have been designated to be assumed and assigned will be held on **July 28, 2020, at 1:00 p.m.** (prevailing Eastern Time) before the Honorable Karen B. Owens at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801. Objections to adequate assurance of future performance, and any additional Cure Amount objections, may be asserted up to the commencement of or at the Sale Hearing.

Pursuant to the Motion, the Debtors are requesting an order from the Court (the "**Sale Order**") which will provide, among other things, that the Debtors' assignment of the Assumed Contracts to the Successful Bidder or Backup Bidder, as applicable, under the provisions of the Sale Order and any additional orders of this Court, and payment of any Cure Amount is authorized, so that no default shall exist under any Assumed Contract, and no counterparty to any Assumed Contract shall be permitted (a) to declare a default by the Successful Bidder or Backup Bidder, as applicable, under such Assumed Contract or (b) otherwise take action against the Successful Bidder or Backup Bidder, as applicable, as a result of Debtors' financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed Contract. If the Court enters the Sale Order, each non-Debtor party to an Assumed Contract hereby will be forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or the Successful Bidder or Backup Bidder, as applicable, or the property of any of them, any default or claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the Closing, including those constituting Excluded Liabilities or, against the Successful Bidder or Backup Bidder, as applicable, any counterclaim, defense, setoff, recoupment, claim of refund or any other Claim asserted or assertable against the Debtors; (ii) imposing or charging against the Successful Bidder or Backup Bidder, as applicable, any rent accelerations, assignment fees, increases or any other fees as a result of the Debtors' assumption and assignment to the Successful Bidder or Backup Bidder, as applicable, of any Assumed Contract in accordance with the Final Purchase Agreement; or (iii) contesting the Cure Amount.

Dated: _____, 2020
Wilmington, Delaware

COLE SCHOTZ P.C.

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