


SO ORDERED.

SIGNED this 3rd day of November, 2020.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	CASE NO. 20-10247
Randolph Hospital, Inc. d/b/a Randolph)	
Health,)	CHAPTER 11
)	
Debtors. ¹)	
)	

**ORDER (I) AUTHORIZING THE SALE OF THE
DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS, (II) AUTHORIZING THE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (III) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the motion (the "Sale Motion")² of the above-captioned debtors and debtors-in-possession (the "Debtors") for, among other things, entry of an order (the "Order") pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal

¹ The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health ("Randolph Health"), Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or Purchase Agreement (as defined herein), as applicable.

Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing and approving the sale (the “Sale Transaction”) of substantially all of the Debtors’ assets (the “Acquired Assets”)³ free and clear of all liens, claims, encumbrances, setoff rights and others interests (the “Encumbrances and Interests”), (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the “Designated Contracts”) identified by the Debtors and more fully described in the Purchase Agreement, as it may be amended from time to time in accordance with Paragraph 43 of this Order, entered into by and between the Debtors and American Healthcare Systems, LLC (the “Purchaser”) for the purchase of the Acquired Assets and the assumption of the Designated Contracts, and (iii) granting certain related relief; and the Court having held a hearing on October 22, 2020 (the “Sale Hearing”) to approve the Sale Transaction; and the Court having reviewed and considered the Sale Motion, the objections to the Sale Motion, and the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and upon the record of the Sale Hearing and these chapter 11 cases (the “Cases”); and after due deliberation thereon; and good cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT⁴

³ “Acquired Assets” is defined in the Purchase Agreement. For the avoidance of doubt, the Acquired Asset(s) shall not include (i) any cash, cash equivalents and investment property of the Debtors, including, but not limited to, any funds in any of the Debtors’ investment or other accounts; *provided, however*, that any interest of the Debtors in StayWell Senior Care, Inc. and/or Randolph Cancer Center, LLC are included in the definition of Acquired Assets that may be sold pursuant to the terms of this Order, (ii) any cause of action or proceeds of such cause of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents, and (iii) any commercial or other tort claims (as such term is defined in the Uniform Commercial Code as in effect in the State of North Carolina) arising on or before the closing date of the Sale Transaction, or any proceeds thereof, including, but not limited to, any and all causes of action against present or former directors and officers of the Debtors and/or any of their affiliates.

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Bankruptcy Rule 7052.

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

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are sections 105, 363 and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 6006.

C. **Petition Date.** On March 6, 2020, the Debtors commenced these Cases by each filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

D. **Entry of Bidding Procedures Order.** On September 8, 2020, this Court entered an order (the “Bidding Procedures Order”) (i) approving bidding and auction procedures (the “Bidding Procedures”), (ii) granting the Debtors the authority to designate a Stalking Horse Purchaser and negotiate certain bidding protections for same, (iii) approving procedures for the assumption and assignment of Designated Contracts, including the notice of proposed cure amounts (the “Cure Amount”), (iv) scheduling the Auction and Sale Hearing, and (v) approving the form and manner of notice of all procedures, schedules, and agreements.

E. **Compliance with Bidding Procedures Order.** As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors have marketed the Acquired Assets and conducted the sale process in compliance with the Bidding Procedures Order, and the Auction was duly noticed and the sale process was conducted in a non-collusive, fair and good faith manner. The Debtors and their professionals have afforded potential purchasers a full and fair opportunity to make higher and better offers. The Debtors and the

Purchaser acted in compliance with the terms of the Bidding Procedures. In accordance with the Bidding Procedures, the Debtors determined that the bid submitted by the Purchaser and memorialized by the Purchase Agreement is the Successful Bid (as defined in the Bidding Procedures Order). In addition, in accordance with the Bidding Procedures Order, the Debtors determined that the bid submitted by Pure Health Carolina Corp. (the “Next Best Bidder”) is the Next Best Bid (as defined in the Bidding Procedures Order).

F. **Notice.** Proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing, the Assumption and Assignment Procedures (including the objection deadline with respect to any Cure Amount) and the assumption and assignment of the Designated Contracts and the Cure Amount has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006 and in compliance with the Bidding Procedures Order, such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Sale Motion, the Sale Hearing, the Sale Transaction, or the assumption and assignment of the Designated Contracts or the Cure Amount is or shall be required.

G. **Corporate Authority.** Each Debtor (i) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale of the Acquired Assets by the Debtors has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement, (iii) has taken all corporate action and formalities necessary to authorize and approve the Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby, including, without limitation, as required by their respective organizational documents and (iv)

no government, regulatory or other consents or approvals, other than those expressly provided for in the Purchase Agreement or otherwise provided herein, are required for the Debtors to enter into the Purchase Agreement and consummate the Sale Transaction. To the extent that any of (iii) has not been obtained, this Order shall constitute the taking of all corporate action and formalities necessary to authorize and approve the Purchase Agreement.

H. **Opportunity to Object.** Fair and reasonable notice and opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities.

I. **Sale in Best Interest.** Consummation of the sale of the Acquired Assets at this time, subject to the terms of the Purchase Agreement and this Order is in the best interests of the Debtors, their creditors, their estates and other parties in interest.

J. **Business Justification.** Sound business reasons exist for the Sale Transaction. Entry into the Purchase Agreement, and the consummation of the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Designated Contracts, constitutes each Debtor's exercise of sound business judgment and such acts are in the best interests of each Debtor, its estate, and all parties in interest. The Court finds that each Debtor has articulated good and sufficient business reasons justifying the Sale Transaction. Such business reasons include, but are not limited to, the following: (i) the Purchase Agreement constitutes the highest or best offer for the Acquired Assets; (ii) the Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Acquired Assets on a going-concern basis and avoid decline and devaluation of the Acquired Assets; (iii) unless the Sale Transaction and all of the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for in the Sale Motion and pursuant to the Purchase

Agreement, (x) recoveries to creditors may be diminished and (y) the Debtors' healthcare facilities might be forced to close and cease operations, displacing patients and negatively impacting the employees of the Debtors; (iv) approval of the Sale Transaction, subject to the terms hereof, is in the public interest in that it permits the continued operation of the Debtors' facilities; and (v) attempting to consummate the transaction though a chapter 11 plan is not feasible. The terms and conditions of the Purchase Agreement, including, without limitation, the consideration to be realized by the Debtors, are fair and reasonable. Approval of the Sale Motion, the Purchase Agreement, and the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

K. **Arm's Length Sale.** The Purchase Agreement was negotiated, proposed and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arm's length bargaining positions. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under 11 U.S.C. § 363(n). Specifically, the Purchaser has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement among bidders. The Purchaser is not an "insider" of the Debtors as defined in Bankruptcy Code section 101(31).

L. **Good Faith Purchaser.** The Purchaser is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under 11 U.S.C. § 363(m) and any other applicable or similar bankruptcy and non-bankruptcy law. Specifically, (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in purchasing the Acquired Assets, (ii) the Purchaser complied in all respects with the provisions in the Bidding Procedures Order, (iii) the Purchaser agreed to subject its bid to the competitive bid procedures

set forth in the Bidding Procedures Order, (iv) all payments to be made by the Purchaser in connection with the Sale Transaction have been disclosed, (v) no common identity of directors, officers or controlling stockholders exists among the Purchaser and the Debtors, (vi) the negotiation and execution of the Purchase Agreement was at arm's length and in good faith, and at all times each of the Purchaser and the Debtors were represented by competent counsel of their choosing, (vii) the Purchaser did not in any way induce or cause the chapter 11 filing of the Debtors, and (viii) the Purchaser has not acted in a collusive manner with any person. The Purchaser will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the Purchase Agreement.

M. **Free and Clear; Attachment to Proceeds of Sale.** The Debtors may sell the Acquired Assets free and clear of all obligations, liabilities, interests, and the Encumbrances and Interests as so released shall attach to any cash sales proceeds of the Sale Transaction in their respective order of priority because, with respect to each creditor asserting a lien, claim, encumbrance, or interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) has been satisfied. Those holders of Encumbrances and Interests released under this Order who did not object or who withdrew objections to the Sale Transaction, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances and Interests released by this Order who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code. For the avoidance of doubt and without limiting the forgoing, the Debtors may sell the Acquired Assets, and the Acquired Assets are being sold, free and clear of any and all tax liens, including any tax liens of the United States or any of its agencies and instrumentalities.

N. The Purchaser would not have entered into the Purchase Agreement and would

not consummate the transactions contemplated hereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts, (i) if the transfer of the Acquired Assets were not free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, and all liens, claims, encumbrances, setoff rights or other interests of or asserted by any local, state, or federal agency or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests so released, including, without limitation, rights or claims based on any taxes or successor or transferee liability. The Purchaser will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts, unless this Court expressly orders that none of the Purchaser, its affiliates, its present or contemplated members or shareholders, or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests relating to the acquisition of the Acquired Assets, the Debtors' business, or the transactions contemplated by the Purchase Agreement, including, without limitation, rights or claims based on any taxes, successor or transferee liability, and all liens, claims, encumbrances, setoff rights or other interests of or asserted by any local, state, or federal agency.

O. Not transferring the Acquired Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever including, without limitation, rights or claims based on any taxes, successor or transferee liability, and all liens, claims, encumbrances, setoff rights or other interests of or asserted by any local, state, or federal agency

would adversely impact the Debtors' efforts to maximize the value of their estates, and the transfer of the Acquired Assets other than pursuant to a transfer that is free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, except as otherwise provided herein, would be of substantially less benefit to the Debtors' estates.

P. Without limiting the generality of the foregoing, except as provided herein or the Purchase Agreement, none of the Purchaser, its respective affiliates, their respective present or contemplated members or shareholders, or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests relating to any U.S. federal, state or local income tax liabilities, that the Debtors incur in connection with the consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts.

Q. **Assumption of Executory Contracts and Unexpired Leases.** Except as provided herein or in the Purchase Agreement, the (i) transfer of the Acquired Assets to the Purchaser and (ii) assignment to the Purchaser of the Designated Contracts will not subject the Purchaser to any liability whatsoever incurred prior to the Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable law, including, without limitation, any theory of antitrust, successor or transferee liability. Because the assumption and assignment of the Designated Contracts is required by the Purchaser and because the Debtors and their estates will be relieved of all liability with respect to the Designated Contracts upon their assumption

and assignment to the Purchaser, it is an exercise of sound business judgment for the Debtors to assume and assign the Designated Contracts to the Purchaser in connection with the consummation of the Sale Transaction, and the assumption and assignment of the Designated Contracts is the best interests of the Debtors, their estates, and their creditors. The Designated Contracts being assigned to the Purchaser are an integral part of the Acquired Assets being purchased by the Purchaser and, accordingly, such assumption and assignment of Designated Contracts is reasonable, enhances the value of the Debtors' estates, and does not constitute unfair discrimination.

R. **Cure/Adequate Assurance.** Contemporaneously with the Closing, the Purchaser shall have (i) cured, or shall have provided adequate assurance of cure, or shall have negotiated a reduced cure amount with the respective counterparty, of any default existing prior to the date hereof under any of the Designated Contracts within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the Closing under any of the Designated Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. The Purchaser has the right to modify the list of Designated Contracts up to the Closing pursuant to the Purchase Agreement and the Bidding Procedures Order, provided that the Purchaser provides the Committee and the United States and its agencies and instrumentalities with at least ten (10) days' notice and an opportunity to object. The Purchaser has provided or will provide at the Closing adequate assurance of future performance of and under the Designated Contracts within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

S. **Prompt Consummation.** Time is of the essence in consummating the Sale

Transaction, and the Debtors and the Purchaser intend to close the Sale Transaction as soon as reasonably practicable in accordance with the Purchase Agreement.

T. **Business Judgment.** The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement outside of a chapter 11 plan of reorganization.

U. **No Fraudulent Transfer.** The Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Purchaser is not a mere continuation, and is not holding itself out as a mere continuation, of any of the Debtors or their respective estates and there is no continuity between the Purchaser and the Debtors. The Sale Transaction does not amount to a consolidation, merger or *de facto* merger of the Purchaser and any of the Debtors.

V. The consideration provided by the Purchaser for the Acquired Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Acquired Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia (including, without limitation, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act). The Debtors' determination that the Purchase Agreement constitutes the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment. Approval of the Sale Motion and the Purchase Agreement, and the consummation of the

transactions contemplated thereby, is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest.

W. **Purchaser Not an Insider and No Successor Liability.** The Purchaser is not an “insider” or “affiliate” of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders exists between the Purchaser and the Debtors. Except as otherwise set forth in the Purchase Agreement and the transfer of the Acquired Assets and the assumption of the Assumed Liabilities (including any individual elements of the Sale Transaction) to the Purchaser, does not, and will not, subject the Purchaser to any liability whatsoever, with respect to the Debtors’ operation of their businesses prior to the closing of the Sale Transaction or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. Pursuant to the Purchase Agreement, the Purchaser is not purchasing all of the Debtors’ assets in that the Purchaser is not purchasing any of the Excluded Assets or assuming the Excluded Liabilities, and the Purchaser is not holding itself out to the public as a continuation of the Debtors. The Sale does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or the Debtors’ estates. There is not substantial continuity between the Purchaser and the Debtors, and there is no continuity of enterprise between the Debtors and the Purchaser. The Purchaser is not a mere continuation of the Debtors or the Debtors’ estates, and the Purchaser does not constitute a successor to the Debtors or the Debtors’ estates.

X. **Legal, Valid Transfer.** The transfer of the Acquired Assets to the Purchaser will be a legal, valid, and effective transfer of the Acquired Assets, and, upon the Debtors’ receipt of

the purchase price and all other consideration and performances required from the Purchaser under the Purchase Agreement, will vest the Purchaser with all right, title, and interest of the Debtors to the Acquired Assets free and clear of all Encumbrances, as set forth in the Purchase Agreement. The Acquired Assets constitute property of the Debtors' estates and good title is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors are the sole and rightful owners of the Acquired Assets, and no other person has any ownership right, title, or interests therein.

Y. **Purchase Agreement As Modified By This Order.** The terms of the Purchase Agreement, including any amendments, supplements, and modifications thereto, are fair and reasonable in all respects. To the extent of any inconsistency between the terms of the Order and the terms of the Purchase Agreement, the Order shall prevail and the terms of the Purchase Agreement shall be deemed modified by this Order.

Z. **Not a Sub Rosa Plan.** The Sale does not constitute a *sub rosa* chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates a liquidating plan of reorganization for the Debtors.

AA. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

It is therefore ORDERED, ADJUDGED, AND DECREED THAT

General Provisions

1. The Sale Motion is GRANTED and APPROVED as provided herein.
2. The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Cone Health's ("Cone Health") filed an Objection [Docket No. 534, the "Sale Objection"] to the Sale Motion and an Objection [Docket No. 541, the "Cure Objection") to the Debtors' First

Supplemental Cure Notice. Cone Health is a minority interest holder in two non-debtor affiliates of Randolph Health, Randolph Cancer Center, LLC (“Cancer Center”) and StayWell Senior Care (“StayWell”). In its Sale Objection, Cone Health objected to the proposed sale of Randolph Health’s membership interest in the Cancer Center, the proposed assumption and assignment of the Cancer Center’s Amended and Restated Operating Agreement (“Operating Agreement”) and the proposed sale of Randolph Hospital, Inc.’s shares in StayWell to Purchaser based on purported rights granted to Cone Health under the Cancer Center’s Operating Agreement and StayWell’s Bylaws. The parties announced a resolution of Cone Health’s Sale Objection and Cure Objection (the “Resolution”) on the record at the hearing. Pursuant to the Resolution, the Purchaser and Cone Health have agreed that (i) post-closing of the Sale Transaction, Cone Health and the Purchaser will each hold a 50% interest in the Cancer Center; (ii) certain revisions to operational and management rights for the Cancer Center, as summarized on the record at the Sale Hearing, shall be documented by a post-closing amendment to the Cancer Center’s Operating Agreement; and (iii) Cone Health shall transfer all of its claims against the Debtors and its interest in StayWell to Purchaser. Should any dispute arise between the Purchaser and Cone Health regarding (a) the Resolution or (b) the terms of any documents required to evidence the Resolution, either party may file a motion to request a further hearing and a ruling from the Court. Further, as part of the Resolution, the Debtors, with the consent of the Unsecured Creditors Committee (the “Committee”) and Bank of America, N.A. (“BofA”) as secured creditor, have agreed that: (i) all of the Cancer Center’s claims, which includes without limitation all rejection damages claims and any other alleged rights to payment whether arising pre-petition or post-petition (collectively, “Cancer Center Claim”), shall be allowed as a general unsecured claim in the scheduled amount of the pre-petition claim, \$14,698,181.00, subject to the terms of

this settlement, (ii) the Cancer Center Claim shall participate in distributions to general unsecured creditors on a *pro rata* basis, but the total amount of its distribution shall not exceed \$500,000; and (iii) by agreement with Cone Health, all distributions received by the Cancer Center on account of the Cancer Center Claim shall be paid to Purchaser upon receipt by the Cancer Center. Additionally, BofA agrees that it does not have a security interest on Randolph Health's membership interest in the Cancer Center. The Court hereby approves the settlement set forth herein and, as a consequence, authorizes Randolph Health to sell its interests in Cancer Center and StayWell to the Purchaser. Cone Health hereby consents to Purchaser's admission as a member of the Cancer Center in accordance with the Resolution. Upon closing of the Sale, Purchaser shall be admitted as a member of Cancer Center pursuant to the Operating Agreement, which shall continue to govern the Cancer Center, as amended post-closing in accordance with the Resolution. The Court reserves jurisdiction to enforce the terms of the Resolution and the underlying settlement agreement between the parties. In the event the Sale does not close, the Debtors and Cone reserve all rights with respect to the assumption and assignment of the Operating Agreement.

3. Pursuant to Section 363(d)(1), the transaction is subject to review by the North Carolina Attorney General in accordance with the North Carolina Nonprofit Corporations Act, N.C.G.S. §§ 55A-11-02 through 55A-17-05.

4. All other objections to the Sale Motion were resolved or withdrawn prior to the Sale Hearing. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice.

Approval of the Sale of the Acquired Assets

5. The Purchase Agreement, including any amendments, supplements and

modifications thereto, and all of the terms and conditions therein, is hereby approved.

6. The Acquired Assets shall not include the Excluded Assets. If any Excluded Assets and/or proceeds thereof come into the possession of the Purchaser, (i) the Purchaser shall hold such Excluded Assets and/or the proceeds thereof in trust for the benefit of the Debtors and their estates and (ii) the Purchaser shall promptly deliver such Excluded Assets and/or the proceeds thereof to the Debtors.

7. Pursuant to section 363(b) of the Bankruptcy Code, the sale of the Acquired Assets to the Purchaser, and the transactions contemplated thereby, are approved in all respects, and are free and clear of all obligations, liabilities and Encumbrances and Interests.

Payment of Bid Protections to Stalking Horse Purchaser

8. Upon closing of the transaction with the Purchaser or the Next Best Bidder, the Debtors may pay the Bid Protections to the Stalking Horse Purchaser from the transaction proceeds, as set forth in the Bidding Procedures Order.

Sale and Transfer of Acquired Assets

9. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are hereby authorized and directed to sell the Acquired Assets to the Purchaser and consummate the Sale Transaction in accordance with, and subject to the terms and conditions of, the Purchase Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the Purchase Agreement, and are further authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, including, without limitation, the related documents, exhibits and schedules, and to take all further actions as may be reasonably

requested by the Purchaser for the purposes of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Acquired Assets, or as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Purchase Agreement.

10. Notwithstanding anything herein or in the Purchase Agreement to the contrary, the Debtors shall not transfer or assign any insurance policy to the Purchaser unless the Debtors will continue to have insurance coverage thereunder for any acts, events, occurrences or claims arising before Closing (irrespective of when any such claim is asserted).

11. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, and the terms of this Order, the Acquired Assets shall be transferred to the Purchaser only upon consummation of the Purchase Agreement at the Closing free and clear of all obligations, liabilities and Encumbrances and Interests of any kind or nature whatsoever, including without limitation, rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any taxes or successor or transferee liability, including, without limitation all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising before or subsequent to the commencement of these Cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, without limitation, claims otherwise arising under federal or state tax laws or doctrines of successor or transferee liability. All Encumbrances and Interests released shall attach to any cash sales proceeds (other than sales proceeds designated to pay wind-down expenses) in their respective order of priority.

12. Following the Closing, the Debtors or the Purchaser are authorized to execute and

file a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all obligations, liabilities and Encumbrances in the Acquired Assets of any kind or nature whatsoever. On the Closing, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser. On the Closing, this Order also shall be construed, and constitute for any and all purposes, a complete and general assignment of all right, title and interest of the Debtors and each bankruptcy estate to the Purchaser in the Designated Contracts. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

13. All entities which are presently, or on the Closing may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchaser on the Closing.

14. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Purchaser in accordance with the Purchase Agreement and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

15. Except as expressly permitted by the Purchase Agreement, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, employees, litigation claimants, and other creditors, holding liens, claims encumbrances, and other interests of any

kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, against or in a Debtor or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Acquired Assets or the operation of the Acquired Assets before the Closing, or the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts, are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its respective successors and assigns, their respective property and the Acquired Assets, such persons' or entities' liens, claims, encumbrances, or other interests, including, without limitation, rights or claims based on any taxes or successor or transferee liability.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license or similar grant relating to the operation of the Acquired Assets on account of the filing or pendency of these Cases or the consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts.

17. Subject to the terms and conditions of this Order, the transfer of the Acquired Assets to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of the Acquired Assets, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Acquired Assets free and clear of all Encumbrances of any kind or nature whatsoever.

18. The inclusion of patients' personally identifiable information in the Acquired Assets is consistent with the Debtors' pre-petition privacy policy because the transfer is

necessary to the ongoing provision of healthcare services. Pursuant to section 363(b)(1)(A), the Debtors may sell patients' personally identifiable information without the need for the appointment of a consumer privacy ombudsman.

No Successor Liability

19. The Purchaser is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and the Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates, other than the Assumed Liabilities, with respect to the Acquired Assets or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability except for the assumption of the Purchase Agreement and any documents related thereto. Except to the extent the Purchaser assumes Assumed Liabilities pursuant to the Purchase Agreement, neither the purchase of the Acquired Assets by the Purchaser nor the fact that the Purchaser is using any of the Acquired Assets previously operated by the Debtors will cause the Purchaser to be deemed a successor in any respect to the Debtors' businesses or incur any liability derived therefrom within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

20. The Purchaser has given substantial consideration under the Purchase Agreement, which consideration shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser and which shall be deemed to have been given in favor of the Purchaser by all holders of Encumbrances and liabilities in or against the Debtors or the Acquired Assets. Upon consummation of the Sale Transaction, the Purchaser

shall not be deemed to (a) be the successor to the Debtors, (b) have, *de facto* or otherwise, merged with or into the Debtors, or (c) be a mere continuation, alter ego or substantial continuation of the Debtors.

Good Faith

21. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein by this Order to consummate the Sale Transaction shall not affect the validity of the sale of the Acquired Assets to the Purchaser. The Purchaser is a purchaser in good faith of the Acquired Assets and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

22. As a good faith purchaser of the Acquired Assets, the Purchaser has not entered into an agreement with any other potential bidders at the Auction, and has not colluded with any of the other bidders, potential bidders or any other parties interested in the Acquired Assets, and, therefore, neither the Debtors nor any successor in interest to the Debtors' estates shall be entitled to bring an action against the Purchaser, and the Sale Transaction may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

Assumption and Assignment of Designated Contracts

23. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale Transaction, the Debtors' assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the Purchase Agreement, of the Designated Contracts is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

24. The Debtors are hereby authorized and directed in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, effective

upon the Closing of the Sale Transaction, the Designated Contracts free and clear of all Encumbrances and Interests of any kind or nature whatsoever and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Designated Contracts to the Purchaser.

25. The Debtors are not authorized by this Order to assume any Designated Contract unless (i) such contract is also assigned to the Purchaser and (ii) the Purchaser assumes liability for any and all cure obligations relating to such contract.

26. The Designated Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in section 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to 11 U.S.C. § 365(k), the Debtors shall be relieved from any liability with respect to the Designated Contracts after such assignment to the Purchaser.

27. All defaults or other obligations of the Debtors under the Designated Contracts arising or accruing prior to the date of this Order (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be cured by the Purchaser within five (5) business days of the Closing, and the Purchaser shall have no other liability or obligation relating to such contracts arising or accruing prior to the Closing except as otherwise expressly provided herein or in the Purchase Agreement. For the avoidance of doubt, neither the Debtors nor their estates shall have any liability for any required cure amounts relating to the Designated Contracts or any executory contract or unexpired lease assumed pursuant to the terms of this Order or the Purchase Agreement.

28. As part of its consideration for the Acquired Assets and except as provided in or

limited by the Purchase Agreement or this Order, the Purchaser will cure any and all defaults with respect to the Designated Contracts and compensate all counterparties for any actual pecuniary losses resulting from such defaults.

29. On and after Closing, each non-Debtor party to an Assigned Contract hereby is forever barred, estopped, and permanently enjoined from raising or asserting against the Debtors, their estates, or the property of either of them, any assignment fee, default, breach or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the date of the Sale Hearing, or arising by reason of the consummation of transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction and the assumption and assignment of the Designated Contracts. Any party that may have had the right to consent to the assignment of an Assigned Contract is deemed to have consented to such assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise if such party failed to object to the assumption and assignment of such Assigned Contract.

30. To the extent a counterparty to an Assigned Contract failed to object timely to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid by the Purchaser, shall completely revive any Assigned Contract to which it relates.

31. In the event that Closing of the Sale does not occur, none of the Debtors' executory contracts or unexpired leases shall be assumed or rejected by virtue of this Order and shall remain subject to further administration in these Cases.

30. For the avoidance of doubt, nothing in this Sale Order shall limit, modify, or in any way affect the United States Secretary (the “Secretary”) of Health and Human Services’ or NCDHHS’s authority to regulate Debtor’s or the Purchaser’s enrollment or participation as a Medicare or Medicaid provider of services (to the extent the Purchaser enrolls or participates as a Medicare or Medicaid provider of services) or the right and authority of the Secretary, CMS, NCDHHS, or their contractors to review, approve, deny, or pay Medicare or Medicaid claims in the ordinary course of business in accordance with the Medicare or Medicaid Statute and regulations, and the policies and procedures thereunder. Neither the United States nor North Carolina takes a position with respect to, and nothing herein shall be construed as the Secretary’s or NCDHHS’s consent to, or acceptance of, the Purchase Agreement or any underlying transactions described in or supporting the Agreement.

31. For the avoidance of doubt, notwithstanding anything to the contrary in this Sale Order or the Purchase Agreement, the Debtor and the Purchaser have agreed that for purposes of this case only the Debtor’s Medicare provider agreement and Medicaid provider agreement shall not be sold pursuant to Section 363 of the Bankruptcy Code free and clear of any successor liability but shall be assumed and assigned, including, without limitation, any and all liability arising from or under the Medicare provider agreement or the Medicaid provider agreement, pursuant to and in accordance with Section 365 of the Bankruptcy Code and the Medicare Statute, the Medicaid Statute, the regulations promulgated under either the Medicare Statute or the Medicaid Statute, CMS’ Medicare policies and procedures, and federal or state Medicaid policies and procedures.

32. Any cure amount set forth by the Debtor is not binding on the United States or North Carolina, and shall not be interpreted to set a cure amount related to the Debtor’s

Medicare provider agreement or Medicaid provider agreement or limit successor liability with respect to the Debtor's Medicare provider agreement or Medicaid provider agreement that are assumed and assigned to the Purchaser.

33. For the avoidance of doubt, notwithstanding any other provision of this Sale Order, the Purchase Agreement, or any other document implementing the Sale, the Debtor and the Purchaser have agreed that (i) the Debtor shall not assume and assign or otherwise transfer any national provider identifier, provider transaction access number, Medicare enrollment agreement, or Medicaid enrollment agreement to the Purchaser; and (ii) the Debtor shall not loan or otherwise permit the Purchaser to use or submit claims under the Debtor's provider transaction access number, Medicare enrollment agreement, or Medicaid enrollment agreement, except in accordance with the Medicare Statute, the Medicaid Statute, the regulations promulgated under the Medicare Statute or the Medicaid Statute, CMS' Medicare policies and procedures, federal or state Medicaid policies and procedures, and with the approval of CMS and NCDHHS.

34. Notwithstanding anything to the contrary in this Sale Order, or any Notice related thereto, in the event that the Cigna Contracts (as defined in the *Objection of Cigna to Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With the Sale of Substantially all the Debtor's Assets* [Docket No. 510] (the "Cigna Objection")) are assumed and assigned to the Purchaser as of the Closing Date pursuant to the written, irrevocable notice to be provided to Cigna under paragraph 22 of the Sales Procedure Order, then, in lieu of cure, all obligations due and unpaid under the Cigna Contracts accruing prior to the Closing Date shall pass through to the Purchaser and survive assumption and assignment, so that nothing in this Sale Order or 11 U.S.C. §365 shall affect such obligations.

Next Best Bidder

35. If the Debtors and the Purchaser fail to consummate the Sale, the Debtor and Next Best Bidder are hereby authorized to enter into negotiations regarding the execution of an asset purchase agreement and the consummation of a Sale of the Acquired Assets to Next Best Bidder for the amount of the Next Best Bid, without further order of the Court. The Debtors shall have the right to seek a determination that Next Best Bidder is a purchaser in good faith entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. To the extent the Next Best Bidder seeks to have executory contracts and unexpired leases assigned to it, the Debtors shall provide notice of such assumption and assignment pursuant to Bankruptcy Rules 6006 and 9014.

Additional Provisions

36. The consideration provided by the Purchaser for the Acquired Assets under the Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

37. Each and every federal, state, and local governmental agency, court or department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement. On the Closing, the Debtors and the Purchaser are authorized to take such actions as may be necessary to obtain a release of any and all obligations, liabilities and Encumbrances and Interests in the Acquired Assets, if any, and to the extent contemplated hereby and by the Purchase Agreement. This Order (a) shall be effective as a determination that, on the Closing, all Encumbrances and Interests of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing

have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement. The Purchaser and the Debtors shall take such further steps and execute such further documents, assignments, instruments and papers as shall be reasonably requested by the other to implement and effectuate the transactions contemplated in this paragraph. All interests of record as of the Closing shall be forthwith deemed removed and stricken as against the Acquired Assets. All entities described in this paragraph are authorized and specifically directed to strike all such recorded liens, claims, rights, interests and encumbrances against the Acquired Assets from their records, official and otherwise.

38. If any person or entity that has filed statements or other documents or agreements evidencing claims, liens, encumbrances, or interests in any of the Acquired Assets does not deliver to the Debtors or the Purchaser prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the

release of all interests and other interests that the person or entity has or may assert with respect to any of the Acquired Assets to be recorded or filed as of the Closing, the Debtors and/or the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such persons or entity with respect to any of the Acquired Assets after the Closing.

39. The Debtors will cooperate with the Purchaser and the Purchaser will cooperate with the Debtors, in each case to ensure that the transaction contemplated in the Purchase Agreement is consummated, and the Debtors will make such modifications or supplements to any bill of sale or other document executed in connection with the closing to facilitate such consummation as contemplated by the Purchase Agreement (including, without limitation, adding, pursuant to the terms of the Purchase Agreement, such specific assets to such documents as may be reasonably requested by the Purchaser).

40. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Acquired Assets other than for the Assumed Liabilities, including all cure obligations relating to any executory contracts and unexpired leases assumed pursuant to the terms of this Order and the Purchase Agreement.

41. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their respective affiliates, successors and assigns, their estates, and their creditors, the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting Encumbrances on the Acquired Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and

provisions likewise shall be binding.

42. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety.

43. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in consultation with the Committee, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and is consistent with the terms of this Order. To the extent that any provision of the Purchase Agreement conflicts with any provision of this Order, this Order shall govern and control.

44. Nothing contained in any plan of reorganization or liquidation confirmed in these Cases or any order of this Court confirming such plans or in any other order in these Cases, including any order entered after any conversion of these Cases to a case under chapter 7 of the Bankruptcy Code, shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement or the terms of this Order. The provisions of this Order and the Purchase Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered: (i) confirming or consummating any plan of reorganization of the Debtors; (ii) converting these Cases from chapter 11 to chapter 7 of the Bankruptcy Code; or (iii) dismissing any or all of these Cases. The terms and provisions of the Purchase Agreement as well as the rights and interests granted pursuant to this Order and the Purchase Agreement shall continue in these Cases or any superseding case and shall be specifically performable and enforceable against and binding upon the Debtors, their estates and the Purchaser and their respective

successors and permitted assigns, including any trustee, responsible officer or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

45. The provisions of this Order are nonseverable and mutually dependent.

46. The Debtors' shall not be liable, through indemnification of Purchaser or otherwise, for any claims brought by any other broker, finder, or other agent claiming to have acted on behalf of Debtors or an Affiliate of Debtors in connection with the purchase and sale of the Acquired Assets.

47. Compliance with the legal requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances.

48. The Debtors and each other person having duties or responsibilities under the Purchase Agreement or this Order, and their respective agents, representatives, and attorneys, are authorized and empowered to carry out all of the provisions of the Purchase Agreement, to issue, execute, deliver, file and record, as appropriate, the Purchase Agreement, and any related agreements, and to take any action contemplated by the Purchase Agreement or this Order, and to issue, execute, deliver, file and record, as appropriate, such other contracts, instruments, releases, deeds, bills of sale, assignments, or other agreements, and to perform such other acts as are consistent with, and necessary or appropriate to, implement, effectuate and consummate the Purchase Agreement and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by applicable business corporation, trust and other laws of applicable governmental units with respect to the implementation and consummation of the Purchase Agreement and this Order and the

transactions contemplated thereby and hereby.

49. This Court shall retain exclusive jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Acquired Assets to the Purchaser free and clear of Encumbrances, or compel the performance of other obligations owed by the Debtors, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Purchaser against (i) any claims of successor or vicarious liability related to the Acquired Assets or Designated Contracts, or (ii) any claims of Encumbrances asserted on or in the Debtors or the Acquired Assets, of any kind or nature whatsoever.

50. Notwithstanding anything to the contrary contained herein, the purchase by Purchaser of the Acquired Assets is subject to the Assumed Liabilities and Purchaser shall remain liable for the Assumed Liabilities, all as set forth in the Purchase Agreement.

51. The Court finds that good cause exists to waive the deadlines under Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, and 9014. As a result, this Order shall take effect immediately and shall not be stayed. The Debtors and the Purchaser are authorized to close the Sale Transaction immediately upon entry of this Order in accordance with and subject in all respects to the terms and conditions of the Purchase Agreement.

52. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a) notwithstanding Bankruptcy Rules 6004(h) and 6006(d).

53. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Sale Motion in these Cases, the terms of this Order shall govern.

54. The Debtors and the Purchaser shall provide reasonable updates to the Committee, the Bankruptcy Administrator, and those parties asserting liens on the Acquired Assets regarding their respective efforts to satisfy the conditions to Closing set forth in the Purchase Agreement. If it becomes apparent that the Debtors and the Purchaser will be unable to satisfy any condition to Closing set forth in the Purchase Agreement, the Debtors and the Purchaser shall promptly notify each other, the Committee, the Bankruptcy Administrator, those parties asserting liens on the Acquired Assets, and if necessary, the Court.

55. Notwithstanding anything to the contrary in this Order and notwithstanding any attachment of any valid liens to the cash proceeds of the Sale, subject to the entry of a subsequent order by the Court in these Cases, including an order confirming a plan of liquidation, no cash proceeds of the Sale shall be distributed to any party.

56. Nothing contained in this Order or the Purchase Agreement shall be deemed an allocation of the Sale purchase price or proceeds of the Acquired Assets to any of the Acquired Assets. All rights, claims, and objections of all parties-in-interest with respect to such allocation are expressly reserved and preserved.

57. Except as expressly stated herein, nothing contained in this Order or the Purchase Agreement shall be deemed to be an acknowledgment or determination of the validity, extent, or priority of any lien on any of the Acquired Assets or proceeds thereof, and all rights, claims, and objections of all parties-in-interest – including all challenge rights of the Committee preserved by the *Stipulation and Agreed Eighth Interim Order (I) Authorizing Use of Cash Collateral Pursuant to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001, (II)*

Granting Adequate Protection, (III) Scheduling Further Hearing, and (IV) Granting Related Relief [Docket No. 503] or any other stipulation approved by, or order of, the Court – are expressly reserved and preserved.

58. The rights granted to the Debtors under section 6.2(b) of the Purchase Agreement shall extend to the Committee and any successor to the Debtors, the Committee, or the rights of the Debtors' estates, including any liquidating trustee or debtor represented appointed pursuant to any confirmed bankruptcy plan in these Cases.

59. Notwithstanding the terms of the Purchase Agreement or anything to the contrary therein, the parties to the APA as well as "BofA" as secured creditor and the Committee agree that the A/R Escrow (as defined in the Purchase Agreement) shall be fully funded in the amount of \$500,000 from the sale proceeds at the closing of the sale under the Purchase Agreement. The sale proceeds used to fund the A/R Escrow and applied to (i) payment of any indemnity claims and (ii) distributions of unused funds from the A/R Escrow to the Debtors' estates, if any, in accordance with Article X of the Purchase Agreement, shall be allocated between BofA (in its capacity as secured creditor) and the Debtors' estates based upon the respective percentages of the total sales proceeds allocated to the sold assets encumbered by BofA's valid, perfected and unavoidable liens and the sold unencumbered assets, pursuant to an agreement of the Debtors, the Committee and BofA or any further Order of the Court.

60. The Debtors are directed to serve a copy of this Order as required by the Order Implementing Certain Notice and Case Management Procedures (Docket # 134) within five (5) days of entry of this Order and to file a certificate of service with the Clerk of Court.

END OF DOCUMENT

