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7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11 In re  
12 VISITING NURSE ASSOCIATION OF THE  
INLAND COUNTIES,  
13  
14 Debtor and  
Debtor-in-Possession.

Case No. 6:18-bk-16908-MH

Chapter 11

**MOTION FOR ORDER APPROVING  
BIDDING PROCEDURES, STALKING  
HORSE BIDDER PROTECTIONS, FORM  
OF ASSET PURCHASE AGREEMENTS,  
AND ASSIGNMENT PROCEDURES, IN  
CONNECTION WITH SALE OF DEBTOR'S  
HOSPICE ASSETS AND HOME HEALTH  
ASSETS; DECLARATIONS OF ADAM  
MEISLIK, HYRUM KIRTON AND RAJ  
WALIA IN SUPPORT**

Hearing Date, Time and Location:  
DATE: May 12, 2020  
TIME: 2:00 p.m.  
CTRM: 303

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MOTION TO APPROVE BIDDING  
PROCEDURES AND BID PROTECTIONS

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1 **TO THE HONORABLE MARK D. HOULE, UNITED STATES BANKRUPTCY JUDGE,**  
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN INTEREST:**

3 Visiting Nurse Association of the Inland Counties, the debtor and debtor-in-  
4 possession ("Debtor") in the above-captioned case, hereby files this motion ("Motion")  
5 pursuant to sections 105(a), 363, 365 and 1107 of Title 11 of the United States Code  
6 ("Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of  
7 Bankruptcy Procedure (as amended from time to time, "Bankruptcy Rules"), and Rule  
8 6004-1 and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court  
9 for the Central District of California ("LBR" or "Local Rules") for entry of an order,  
10 substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):

11  
12 (i) authorizing and approving the bidding procedures, auction sale format,  
13 stalking horse bid protections ("Bidding Procedures") substantially in the  
14 form attached to the Bidding Procedures Order as **Exhibit 1** and relating to:

15  
16 a. the proposed sale (the "Hospice Sale") of certain of the Debtor's hospice  
17 business assets (the "Hospice Assets") free and clear of any claim,  
18 charge, lien (statutory or otherwise), mortgage, lease, hypothecation,  
19 encumbrance, pledge, security interest, option, rights of use, right of first  
20 offer, right of first refusal, easement, servitude, restrictive covenant,  
21 encroachment, license and other restriction and interest

22 ("Encumbrances") to Bristol Hospice, L.L.C., or its nominee ("Bristol") and

23  
24 b. the proposed sale (the "Home Health Sale," and together with the  
25 Hospice Sale, the "Sales") of substantially all of the Debtor's home health  
26 business assets (the "Home Health Assets") free and clear of any  
27 Encumbrance to HealthSure Management Services LLC ("HMS");  
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- 1 (ii) setting the deadline for potential bidders to submit a proposal to purchase
- 2 the Hospice Assets, the Home Health Assets or both (the "Bid Deadline"),
- 3 authorizing and scheduling an auction (the "Auction"), and scheduling a
- 4 hearing with respect to the approval of a proposed sale transactions (the
- 5 "Sale Hearing");
- 6
- 7 (iii) authorizing and approving the Notice Procedures (as defined below);
- 8
- 9 (iv) authorizing and approving (a) the form of the asset purchase agreement by
- 10 and between the Debtor and Bristol dated April 24, 2020 ("Hospice Asset
- 11 Purchase Agreement") and (b) the form of the asset purchase agreement by
- 12 and between the Debtor and HMS dated May 4, 2020 ("Home Health Asset
- 13 Purchase Agreement," and together with the Hospice Asset Purchase
- 14 Agreement, the "Asset Purchase Agreements");
- 15
- 16 (v) approving the procedures set forth in the Bidding Procedures Order (the
- 17 "Assumption and Assignment Procedures")<sup>1</sup> for the assumption and
- 18 assignment of the Debtor's executory contracts and unexpired leases (the
- 19 "Assigned Contracts") and the determination of the amount necessary to
- 20 cure any defaults thereunder (the "Cure Costs");
- 21
- 22 (vi) authorizing and approving the form and manner of notice to each relevant
- 23 non-Debtor counterparty to an executory contract or unexpired lease
- 24 (collectively, the "Contract Counterparties") regarding the Debtor's potential
- 25 assumption and assignment of certain executory contracts and unexpired
- 26 leases of the Debtor and of the Debtor's calculation of the Cure Costs,
- 27

28 <sup>1</sup> A copy of the Assumption and Assignment Procedures is attached to the Bidding Procedures Order as Exhibit 3.

1 substantially in the form attached to the Bidding Procedures Order as  
2 **Exhibit 2** (the "Cure Notice"); and

3  
4 (vii) granting related relief.

5  
6 In support of the Motion, the Debtor submits the Declaration of Adam Meislik, the  
7 Debtor's chief restructuring officer, the Declaration of Hyrum Kirton, the Chief Executive  
8 Officer of Bristol, the Declaration of Raj Walia, the chief executive officer of HMS, and the  
9 accompanying memorandum of points and authorities. The Motion is based upon the  
10 following:

11 **I. BACKGROUND**

12 **A. Jurisdiction and Venue.**

13 This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and  
14 1334. Venue of this case and this Motion are proper in this district pursuant to 28 U.S.C.  
15 §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Debtor  
16 consents to the entry of a final order by the Court in connection with this Motion to the  
17 extent it is later determined that the Court, absent consent of the parties, cannot enter  
18 final orders or judgments consistent with Article III of the United States Constitution.

19 **B. The Chapter 11 Filing.**

20 On August 15, 2018 ("Petition Date"), the Debtor filed a voluntary petition for relief  
21 under chapter 11 of the title 11 of the United States Code ("Bankruptcy Code") in the  
22 United States Bankruptcy Court for the Central District of California ("Court"). The Debtor  
23 continues to operate and manage its affairs as debtor and debtor-in-possession pursuant  
24 to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the  
25 appointment of a trustee or examiner.

26 On September 19, 2018, the Office of the United States Trustee appointed an  
27 Official Committee of Creditors Holding Unsecured Claims ("Committee").  
28

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1 On February 28, 2020, the Debtor filed a proposed disclosure statement and  
2 chapter 11 plan of liquidation. A hearing on the approval of the disclosure statement is  
3 currently scheduled for April 21, 2020.

4 **C. The Debtor.**

5 The Debtor is a not-for-profit home health services organization serving Riverside  
6 and San Bernardino Counties. It provides home health and hospice care services to the  
7 government, industry, institutions, individuals, associations and organizations, and  
8 provides products and related services. The Debtor currently provides in-home services  
9 to approximately 165 patients.

10 **II. PRELIMINARY STATEMENT.**

11 Following a review of strategic alternatives for its business, the Debtor, in  
12 consultation with its advisors, determined that maximizing the value of its estate is best  
13 accomplished through an orderly sale, free and clear of liabilities, of the Debtor's hospice  
14 and home health care businesses. Since January 2019, the Debtor, its finders and its  
15 advisors have been engaged in a marketing efforts designed to encourage bids for a  
16 transaction pursuant to which all or a portion of the Debtor's assets would be sold  
17 generating funds for creditors of the estate.

18 To date, several parties have expressed an interest in purchasing the Debtor's  
19 Hospice Assets and Home Health Assets. In the exercise of its business judgment, the  
20 Debtor has entered into (i) the Hospice Asset Agreement for the sale of the Hospice  
21 Assets and (ii) the Home Health Asset Purchase Agreement for the sale of the Home  
22 Health Assets. Each of these Asset Purchase Agreements are "stalking horse" purchase  
23 offers subject to higher and better bids pursuant to the procedures set forth herein and in  
24 the Proposed Order.

25 The Debtor believes that the Sales of the Hospice Assets and the Home Health  
26 Assets pursuant to the procedures set forth herein and in the Proposed Order and on the  
27 timeline proposed herein presents the best opportunity for the Debtor to maximize value  
28 for its estate, its stakeholders, and parties in interest.

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1 **III. RELIEF REQUESTED**

2 Debtor requests entry of an order, substantially in the form attached hereto as  
3 **Exhibit A**, (i) authorizing and approving the Bidding Procedures; (ii) setting the Bid  
4 Deadline; (iii) authorizing and scheduling the Auction; (iv) scheduling the Sale Hearing; (v)  
5 authorizing and approving the form and manner of the Notice Procedures; (vi) authorizing  
6 and approving the form and manner of the Asset Purchase Agreements; (vii) authorizing  
7 and approving the Assumption and Assignment Procedures; (viii) authorizing and  
8 approving the form and manner of the Cure Notices; and (ix) granting related relief.

9 **IV. PROPOSED BIDDING PROCEDURES.**

10 Unless otherwise ordered by the Court or set forth in these procedures, in order to  
11 be qualified to receive any confidential information from the Debtor in connection with the  
12 Sale, an interested party (each, an "Interested Party") must submit each of the following to  
13 the Notice Parties (defined below) on ten (10) business days prior to the Bid Deadline  
14 (defined below):

- 15 (a) A written disclosure of the identity of each entity that will be
- 16 bidding for the hospice and/or home health care business or
- 17 otherwise participating in connection with such bid;
- 18 (b) An executed confidentiality agreement (to be delivered prior to the
- 19 distribution of any confidential information by the Debtor) in a form
- 20 and substance satisfactory to the Debtor and which shall inure to
- 21 the benefit of any purchaser of the Hospice Assets and/or Home
- 22 Health Assets;
- 23 (c) A statement demonstrating, to the Debtor's satisfaction that the
- 24 Interested Party has a bona fide interest in purchasing the
- 25 Hospice Assets and/or Home Health Assets; and
- 26 (d) Such other information with respect to an Interested Party's
- 27 experience and financial wherewithal (which may include, but is
- 28 not limited to, any cure and adequate assurance obligations as
- the case may be) as the Debtor requests, if any, which may
- include, but is not limited to, the internal corporate, legal or other
- authorizations to close a purchase transaction.

If the Debtor determines, after receipt of the items identified above and a  
determination by the Debtor, in its sole discretion, that an Interested Party has a bona fide

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1 interest in purchasing the Debtor's Hospice Assets and/or Home Health Assets, and the  
2 financial wherewithal to do so, such Interested Party will be deemed a "Potential Bidder."  
3 As promptly as practicable after the Interested Party is deemed to be a Potential Bidder,  
4 the Debtor will notify the Interested Party as to such determination.

5 **A. Due Diligence**

6 The Debtor will afford any Potential Bidder such due diligence access or additional  
7 information as the Debtor deems appropriate, in its business judgment. Such information  
8 shall be provided through the data room created by the Debtor to facilitate diligence  
9 respecting the hospice and home health care businesses to Potential Bidders ("Data  
10 Room"). The Debtor shall endeavor to provide all such information to all Potential Bidders  
11 concurrently by placing the information in the Data Room and informing all Potential  
12 Bidders of the addition of the information. For any Potential Bidder who is a competitor of  
13 the Debtor or is the subject of a claim or potential claim of the Debtor, the Debtor reserves  
14 the right to withhold any materials or information that the Debtor determines is:

15 (i) sensitive or confidential business records, (ii) not appropriate for disclosure to such a  
16 Potential Bidder, (iii) has not been made available to any other competitor of the Debtor or  
17 affiliate thereof, and (iv) cannot be reasonably redacted to remove any sensitive or  
18 confidential business information; provided that the Debtor shall notify the applicable  
19 Potential Bidder of the determination to withhold such information and shall provide  
20 reasonable detail as to the information withheld. The due diligence period shall extend  
21 through and include the Bid Deadline. Additional due diligence will not be provided after  
22 the Bid Deadline unless such Potential Bidder has submitted a Qualified Bid.

23 **B. Provisions Governing Qualifications of Qualified Bids and Overbids**

24 a. Hospice Asset Qualified Bids

25 A bid submitted by a Potential Bidder with respect to the Hospice Assets will be  
26 considered a Qualified Hospice Bid (each, a "Qualified Hospice Bid," and each such  
27 Potential Bidder thereafter a "Qualified Hospice Bidder") only if the bid complies with the  
28 following requirements:

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- (a) accept the terms of the proposed Hospice Asset Purchase Agreement, attached hereto as **Exhibit B**, or includes an alternative proposed purchase agreement, including all exhibits and schedules thereto, and contains terms and conditions that, taken as a whole, are higher or otherwise better than the terms and conditions of the Hospice Asset Purchase Agreement, as determined by the Debtor using its business judgment; ("Competing Asset Purchase Agreement"), duly authorized and executed by the Potential Bidder, along with a redlined, marked copy showing all changes between the Competing Purchase Agreement and the proposed Hospice Asset Purchase Agreement. Any Qualified Hospice Bid that accepts the terms of the Hospice Asset Purchase Agreement, or, alternatively, proposes a Competing Purchase Agreement, must agree or provide for the following:
  - (i) the bid must have a value to the Debtor that is greater than the sum of the value offered under the Hospice Asset Purchase Agreement, plus (i) the out-of-pocket costs and expenses of Bristol (not to exceed \$250,000 and to be determined before the Sale Hearing); (ii) a break-up fee of 3% of the Purchase Price under the Hospice Asset Purchase Agreement; and (iii) \$250,000.00 ("Hospice Asset Minimum Overbid");
  - (ii) if the Potential Bidder wishes to acquire assets of the hospice business that are not being sold under the Hospice Asset Purchase Agreement, the Hospice Minimum Overbid shall include an additional cash price offer;
  - (iii) a disclaimer of any right of the Potential Bidder to receive a breakup fee or termination fee, and waiver of any claim to compensation under section 503(b) of the Bankruptcy Code for making a substantial contribution;
  - (iv) an identification, with particularity, which liabilities, executory contracts and unexpired leases that have been identified to Potential Bidders through the diligence process the Potential Bidder would agree to assume;
  - (v) a contact person(s) for the proposed assignee that the applicable counterparty may directly contact in connection with adequate assurance of future performance issues; and
  - (vi) a proposed closing date that is not later than August 31, 2020;
- (b) includes a cashier's check made payable to the order of Visiting Nurse Association of the Inland Counties or evidence of electronic

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funds transfer in accordance with instructions to be provided by the Debtor equal to 5% of the Hospice Minimum Overbid, which will be retained by the Debtor as a refundable deposit for application against the purchase price at the closing of the transaction, returned to the Potential Bidder, or forfeited to the Debtor as set forth below;

(c) identifies the full legal name of the Potential Bidder (including any equity holders or other financial backers sponsoring or participating in connection with such bid);

(d) it included a signed writing that the Potential Bidder's offer will remain open and irrevocable as follows (i) until the closing of the Sale if it is designated as the Successful Bid, (ii) until the Back-Up Expiration Date (as defined below) if it is designated as the Back-Up Bid (as defined below), and (iii) in all other cases, three (3) business days after conclusion of the Sale Hearing;

(e) is accompanied by evidence establishing the Potential Bidder's ability to provide adequate assurance of future performance with respect to the executory contracts and unexpired leases identified in subparagraph (a)(iv) above. If the Debtor concludes, exercising its business judgment, that the information establishing adequate assurance is not sufficient, then the Debtor may request specific additional information from the Potential Bidder in writing and the Potential Bidder shall have a reasonable period of time to supplement the information it provided to establish adequate assurance;

(f) is accompanied by evidence establishing, based upon the Debtor's business judgment, that the Potential Bidder has the financial ability to pay, including through committed financing, or otherwise fulfill the conditions relating to payment of the Hospice Minimum Overbid; such evidence shall include, but is not limited to, (i) current audited financial statements (to the extent they are otherwise prepared in the ordinary course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an entity that has been capitalized recently for the purpose of acquiring the hospice business, current audited financial statements of its equity holder(s) or their affiliate(s) (to the extent they are otherwise prepared in the ordinary course of business) who shall either guarantee the obligations of the Potential Bidder or provide such other form of financial disclosure and credit-quality support information or enhancement or (ii) documents evidencing committed financing for the Hospice Minimum Overbid, as deemed reasonably acceptable by the Debtor, in its sole discretion. The Potential Bidder may elect to only provide the information required under this subsection upon the execution of confidentiality agreement by the Debtor and the Potential Bidder, its

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- 1 equity holders and its affiliates. The form of confidentiality
- 2 agreement shall be provided by the Debtor to any Potential Bidder
- 3 upon request;
- 4 (g) is accompanied by evidence establishing, based upon the Debtor's
- 5 business judgment, that the Potential Bidder is capable and
- 6 qualified, financially, legally and otherwise, of unconditionally
- 7 performing all obligations under the Hospice Asset Purchase
- 8 Agreement or the Competing Purchase Agreement;
- 9 (h) includes confirmation that there are no conditions precedent to the
- 10 Potential Bidder's ability to enter into a definitive agreement and
- 11 that all necessary internal governance and shareholder approvals
- 12 have been obtained prior to the bid;
- 13 (i) is not subject to any due diligence or financing contingencies of any
- 14 kind, or any contingencies related to any internal or investment
- 15 committee or similar approvals;
- 16 (j) includes an acknowledgement and representation, in form and
- 17 substance satisfactory to the Debtor that the Potential Bidder:
- 18 (a) has had an opportunity to conduct any and all required due
- 19 diligence regarding the Hospice Assets prior to making its offer,
- 20 (b) has relied solely upon its own independent review, investigation,
- 21 and/or inspection of any documents and/or the hospice business in
- 22 making its bid, (c) did not rely upon any written or oral statements,
- 23 representations, promises, warranties, or guaranties whatsoever,
- 24 whether express or implied (by operation of law or otherwise),
- 25 regarding the hospice business, and (d) affirmatively consents to
- 26 the jurisdiction of the Court, affirmatively consents to the Court
- 27 entering a final order, and waives any right to a jury trial, in each
- 28 case in connection with any disputes relating to the relief sought in
- the Motion and the construction and enforcement of any sale
- transaction documents;
- (k) includes proof that the Potential Bidder is licensed, or will be able to
- obtain licenses, by the California Department of Social Services
- (RCFE) and the California Department of Health Services (SNF), if
- necessary, and must submit a viable business and licensing plan
- (whether a business and licensing plan is viable shall be
- determined by the Debtor using its reasonable business judgment);
- (l) contains such other information reasonably requested by the
- Debtor; and
- (m) is received by each of the Notice Parties prior to the Bid Deadline.

Notwithstanding the foregoing, Bristol is deemed as a Qualified Hospice Bidder and the

1 Hospice Asset Purchase Agreement is deemed a Qualified Hospice Bid, for all purposes  
2 and in connection with the Bidding Procedures, Auction and Hospice Asset Sale.

3 b. Home Health Qualified Bids.

4 A bid submitted by a Potential Bidder with respect to the Home Health Assets will  
5 be considered a Qualified Home Health Bid (each, a "Qualified Home Health Bid," and  
6 each such Potential Bidder thereafter a "Qualified Home Health Bidder") only if the bid  
7 complies with the following requirements:

8 (a) accept the terms of the proposed Home Health Asset Purchase  
9 Agreement, attached hereto as **Exhibit C**, or includes a Competing  
10 Purchase Agreement, including to the extent feasible, all exhibits  
11 and schedules thereto, and contains terms and conditions that,  
12 taken as a whole, are higher or otherwise better than the terms and  
13 conditions of the Home Health Asset Purchase Agreement, as  
14 determined by the Debtor using its business judgment, duly  
15 authorized and executed by the Potential Bidder, along with a  
16 redlined, marked copy showing all changes between the Competing  
17 Purchase Agreement and the proposed Home Health Asset  
18 Purchase Agreement. Any Qualified Home Health Bid that accepts  
19 the terms of the Home Health Asset Purchase Agreement, or,  
20 alternatively, proposes a Competing Purchase Agreement, must  
21 agree or provide for the following:

- 22 (i) the cash purchase price shall be no less than \$800,000, plus  
23 the out-of-pocket costs and expenses of HMS (not to exceed  
24 \$21,000) ("Home Health Care Minimum Overbid");
- 25 (ii) if the Potential Bidder wishes to acquire assets of the home  
26 health care business that are not being sold under the Home  
27 Health Asset Purchase Agreement, the Home Health Care  
28 Minimum Overbid shall include an additional cash price offer;
- (iii) a disclaimer of any right of the Potential Bidder to receive a  
breakup fee or termination fee, and waives any claim to  
compensation under section 503(b) of the Bankruptcy Code  
for making a substantial contribution;
- (iv) an identification, with particularity, which liabilities, executory  
contracts and unexpired leases that have been identified to  
Potential Bidders through the diligence process the Potential  
Bidder would agree to assume;
- (v) a contact person(s) for the proposed assignee that the

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applicable counterparty may directly contact in connection with adequate assurance of future performance issues; and

(vi) a proposed closing date that is not later than August 1, 2020;

(b) includes a cashier’s check made payable to the order of Visiting Nurse Association of the Inland Counties or evidence of electronic funds transfer in accordance with instructions to be provided by the Debtor equal to 5% of the Home Health Care Minimum Overbid, which will be retained by the Debtor as a refundable deposit for application against the purchase price at the closing of the transaction, returned to the Potential Bidder, or forfeited to the Debtor as set forth below;

(c) identifies the full legal name of the Potential Bidder (including any equity holders or other financial backers sponsoring or participating in connection with such bid);

(d) provides that such offer remains open and irrevocable as follows (i) until the closing of the Sale if it is designated as the Successful Bid, (ii) until the Back-Up Expiration Date if it is designated as the Back-Up Bid, and (iii) in all other cases, three (3) business days after conclusion of the Sale Hearing;

(e) is accompanied by evidence establishing the Potential Bidder’s ability to provide adequate assurance of future performance with respect to the executory contracts and unexpired leases identified in subparagraph (a)(iv) above. If the Debtor concludes, exercising its business judgment, that the information establishing adequate assurance is not sufficient, then the Debtor may request specific additional information from the Potential Bidder in writing and the Potential Bidder shall have a reasonable period of time to supplement the information it provided to establish adequate assurance;

(f) is accompanied by evidence establishing, based upon the Debtor’s business judgment, that the Potential Bidder has the financial ability to pay, including through committed financing, or otherwise fulfill the conditions relating to payment of the Home Health Care Minimum Overbid; such evidence shall include, but is not limited to, (i) current audited financial statements (to the extent they are otherwise prepared in the ordinary course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an entity that was recently capitalized for the purpose of acquiring the home health care business, current audited financial statements of its equity holder(s) or their affiliate(s) (to the extent they are otherwise prepared in the ordinary course of business) who shall either guarantee the obligations of the Potential Bidder or provide such other form of financial disclosure and credit-quality support information or



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1 enhancement or (ii) documents evidencing committed financing for  
2 the Home Health Care Minimum Overbid, as deemed reasonably  
3 acceptable by the Debtor, in its sole discretion. The Potential  
4 Bidder may elect to only provide the information required under this  
5 subsection upon the execution of confidentiality agreement by the  
6 Debtor and the Potential Bidder, its equity holders and its affiliates.  
7 The form of confidentiality agreement shall be provided by the  
8 Debtor to any Potential Bidder upon request;

6 (g) is accompanied by evidence establishing, based upon the Debtor's  
7 business judgment, that (a) the Potential Bidder is capable and  
8 qualified, financially, legally and otherwise, of unconditionally  
9 performing all obligations under the proposed Home Health Asset  
10 Purchase Agreement or the Competing Purchase Agreement, and  
11 (b) all necessary internal, board, and shareholder approvals related  
12 to the submission, execution, delivery, and closing of the Home  
13 Health Asset Purchase Agreement or the Competing Purchase  
14 Agreement, have been or can timely be obtained;

12 (h) is not subject to any due diligence or financing contingencies of any  
13 kind, or any contingencies related to any internal or investment  
14 committee or similar approvals;

14 (i) includes an acknowledgement and representation, in form and  
15 substance satisfactory to the Debtor that the Potential Bidder:  
16 (a) has had an opportunity to conduct any and all required due  
17 diligence regarding the home health care business prior to making  
18 its offer, (b) has relied solely upon its own independent review,  
19 investigation, and/or inspection of any documents and/or the  
20 hospice business in making its bid, (c) did not rely upon any written  
21 or oral statements, representations, promises, warranties, or  
22 guaranties whatsoever, whether express or implied (by operation of  
23 law or otherwise), regarding the home health care business, and  
24 (d) affirmatively consents to the jurisdiction of the Court,  
25 affirmatively consents to the Court entering a final order, and  
26 waives any right to a jury trial, in each case in connection with any  
27 disputes relating to the relief sought in the Motion and the  
28 construction and enforcement of any sale transaction documents;

23 (j) includes proof that the Potential Bidder is licensed, or will be able to  
24 obtain licenses, by the California Department of Social Services  
25 (RCFE) and the California Department of Health Services (SNF), if  
26 necessary, and must submit a viable business and licensing plan  
27 (whether a business and licensing plan is viable shall be  
28 determined by the Debtor using its reasonable business judgment);

27 (k) contains such other information reasonably requested by the  
28 Debtor; and

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1 (l) is received by each of the Notice Parties (as defined herein) prior to  
2 the Bid Deadline.

3 Notwithstanding the foregoing, HMS is deemed as a Qualified Home Health Bidder and  
4 the Home Health Asset Purchase Agreement is deemed a Qualified Home Health Bid, for  
5 all purposes and in connection with the Bidding Procedures, Auction and Home Health  
6 Asset Sale.

7 c. Combined Hospice and Home Health Care Qualified Bids

8 A bid submitted by a Potential Bidder with respect to both the Hospice Assets and  
9 the Home Health Assets (collectively, the "Combined Assets") will be considered will be  
10 considered a Qualified Combined Asset Bid (each, a "Qualified Combined Asset Bid," and  
11 together with any Qualified Hospice Bid and Qualified Home Health Bid, the "Qualified  
12 Bids" and each such Potential Bidder thereafter a "Qualified Combined Asset Bidder") only  
13 if the bid complies with the following requirements:

14 (a) submit a Competing Asset Purchase Agreement, including all  
15 exhibits and schedules thereto, and contains terms and conditions  
16 that, taken as a whole, are higher or otherwise better than the terms  
17 and conditions of the Asset Purchase Agreements, to the extent  
18 such agreements do not conflict, as determined by the Debtor using  
19 its business judgment. Any Qualified Combined Asset Bid that  
20 proposes a Competing Purchase Agreement, must agree or provide  
21 for the following:

22 (vii) the cash purchase price that is greater than the aggregate  
23 value of the Hospice Asset Minimum Overbid and Home  
24 Health Care Minimum Overbid ("Combined Asset Minimum  
25 Overbid");

26 (viii) a disclaimer of any right of the Potential Bidder to receive a  
27 breakup fee or termination fee, and waives any claim to  
28 compensation under section 503(b) of the Bankruptcy Code  
for making a substantial contribution;

(ix) an identification, with particularity, which liabilities, executory  
contracts and unexpired leases that have been identified to  
Potential Bidders through the diligence process the Potential  
Bidder would agree to assume;

(x) a contact person(s) for the proposed assignee that the

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applicable counterparty may directly contact in connection with adequate assurance of future performance issues; and

(xi) a proposed closing date that is not later than August 31, 2020 with respect to the Hospice Assets and August 1, 2020 with respect to the Home Health Assets;

(b) includes a cashier's check made payable to the order of Visiting Nurse Association of the Inland Counties or evidence of electronic funds transfer in accordance with instructions to be provided by the Debtor equal to 5% of the Combined Asset Minimum Overbid, which will be retained by the Debtor as a refundable deposit for application against the purchase price at the closing of the transaction, returned to the Potential Bidder, or forfeited to the Debtor as set forth below;

(c) identifies the full legal name of the Potential Bidder (including any equity holders or other financial backers sponsoring or participating in connection with such bid);

(d) it included a signed writing that the Potential Bidder's offer will remain open and irrevocable as follows (i) until the closing of the Sale if it is designated as the Successful Bid, (ii) until the Back-Up Expiration Date if it is designated as the Back-Up, and (iii) in all other cases, three (3) business days after conclusion of the Sale Hearing;

(e) is accompanied by evidence establishing the Potential Bidder's ability to provide adequate assurance of future performance with respect to the executory contracts and unexpired leases identified in subparagraph (a)(iv) above. If the Debtor concludes, exercising its business judgment, that the information establishing adequate assurance is not sufficient, then the Debtor may request specific additional information from the Potential Bidder in writing and the Potential Bidder shall have a reasonable period of time to supplement the information it provided to establish adequate assurance;

(f) is accompanied by evidence establishing, based upon the Debtor's business judgment, that the Potential Bidder has the financial ability to pay, including through committed financing, or otherwise fulfill the conditions relating to payment of the Combined Asset Minimum Overbid; such evidence shall include, but is not limited to, (i) current audited financial statements (to the extent they are otherwise prepared in the ordinary course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an entity recently capitalized a for the purpose of acquiring the hospice and home health care businesses, current audited financial statements of its equity

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1 holder(s) or their affiliate(s) (to the extent they are otherwise  
2 prepared in the ordinary course of business) who shall either  
3 guarantee the obligations of the Potential Bidder or provide such  
4 other form of financial disclosure and credit-quality support  
5 information or enhancement or (ii) documents evidencing  
6 committed financing for the Combined Asset Minimum Overbid, as  
7 deemed reasonably acceptable by the Debtor, in its sole discretion.  
8 The Potential Bidder may elect to only provide the information  
9 required under this subsection upon the execution of confidentiality  
10 agreement by the Debtor and the Potential Bidder, its equity  
11 holders and its affiliates. The form of confidentiality agreement  
12 shall be provided by the Debtor to any Potential Bidder upon  
13 request;

9 (g) is accompanied by evidence establishing, based upon the Debtor's  
10 business judgment, that the Potential Bidder is capable and  
11 qualified, financially, legally and otherwise, of unconditionally  
12 performing all obligations under the Competing Purchase  
13 Agreement;

13 (h) it includes confirmation that there are no conditions precedent to  
14 the Potential Bidder's ability to enter into a definitive agreement and  
15 that all necessary internal governance and shareholder approvals  
16 have been obtained prior to the bid;

16 (i) is not subject to any due diligence or financing contingencies of any  
17 kind, or any contingencies related to any internal or investment  
18 committee or similar approvals;

18 (j) includes an acknowledgement and representation, in form and  
19 substance satisfactory to the Debtor that the Potential Bidder:  
20 (a) has had an opportunity to conduct any and all required due  
21 diligence regarding the hospice and home health care businesses  
22 prior to making its offer, (b) has relied solely upon its own  
23 independent review, investigation, and/or inspection of any  
24 documents and/or the hospice and home health care businesses in  
25 making its bid, (c) did not rely upon any written or oral statements,  
26 representations, promises, warranties, or guaranties whatsoever,  
27 whether express or implied (by operation of law or otherwise),  
28 regarding the hospice and home health care businesses, and  
29 (d) affirmatively consents to the jurisdiction of the Court,  
30 affirmatively consents to the Court entering a final order, and  
31 waives any right to a jury trial, in each case in connection with any  
32 disputes relating to the relief sought in the Motion and the  
33 construction and enforcement of any sale transaction documents;

27 (k) includes proof that the Potential Bidder is licensed, or will be able to  
28 obtain licenses by the California Department of Social Services

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(RCFE) and the California Department of Health Services (SNF), if necessary, and must submit a viable business and licensing plan (whether a business and licensing plan is viable shall be determined by the Debtor using its reasonable business judgment);

(l) contains such other information reasonably requested by the Debtor; and

(m) is received by each of the Notice Parties (as defined herein) prior to the Bid Deadline.

d. Determination of Qualified Bid

Any Potential Bidder that timely submits a Qualified Bid, as set forth above, shall be deemed a "Qualified Bidder" and may bid for the Hospice or Home Health Assets, or both, and may modify its bid in subsequent rounds to include or exclude assets or liabilities and to modify other terms of its bid, as it deems appropriate, at the Sale Hearing. Any Potential Bidder that fails to submit a timely, conforming Qualified Bid, as set forth above, shall be disqualified from bidding at the Sale Hearing, unless the Court orders otherwise.

The Debtor, in the exercise of its business judgment, may consider, as a single Qualified Bid, multiple bids for the Hospice and/or Home Health Assets, or both, or any portion thereof, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid. The Debtor may permit Potential Bidders who submitted such multiple bids by the Bid Deadline but who were not identified as a component of a single Qualified Bid consisting of such multiple bids and which otherwise satisfy the Qualified Bid criteria set forth above, to participate at the Sale Hearing and to submit at the Sale Hearing a higher or otherwise better bid that in subsequent rounds of bidding may be considered, together with other bids, as part of a single Qualifying Bid for overbid purposes.

The Debtor shall provide a copy of (i) all Qualifying Hospice Bids and Qualifying Combined Asset Bids to Bristol within one (1) business day after any such bid has been deemed a Qualified Bid and (ii) all Qualifying Home Health Bids and Qualifying Combined

1 Asset Bids to HMS, in each case no later than within one (1) business day after any such  
2 bid has been deemed a Qualified Bid.

3 All Qualified Bidders at the Sale Hearing shall be deemed to have consented to the  
4 jurisdiction of the Court and waived any right to a jury trial in connection with any disputes  
5 relating to the Sale Hearing and the construction and enforcement of any sale transaction  
6 documents.

7 **C. Bid Deadline**

8 A Potential Bidder that desires to make an Qualified Bid will deliver written copies  
9 of its Qualified Bid to each of the following parties by electronic mail: (i) Adam Meislik,  
10 the Debtor's Chief Restructuring Officer (email: ameislik@force10partners.com); (ii) David  
11 M. Goodrich, counsel to the Debtor (email: dgoodrich@wgllp.com); and (iii) Andre Ulloa,  
12 the Debtor's finders (email: andre@ahcteam.com) (collectively, the "Notice Parties"), no  
13 later than June 25, 2020 at 5:00 p.m. (Prevailing Pacific Time). A failure to be timely be  
14 qualified as a bidder may result in an exclusion from bidding at the Sale Hearing. The  
15 Debtor, however, reserves the right to extend the Bid Deadline.

16 **D. Evaluation of Competing Bids**

17 In the event that there are competing bids for the Hospice Assets or the Home  
18 Health Assets, or both, a Qualified Bid will be evaluated by the Debtor and shall be  
19 analyzed using several factors including, but not limited to: (i) the amount of the proposed  
20 purchase price, including the liabilities being assumed, (ii) the assets to be purchased,  
21 (iii) the risks and timing associated with consummating such bid, (iv) the terms of the  
22 Competing Purchase Agreement, should one be presented, (v) to the extent applicable,  
23 the ability of the Qualified Bidder to obtain appropriate regulatory approvals, (vi) the  
24 capitalization and adequate assurance provided by the Potential Bidder with respect to its  
25 likely future performance and satisfaction of any liabilities related to assumed executory  
26 contracts and unexpired leases as well as any other assumed liabilities, including any  
27 pension related obligations, and (vii) any other factors deemed relevant by the Debtor in  
28 the exercise of its business judgment.

1 **E. No Competing Bid**

2 If the Debtor does not receive any Qualified Bids other than the Asset Purchase  
3 Agreements, then the Debtor will not hold an Auction and Bristol and HMS will be named  
4 the Successful Bidders. But if the Debtor receives any Qualified Bids, the Debtor will  
5 proceed to conduct an Auction, otherwise pursuant to the terms and conditions set forth  
6 herein, to consider such Qualified Bids.

7 **F. Combined Asset Auction Procedures**

8 If one or more Qualified Combined Asset Bids are received for the Combined  
9 Assets, the Debtor will conduct an Auction at the Sale Hearing on June 30, 2020 at 2:00  
10 p.m. (prevailing Pacific Time) (the "Auction Date"), at the Court (such Auction, the  
11 "Combined Asset Auction"). A Combined Asset Auction shall be governed by the  
12 following procedures:

- 13 (a) the Auction will be conducted openly and the actual identity of each  
14 Qualified Combined Asset Bidder will be disclosed on the record at  
15 the Auction;
- 16 (b) any Qualified Combined Asset Bidder must attend in person (unless  
17 no Auction is to be conducted);
- 18 (c) all Qualified Bidders (including Bristol and HMS) shall be entitled to  
19 bid at the Auction, including on subsets of the Combined Assets;
- 20 (d) each Qualified Combined Asset Bidder shall be required to confirm  
21 that it has not engaged in any collusion with respect to the bidding or  
22 the sale, and that its Qualified Combined Asset Bid is a good faith  
23 bona fide offer and that it intends to consummate the proposed  
24 transaction if selected as the Successful Bidder;
- 25 (e) at least one (1) business day prior to the Auction, each Qualified  
26 Combined Asset Bidder who has timely submitted a Qualified  
27 Combined Asset Bid must inform the Debtor whether it intends to  
28 attend the Auction; provided that in the event a Qualified Combined  
Asset Bidder elects not to attend the Auction, such Qualified  
Combined Asset Bidder's Qualified Combined Asset Bid shall  
nevertheless remain fully enforceable against such Qualified  
Combined Asset Bidder and such Qualified Combined Asset Bidder  
may still be designated by the Debtor as the leading bid, Successful  
Bidder or the Back-Up Bidder.

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- 1 (f) prior to the Auction, the Debtor will provide a summary of the
- 2 Qualified Combined Asset Bid or combination of Qualified Combined
- 3 Asset Bids which the Debtor believes, in its business judgment, is
- 4 the highest or otherwise best offer ("Combined Asset Starting Bid")
- 5 to Bristol, HMS and each Qualified Combined Asset Bidder that
- 6 submitted a Qualified Combined Asset Bid. The Debtor may
- 7 aggregate Qualified Combined Asset Bids from unaffiliated persons
- 8 to create the Combined Asset Starting Bid; provided that all Qualified
- 9 Combined Asset Bids shall remain subject to the provisions of 11
- 10 U.S.C. § 363 (n) regarding collusive bidding;
- 11 (g) bidding will commence at the Combined Asset Starting Bid;
- 12 (h) each subsequent bid shall be in increments of no less than \$100,000
- 13 higher than the immediately preceding bid;
- 14 (i) the Auction shall be conducted openly and on the Court's record;
- 15 (j) the Auction shall continue until, in the Debtor's business judgment
- 16 and subject to Court approval, there is a highest or otherwise best
- 17 bid or combination of bids (collectively, the "Successful Bid") and the
- 18 party deemed to have made the Successful Bid shall become the
- 19 "Successful Bidder".

20 As used herein, the term "Successful Combined Asset Purchase Agreement" shall  
21 mean the Competing Purchase Agreement(s) of the Successful Bidder(s).

22 **G. Hospice Auction Procedures**

23 In the absence of a Combined Asset Auction, if no Qualified Combined Asset Bid is  
24 received and one or more Qualified Hospice Bids are received for the Hospice Assets, the  
25 Debtor will conduct an Auction at the Sale Hearing on the Auction Date, at the Court (such  
26 Auction, the "Hospice Auction"). The Hospice Auction shall be governed by the following  
27 procedures:

- 28 (a) the Auction will be conducted openly and the actual identity of each
- Qualified Hospice Bidder will be disclosed on the record at the
- Auction;
- (b) each Qualified Hospice Bidder shall be required to confirm that it has
- not engaged in any collusion with respect to the bidding or the sale;
- (c) only Bristol and the Qualified Hospice Bidders who have timely
- submitted a Qualified Hospice Bid will be entitled to make any



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subsequent bids at the Auction;

(d) all Qualified Hospice Bidders who have timely submitted a Qualified Hospice Bid will be entitled to be present at the Auction, and the actual identity of each Qualified Hospice Bidder will be disclosed on the record at the Auction; provided that all Qualified Hospice Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Hospice Bidder attending the Auction in person;

(e) at least one (1) business day prior to the Auction, each Qualified Hospice Bidder who has timely submitted a Qualified Hospice Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Hospice Bidder elects not to attend the Auction, such Qualified Hospice Bidder's Qualified Hospice Bid shall nevertheless remain fully enforceable against such Qualified Hospice Bidder and such Qualified Hospice Bidder may still be designated by the Debtor as the leading bid, Successful Bidder or the Back-Up Bidder;

(f) bidding at the Auction will begin with a bid determined by the Debtor as being the then highest and best bid, which will be announced by the Debtor prior to the commencement of the Auction (the "Baseline Hospice Bid"). The Auction will continue in bidding increments of at least \$100,000.00 (each a "Hospice Overbid") until the selection of a Successful Bid (defined below) and a Back-Up Bidder in accordance with the procedures set forth below;

(g) the Debtor may employ and announce at the Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the Auction, (ii) in the best interest of the Debtor's estate; provided, however, that any such rules are disclosed to Bristol and each Qualified Hospice Bidder participating in the Auction;

(h) the Auction shall be conducted openly and on the Court's record, if the latter is approved by the Court; and

(i) the Auction shall continue until, in the Debtor's business judgment and subject to Court approval, there is a highest or otherwise best bid or combination of bids (collectively, the "Successful Bid") and the party deemed to have made the Successful Bid shall become the "Successful Bidder".

1 As used herein, the term “Successful Hospice Bidder’s Purchase Agreement” shall  
2 mean, as applicable, the (i) Hospice Asset Purchase Agreement or Competing Purchase  
3 Agreement of the Successful Bidder(s), if applicable.

4 **H. Home Health Care Auction Procedures**

5 In the absence of a Combined Asset Auction, if no Qualified Combined Asset Bid  
6 is received and one or more Qualified Home Health Bids are received for the Home  
7 Health Assets, the Debtor will conduct an auction at the Sale Hearing on the Auction Date,  
8 at the Court (such Auction, the “Home Health Auction”). The Home Health Auction shall  
9 be governed by the following procedures:

- 10 (a) the Auction will be conducted openly and the actual identity of each  
11 Qualified Home Health Bidder will be disclosed on the record at the  
12 Auction;
- 13 (b) HMS and any Qualified Home Health Bidder must attend the Auction  
14 in person (unless no Auction is to be conducted);
- 15 (c) only HMS and any Qualified Home Health Bidder shall be entitled to  
16 bid for the Home Health Assets at the Auction;
- 17 (d) each Qualified Home Health Bidder shall be required to confirm that  
18 it has not engaged in any collusion with respect to the bidding or the  
19 sale, and that its Qualified Home Health Overbid is a good faith bona  
20 fide offer and that it intends to consummate the proposed transaction  
21 if selected as the Successful Bidder;
- 22 (e) at least one (1) business day prior to the Auction, each Qualified  
23 Home Health Bidder who has timely submitted a Qualified Home  
24 Health Bid must inform the Debtor whether it intends to attend the  
25 Auction; provided that in the event a Qualified Home Health Bidder  
26 elects not to attend the Auction, such Qualified Home Health  
27 Bidder’s Qualified Home Health Bid shall nevertheless remain fully  
28 enforceable against such Qualified Home Health Bidder and such  
Qualified Home Health Bidder may still be designated by the Debtor  
as the leading bid, Successful Bidder or the Back-Up Bidder.
- (f) prior to the Auction, the Debtor will provide a summary of the  
Qualified Home Health Bid or combination of Qualified Bids which  
the Debtor believes, in its business judgment, is the highest or  
otherwise best offer (“Home Health Care Starting Bid”) to HMS and  
each Potential Bidder that submitted a Qualifying Bid. The Home  
Health Care Starting Bid must be no less than the Home Health Care

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- 1 Minimum Overbid. The Debtor may aggregate Qualified Home
- 2 Health Bids from unaffiliated persons to create the Home Health
- 3 Care Starting Bid; provided that all Qualified Home Health Bidders
- 4 shall remain subject to the provisions of 11 U.S.C. § 363 (n)
- 5 regarding collusive bidding;
- 6 (g) bidding will commence at the Home Health Care Starting Bid;
- 7 (h) each subsequent bid shall be in increments of no less than \$50,000
- 8 higher than the immediately preceding bid; and
- 9 (i) the Auction shall be conducted openly and on the Court's record, if
- 10 the latter is approved by the Court; the Auction shall continue until, in
- 11 the Debtor's business judgment and subject to Court approval, there
- 12 is a highest or otherwise best bid or combination of bids (collectively,
- 13 "Successful Bid") and the party deemed to have made the
- 14 Successful Bid shall become the "Successful Bidder".

15 As used herein, the term "Successful Home Health Bidder's Purchase Agreement"  
16 shall mean, as applicable, the (i) Home Health Asset Purchase Agreement or Competing  
17 Purchase Agreement(s) of the Successful Bidder(s), if applicable.

18 **I. Selection of Successful Bidder; As-Is Where-Is**

19 The determination of the Successful Bids and the Back-Up Bids (as defined below)  
20 by the Debtor at the conclusion of the Auction(s) shall be final, subject only to approval by  
21 the Court. The Sales will be on an "as is, where is" basis and without representations or  
22 warranties of any kind by the Debtor, their agents or the Debtor's chapter 11 estate,  
23 except and solely to the extent expressly set forth in the Successful Hospice Bidder's  
24 Purchase Agreement and the Successful Home Health Bidder's Purchase Agreement or  
25 Successful Combined Asset Bidder's Purchase Agreement.

26 Unless otherwise agreed to by the Debtor and the applicable Successful Bidder(s),  
27 should it not be Bristol or HMS, within two (2) business days after the conclusion of the  
28 Auction(s), the Successful Bidder(s) shall complete and execute all agreements,  
contracts, instruments, and other documents evidencing and containing the terms and  
conditions upon which the bid(s) of the Successful Bidder(s) bid was made.

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1           **J.       Additional Deposits and Return of Deposits**

2           All deposits shall be returned to each Qualified Bidder not selected by the Debtor  
3 as the Successful Bidder or the Back-Up Bidder no later than five (5) business days  
4 following the conclusion of the Auction(s). The Successful Bidder’s deposit will be  
5 credited towards the purchase price at the closing under the Successful Bidder’s  
6 Purchase Agreement. The Back-Up Bidder’s deposit shall be returned to it no later than  
7 five (5) business days after the Back-Up Expiration Date (as defined below) or, if the  
8 Back-Up Bidder is selected as the Successful Bidder and the Debtor elects to  
9 consummate the sale with the Back-Up Bidder, its deposit will be credited towards the  
10 purchase price at the closing under the Back-Up Bid.

11           If the Successful Bidder fails to consummate the Sale because of a breach or  
12 failure to perform on the part of the Successful Bidder, the Successful Bidder’s deposit  
13 shall be forfeited to the Debtor, and the Debtor shall have the right to seek any and all  
14 other remedies and damages from the defaulting Successful Bidder.

15           **K.       Back-Up Bidder**

16           To the extent applicable to either Auction, the Qualified Bidder with the next  
17 highest or otherwise best Qualified Bid (“Back-Up Bid”), as determined by the Debtor may  
18 select, in its sole discretion, to serve as the back-up bidder (“Back-Up Bidder”). The  
19 Back-Up Bidder shall be required to keep the applicable Back-Up Bid open and  
20 irrevocable until the earlier of (i) the closing under the applicable Successful Bidder’s  
21 Purchase Agreement and (ii) 5:00 p.m. (Prevailing Pacific Time) of the first business day  
22 that is 60 days after the Auction Date (the “Back-Up Expiration Date”). If a Successful  
23 Bidder fails to consummate the approved sale because of a breach or failure to perform  
24 on the part of such Successful Bidder, the Debtor shall have the right, but not the  
25 obligation, to accept the applicable Back-Up Bidder’s bid, in which case the Back-Up  
26 Bidder will be immediately notified and deemed to be the Successful Bidder for all  
27 purposes under these Bidding Procedures (and the applicable asset purchase agreement  
28 or Competing Purchase Agreement relating to the applicable Back-Up Bid will be deemed

1 to be the Successful Bidder's Purchase Agreement for all purposes hereunder), and the  
2 Debtor will be authorized to consummate the Sale with the Back-Up Bidder without further  
3 order of the Court; provided, however, that any sale to a Back-Up Bidder shall be  
4 consummated no later than the Back-Up Expiration Date.

5 **L. Credit Bid Rights**

6 Subject to applicable law, secured creditors of the Debtor shall have the right to  
7 use their allowed prepetition secured claims and post-petition secured claims, in all cases  
8 subject to section 363 (k) of the Bankruptcy Code, to credit bid with respect to the  
9 proposed sales of the Hospice Assets and Home Health Assets.

10 **M. Reservation of Rights**

11 Notwithstanding any of the foregoing, the Debtor reserves the right to modify the  
12 Bidding Procedures at or prior to the Auction, including, without limitation, to extend the  
13 deadlines set forth herein, modify bidding increments, waive terms and conditions set forth  
14 herein with respect to any or all potential bidders, impose additional terms and conditions  
15 with respect to any or all Potential Bidders; adjourn or cancel the Auction at or prior to the  
16 Auction, and adjourn or cancel the Sale Hearing and withdraw the sale motion if the  
17 proposed sale is impractical or improvident at the time of the Sale Hearing. The Debtor  
18 will not, however, modify the Bidding Procedures in a manner that violates the Asset  
19 Purchase Agreement. The Debtor further reserve the right, in the exercise of its business  
20 judgment, to terminate discussions with any or all Potential Bidders at any time without  
21 specifying the reasons therefor.

22 **N. Sale Hearing**

23 The Debtor will seek entry of the Sale Order at the Sale Hearing on June 30, 2020  
24 at 2:00 p.m. (prevailing Pacific Time) (or at another date and time convenient to the  
25 Court), to approve and authorize the sale transaction to the Successful Bidder(s) (or the  
26 Back-Up Bidder, if applicable) on terms and conditions determined in accordance with the  
27 Bidding Procedures.  
28

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1 At the Sale Hearing, the Debtor will seek Court approval of the sale to the  
2 Successful Bidder(s) (or, in the event the Successful Bidder fails to close, the Back-Up  
3 Bidder), free and clear of the Encumbrances pursuant to 11 U.S.C. § 363, with the  
4 Encumbrances, as applicable, to attach to the sale proceeds with the same validity and in  
5 the same order of priority as they attached to the Purchased Assets, including the  
6 assumption by the Debtor and assignment to the Successful Bidder(s) of the Assigned  
7 Contracts and Leases pursuant to 11 U.S.C. § 365. The Debtor will submit and present  
8 additional evidence, as necessary, at the Sale Hearing demonstrating that the sale is fair,  
9 reasonable, and in the best interest of the Debtor’s estate and all interested parties, and  
10 satisfies the standards necessary to approve a sale of the Purchased Assets.

11 **V. REQUEST FOR STALKING HORSE PROTECTIONS**

12 Bristol and HMS have been deemed “stalking horse bidders” by the Debtor.  
13 Recognizing the expenditure of time, energy and resources by Bristol and HMS, and  
14 acknowledges and appreciating that a "stalking horse bid" provides a floor bid with  
15 respect to the assets that they have offered to purchase, which may entice other  
16 potential bidders to offer more to acquire the Hospice Assets and/or Home Health  
17 Assets, the Debtor proposes that its agreement to provide certain bidding protections  
18 to Bristol and HMS be approved as part of this Motion.

19 Debtor has agreed that if the Hospice Asset Purchase Agreement is terminated  
20 because the Debtor consummates a transaction with another Qualified Hospice  
21 Bidder(s) or Qualified Combined Asset Bidder(s) at the Auction, Bristol will be paid an  
22 amount in cash equal of out-of-pocket costs and expenses of Bristol and its affiliates  
23 incurred in connection with the diligence, negotiation, documentation, and bidding and  
24 auction process (including any legal and financial advisory fees and expenses) in an  
25 amount not to exceed \$250,000 (“Bristol Expense Reimbursement”), and a break-up  
26 fee equal to 3% of the Purchase Price (as defined in the Hospice Asset Purchase  
27 Agreement) minus the Bristol Expense Reimbursement (“Bristol Break-up Fee,” and  
28 together with the Bristol Expense Reimbursement, the “Bristol Stalking Horse”

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1 Protections”). Debtor requests that the Bristol Stalking Horse Protections shall be paid  
2 out of the proceeds of the Hospice Sale or Combined Asset Sale without any further  
3 order of the Court. The Bristol Stalking Horse Protections also authorize the granting of  
4 a lien to Bristol on any deposit held by escrow for the Hospice Asset Sale should Bristol  
5 not be the Successful Bidder as well as an allowed administrative claim against the  
6 Estate, both of which shall be automatically satisfied and released upon payment of the  
7 entire amount of the Bristol Stalking Horse Protections to Bristol.

8 The Bristol Stalking Horse Protections will only be enforceable by Bristol so long  
9 as: (i) Bristol is not in default of its obligations under the Hospice Asset Purchase  
10 Agreement; (ii) the Hospice Assets are not sold to Bristol, but sold to another  
11 Successful Bidder at the Auction; and (iii) the sale to the other Successful Bidder is  
12 consummated. The Bristol Stalking Horse Protections, if payable, will be the sole and  
13 exclusive remedy of Bristol if the proposed sale to Bristol is not consummated.

14 The Debtor has agreed to payment from the Successful Bidder to HMS, should  
15 HMS not be determined to be the Successful Bidder for the home health care  
16 business, of out-of-pocket costs and expenses of HMS and its affiliates incurred in  
17 connection with the diligence, negotiation, documentation, and bidding and auction  
18 process (including any legal and financial advisory fees and expenses) in an amount  
19 not to exceed \$21,000<sup>2</sup> ("HMS Expense Reimbursement and Break-up Fee") (the  
20 HMS Expense Reimbursement and Break-up Fee is also referred to as the "HMS  
21 Stalking Horse Protections"). The HMS Stalking Horse Protections also provide for an  
22 allowed administrative claim against the Estate, which shall be automatically satisfied and  
23 released upon payment of the entire amount of HMS Stalking Horse Protections to HMS  
24 by the Successful Bidder. The HMS Stalking Horse Protections will only be enforceable by  
25 HMS so long as: (i) HMS is not in default of its obligations under the Purchase  
26 Agreement, and (ii) the home health care business is sold to a Successful Bidder at  
27

28 <sup>2</sup> 3% of \$700,000 purchase price.

1 the Auction and the sale to the other Successful Bidder is consummated. The Stalking  
2 Horse Protections, if payable, will be the sole and exclusive remedy of HMS if the  
3 proposed sale to HMS is not consummated. Only the Successful Bidder, and not the  
4 Debtor, shall be responsible for payment of the HMS Stalking Horse Protections to HMS.

5 **VI. NOTICE PROCEDURES FOR AUCTION AND SALE HEARING**

6 In order to ensure all parties in interest and potential buyers receive adequate  
7 notice of the Sales, the Debtor proposes the following notice procedures:

- 8 (a) the Debtor shall publish a notice in the Riverside Press-Enterprise on  
9 one occasion no later than twenty-one (21) days before the Sale  
10 Hearing or as reasonably practicable thereafter describing, in  
11 summary, the salient terms and conditions of the Sales;
- 12 (b) The Debtor shall post a copy of the Court’s Notice of Sale of Estate  
13 Property (Local Bankruptcy Form 6004-2), without exhibits, in a  
14 common area at the Debtor’s Riverside and Palm Desert premises no  
15 later than twenty-one (21) days before the Sale Hearing; and
- 16 (c) The Debtor shall file with the Court and serve on (i) all parties-in-  
17 interest, including all entities reasonably known to have expressed an  
18 interest in a transaction with respect to all or part of the Hospice  
19 Assets and the Home Health Assets within the past year; (ii) all  
20 entities known to have asserted any lien, claim, interest, or  
21 encumbrance in or upon any of the Hospice Assets and the Home  
22 Health Assets; (iii) counsel for the Committee; (iv) any patient care  
23 ombudsman appointed in this chapter 11 case; and (v) the Office of  
24 the United States Trustee, no later than twenty-one (21) days before  
25 the Sale Hearing, a copy of the sale notice, which shall include a copy  
26 of this Order, including all exhibits hereto, and (iv) serve and file a  
27 notice of sale hearing, including the disclosures and exhibits required  
28 by Local Bankruptcy Rule 6004-1(b)(2), no later than twenty-one (21)  
days before the Sale Hearing.

23 The above-referenced procedures are referred to herein as “Notice Procedures.”  
24 The Debtor believes the Notice Procedures are adequate and consistent with the  
25 Bankruptcy Rules and LBRs and, therefore, requests the Court approve the proposed  
26 notice procedures.  
27  
28

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1 **VII. PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY**  
2 **CONTRACTS AND UNEXPIRED LEASES**

3 The Assumption and Assignment Procedures, attached as **Exhibit 3** to the Bidding  
4 Procedures Order (**Exhibit A** hereto), will, among other things, govern the Debtor's  
5 provision of notice to all Contract Counterparties of Cure Costs in the event the Debtor  
6 decides to transfer the Assigned Contracts in connection with a Sales. The Debtor will file  
7 the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties  
8 at least ten (14) days prior to the Sale Hearing or (ii) such later date otherwise specified in  
9 the Cure Notice.

10 Objections to the Cure Costs set forth on the Cure Notice (a "Cure Objection") and  
11 provision of adequate assurance of future performance (an "Adequate Assurance  
12 Objection") must: (i) be in writing; (ii) state the name and address of the objecting party  
13 and the amount and nature of the claim or interest of such party; (iii) state with particularity  
14 the basis and nature of any objection, and provide proposed language that, if accepted  
15 and incorporated by the Debtor, would obviate such objection; (iv) conform to the  
16 Bankruptcy Rules and the Local Rules; (v) be filed with the Court and be served on the  
17 Objection Notice Parties (as defined in the Cure Notice) by the deadline provided in the  
18 Cure Notice.

19 Any counterparty to an Assigned Contract that is properly served with the Cure  
20 Notice and fails to file and serve an Assumption Objection and/or Adequate Assurance  
21 Objection in accordance with the paragraphs above will forever barred from making such  
22 objections.

23 The Debtor intends to assume and assign certain executory contracts related to the  
24 Hospice Assets and the Home Health Assets (the "Mixed-Use Contracts"). Following the  
25 entry of the order approving the Sales, the Mixed-Use Contracts shall be duplicated, and  
26 only the Mixed-Use Contracts pertaining to the Hospice Assets shall be assigned to  
27 Bristol, and only the Mixed-Use Contracts relating to the Home Health Assets shall be  
28 assigned to HMS. For avoidance of doubt, following assignment of the Mixed-Use

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1 Contracts, the applicable Mixed-Use Contracts counterparty will have one contract with  
2 Bristol related to the Hospice Assets and one contract with HMS related to Home Health  
3 Assets.

4 **VIII. LEGAL BASIS FOR RELIEF REQUESTED.**

5 **A. Standard for Approval of Overbidding and Bid Protections**

6 Courts have made clear that a debtor’s business judgment is entitled to substantial  
7 deference with respect to the procedures to be used in selling assets of the estate. See  
8 e.g., *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re*  
9 *Integrated Resources, Inc.)*, 147 B.R. 650, 656-57 (S.D.N.Y. 1992), *appeal dismissed*, 3  
10 F.3d 49 (2d Cir. 1993) (noting that bidding procedures that have been negotiated by a  
11 debtor are to be reviewed according to the deferential “business judgment” standard,  
12 under which such procedures and arrangements are “presumptively valid”); *In re 995 Fifth*  
13 *Ave., Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business  
14 judgment standard protects such provisions negotiated in good faith).

15 The paramount goal in any proposed sale of property of the estate is to maximize  
16 the proceeds received by the estate. See, e.g., *Integrated Resources*, 147 B.R. at 659  
17 (“It is a well-established principle of bankruptcy law that the . . . [debtors’] duty with respect  
18 to such sales is to obtain the highest price or greatest overall benefit possible for the  
19 estate.”) (quoting *Cello Bag Co. Inc. v. Champion Int’l Corp. (In re Atlanta Packaging*  
20 *Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)); see also *Four B. Corp. v. Food*  
21 *Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in  
22 bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate  
23 at hand”). To that end, courts recognize that procedures intended to enhance competitive  
24 bidding are consistent with the goal of maximizing the value received by the estate and  
25 therefore are appropriate in the context of bankruptcy sales. *Integrated Resources*, 147  
26 B.R. at 659 (such procedures “encourage bidding and [to] maximize the value of the  
27 debtor’s assets.”).

28

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1 The proposed Bidding Procedures proposed herein will establish the parameters  
2 under which the value of the Hospice Assets and Home Health Assets will be best tested  
3 against the market for such assets. The proposed Bidding Procedures will increase the  
4 likelihood that the Debtor’s creditors will receive the greatest possible consideration for the  
5 Hospice Assets and Home Health Assets because they will ensure a competitive and fair  
6 bidding process. They also allow the Debtor to undertake the Auction in as expeditious  
7 and efficient manner as possible, which the Debtor believes is essential to maximizing the  
8 value of its assets for its creditors.

9 The Debtor also believes the proposed Bidding Procedures will promote active  
10 bidding from seriously interested parties and will dispel any doubt as to the highest or  
11 otherwise best offer reasonably available for the Hospice Assets and Home Health  
12 Assets. In particular, the proposed Bidding Procedures will allow the Debtor to conduct  
13 the Auction in a controlled, fair and open fashion that will encourage participation by  
14 financially capable bidders who demonstrate the ability to close a transaction.

15 In sum, the Debtor believes the proposed Bidding Procedures – which were  
16 negotiated by the Debtor prior to the filing of this Motion – will encourage bidding for the  
17 Hospice Assets and Home Health Assets and are consistent with the relevant standards  
18 governing auctions and bidding procedures in bankruptcy proceedings. Accordingly, the  
19 proposed Bidding Procedures are reasonable, appropriate, within the Debtor’s sound  
20 business judgment and should be approved.

21 **B. The Proposed Stalking Horse Protections are Appropriate Under the**  
22 **Circumstances.**

23 Bidding protections encourage a potential purchaser to invest the requisite time,  
24 money, and effort to conduct due diligence and sale negotiations with a debtor despite the  
25 inherent risks and uncertainties of the chapter 11 process. *See, e.g., Integrated\_*  
26 *Resources*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a  
27 “white knight” to offer an initial bid by providing some form of compensation for the  
28 expenses such bidder incurs and the risks such bidder faces by having its offer held

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1 open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr.  
2 N.D. Ohio 1997) (without any reimbursement, “bidders would be reluctant to make an  
3 initial bid for fear that their first bid will be shopped around for a higher bid from another  
4 bidder who would capitalize on the initial bidder’s . . . due diligence”); *In re Marrose Corp.*,  
5 1992 WL 33848, at \*5 (Bankr. S.D.N.Y. Feb. 15, 1992) (stating that “agreements to  
6 provide reimbursement of fees and expenses are meant to compensate the potential  
7 acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”);  
8 *995 Fifth Ave. Assocs.*, 96 B.R. at 28 (finding that bidding incentives may be  
9 “legitimately necessary to convince a white knight to enter the bidding by providing some  
10 form of compensation for the risks it is undertaking”) (citations omitted).

11 Here, the Debtor seeks approval of the Bristol Stalking Horse Protections and the  
12 HMS Stalking Horse Protections. The proposed stalking horse procedures are a  
13 reasonable estimation of the investment made by Bristol and HMS in pursuing their  
14 acquisition of the Hospice Assets and Home Health Assets, respectively. Bid protections,  
15 similar to the proposed stalking horse protections for Bristol and HMS sought to be  
16 approved by this Motion, have been approved in numerous other chapter 11 cases, and  
17 termination or break-up fees in the ranges proposed are typically approved. See  
18 *Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997) (criticizing a  
19 break-up fee equal to 4.4%); *Integrated Resources*, 147 B.R. at 654 (“average break-up  
20 fee in the industry is 3.3%”).

21 While there is no binding authority in the Ninth Circuit as to the appropriate test to  
22 be used in determining whether to approve a proposed bidding incentive, such as the  
23 proposed stalking horse protections, three levels of scrutiny have been applied by courts  
24 in different jurisdictions, lending guidance on this issue.

25 Many courts, including those in the Southern District of New York, use the  
26 “business judgment” standard of review. Under this standard, a break-up fee negotiated  
27 by the debtor in good faith and with due care is presumptively valid. A court will approve  
28 bidding incentives where there is no evidence of self-dealing or manipulation, the amounts

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1 are reasonable in comparison to the purchase price, and the fee encourages, rather than  
2 chills, competitive bidding. See e.g., *Bidermann Indus. U.S.A., Inc.*, 203 B.R. at 552;  
3 *Integrated Resources*, 147 B.R. at 657.

4 Other courts (including a bankruptcy court out of Arizona), have held that a break-  
5 up fee should be approved when it is in the best interests of the estate. Under this  
6 approach, the court will not simply defer to a debtor's business judgment, but will approve  
7 bidding incentives if they are not unduly burdensome and serve the best interests of the  
8 estate and its stakeholders. See *In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr.  
9 D. Ariz. 1994); *In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995).

10 Other courts, most particularly the Third Circuit, have adopted a third  
11 "administrative expense" approach, which requires that the bidding incentive provide  
12 some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re*  
13 *O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding that, even though  
14 bidding incentives are measured against a business judgment standard in non-bankruptcy  
15 transactions, the administrative expense provisions of Bankruptcy Code section 503(b)  
16 govern in the bankruptcy context). See also *Hupp Indus.*, 140 B.R. 191. In *O'Brien*, the  
17 Third Circuit identified at least two instances in which bidding incentives may provide  
18 benefit to the estate. First, the benefit may be found if "assurance of a break-up fee  
19 promoted more competitive bidding, such as by inducing a bid that otherwise would not  
20 have been made and without which bidding would have been limited." *Id.* at 537.  
21 Second, where the availability of bidding incentives induces a bidder to research the value  
22 of the debtors and submit a bid that serves as a minimum or floor bid on which other  
23 bidders can rely, "the bidder may have provided a benefit to the estate by increasing the  
24 likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

25 Whether evaluated under the "business judgment," "best interests of the estate" or  
26 the "administrative expense" standard, the Debtor believes that the proposed stalking  
27 horse protections pass muster and will create a competitive bidding process that benefits,  
28 and is in the best interests of, the estate and its creditors.

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1 The proposed break-up fees and expense reimbursement were negotiated by the  
2 Debtor at arm's-length with Bristol and HMS and are intended to reimburse Bristol and  
3 HMS for their costs in pursuing an acquisition of the Hospice Assets and Home Health  
4 Assets. The proposed sales are calculated to provide a material benefit to the Debtor, its  
5 estate, and its stakeholders by encouraging bidding and increasing the likelihood that the  
6 best possible price for the Hospice Assets and Home Health Assets will be received.

7 Further, the Debtor does not believe the stalking horse protections, if granted, will  
8 have a chilling effect on the sale process. Rather, the existence of stalking horse bidders  
9 increases the likelihood that the best possible price for the Hospice Assets and Home  
10 Health Assets will be received by permitting other Qualified Bidders to rely on the  
11 diligence performed by Bristol and HMS, and moreover, by allowing Qualified Bidders to  
12 use the purchase agreements of Bristol and HMS as platforms for negotiations and  
13 modifications in the context of a competitive bidding process.

14 In sum, the proposed stalking horse protections are reasonable under the  
15 circumstances, will enable the Debtor to maximize the value of the Hospice Assets and  
16 Home Health Assets, while limiting any chilling effect on the sale process, and should be  
17 approved as proposed.

18 **C. Standard for Approval of Procedures for Assumption and Assignment**  
19 **of Executory Contract and Unexpired Leases**

20 Barring exceptions not herein relevant, sections 365(a) and 1107(a) authorize a  
21 debtor in possession, "subject to the Court's approval, ... [to] assume or reject any  
22 executory contract or unexpired lease of the debtor." A debtor in possession may assume  
23 or reject executory contracts for the benefit of the estate. *In re Klein Sleep Products, Inc.*,  
24 78 F.3d 18, 25 (2d. Cir. 1996); *In re Central Fla. Metal Fabrication, Inc.*, 190 B.R. 119, 124  
25 (Bankr. N.D. Fla. 1995); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). In reviewing a  
26 debtor in possession's decision to assume or reject an executory contract, a bankruptcy  
27 court should apply the "business judgment test" to determine whether it would be  
28 beneficial to the estate to assume it. *In re Continental Country Club, Inc.*, 114 B.R. 763,

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1 767 (Bankr. M.D. Fla. 1990); see also *In re Gucci*, 193 B.R. at 415. The business  
2 judgment standard requires that the court follow the business judgment of the debtor  
3 unless that judgment is the product of bad faith, whim, or caprice. *In re Prime Motors*  
4 *Inns*, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991), citing *Lubrizol Enterprises v. Richmond*  
5 *Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

6 Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign its  
7 executory contracts and unexpired leases, provided the debtor first assumes such  
8 executory contracts and unexpired leases in accordance with section 365(b)(1), and  
9 provides adequate assurance of future performance by the assignee. Pursuant to section  
10 365(b)(1), assumption of executory contracts and unexpired leases requires a debtor to:

- 11 (a) cure any existing defaults under such agreements; (b) compensate all non-debtor
  - 12 parties to such agreements for any actual pecuniary loss resulting from the defaults; and
  - 13 (c) provide adequate assurance of future performance under the contract or ease. 11
- 14 U.S.C. § 365(b)(1); see also *In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995); *In*  
15 *re AEG Acquisition Corp.*, 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), aff'd 161 B.R. 50 (9th  
16 Cir. B.A.P. 1993). Pursuant to section 365(f)(1) of the Bankruptcy Code, a debtor may  
17 assign an executory contract or unexpired lease pursuant to section 365(f)(2) of the  
18 Bankruptcy Code notwithstanding any provision in such executory contract or unexpired  
19 lease that prohibits, restricts or conditions the assignment of such executory contract or  
20 unexpired lease.

21 The assumption and assignment of executory contracts furthers the goals of  
22 Chapter 11 of promoting reorganization by balancing the debtor's interest in maximizing  
23 the value of its estate against the contracting party's interest in receiving the benefit of its  
24 bargain and being protected against default by the debtor after assumption has occurred.  
25 *In re Embers 86th Street. Inc.*, 184 B.R. 892, 896 (Bankr. S.D.N.Y. 1995).

26 Here, the proposed assumption and assignment procedures call for the notification  
27 of counter-parties to known and presumed executory contracts and unexpired lease of the  
28 Debtor's intent to assume, cure (if necessary) and assign certain executory contracts and

1 unexpired leases. Should any counter-party object or desire adequate assurances, such  
2 parties are permitted to file Assumption Objections and the Court will resolve any disputes  
3 before the executory contract or unexpired lease is assumed and assigned. As a result,  
4 Sections 365 and 1107 are satisfied under the proposed procedures set forth herein.

5 **IX. CONCLUSION.**

6 WHEREFORE, Debtor requests entry of an order, substantially in the form  
7 attached hereto as **Exhibit A**, (i) authorizing and approving the Bidding Procedures; (ii)  
8 setting the Bid Deadline; (iii) authorizing and scheduling the Auction; (iv) scheduling the  
9 Sale Hearing; (v) authorizing and approving the form and manner of the Notice  
10 Procedures; (vi) authorizing and approving the form and manner of the Asset Purchase  
11 Agreements; (vii) authorizing and approving the Assumption and Assignment Procedures;  
12 (viii) authorizing and approving the form and manner of the Cure Notices; and (ix) granting  
13 related relief.

14 Dated: May 5, 2020

WEILAND GOLDEN GOODRICH LLP

16 By: /s/ David M. Goodrich  
17 DAVID M. GOODRICH  
18 BETH E. GASCHEN  
19 Attorneys for Debtor and  
20 Debtor-in-Possession  
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Weiland Golden Goodrich LLP  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626  
Tel 714-966-1000 Fax 714-966-1002



**DECLARATION OF ADAM MEISLIK**

I, Adam Meislik, declare as follows:

1. Except as otherwise stated, I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am a member of Force Ten Partners LLC (“Force 10”). Force 10 is an advisory firm that specializes in financial and operational corporate restructuring, valuation, forensic accounting, complex litigation support, and computations involved in court proceeding and dispute resolution. Force 10 serves chapter 11 debtors, middle-market companies, as well as their creditors, stakeholders and professionals in roles including financial advisor, interim manager, fiduciary services, expert witness, financier and M&A advisor.

3. Unless otherwise stated, all capitalized terms in this declaration have the same meaning of definition as capitalized terms in the Motion.

4. I am the chief restructuring officer of the Debtor.

5. On August 15, 2018, the Debtor filed a voluntary petition for relief under chapter 11.

6. The Debtor continues to operate and manage its affairs as debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

7. The Debtor is a not-for-profit home health services organization serving Riverside and San Bernardino Counties. It provides home health and hospice care services to the government, industry, institutions, individuals, associations and organizations, and provides products and related services. The Debtor currently provides in-home services to approximately 165 patients.

8. On September 19, 2018, the Office of the United States Trustee appointed the Committee.

9. On February 28, 2020, the Debtor filed a proposed disclosure statement and

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1 chapter 11 plan of liquidation. A hearing on the approval of the disclosure statement is  
2 currently scheduled for April 21, 2020.

3 10. Since January 2019, the Debtor, its finders and its advisors have been  
4 engaged in a marketing efforts designed to encourage bids for a transaction pursuant to  
5 which all or a portion of the Debtor’s assets would be sold generating funds for creditors of  
6 the estate.

7 11. To date, several parties have expressed an interest in purchasing the  
8 Debtor’s Hospice Assets and Home Health Assets. In the exercise of its business  
9 judgment, the Debtor has entered into (i) the Hospice Asset Agreement for the sale of the  
10 Hospice Assets and (ii) the Home Health Asset Purchase Agreement for the sale of the  
11 Home Health Assets. True and correct copies of the proposed Asset Purchase  
12 Agreements are attached hereto as **Exhibits B** and **C**. Each of these Asset Purchase  
13 Agreements are “stalking horse” purchase offers subject to higher and better bids  
14 pursuant to the procedures set forth herein and in the Proposed Order, a true and correct  
15 copy of which is attached hereto as **Exhibit A**.

16 12. The Debtor believes that the Sales of the Hospice Assets and the Home  
17 Health Assets pursuant to the procedures set forth herein and in the Proposed Order and  
18 on the timeline proposed herein presents the best opportunity for the Debtor to maximize  
19 value for its estate, its stakeholders, and parties in interest.

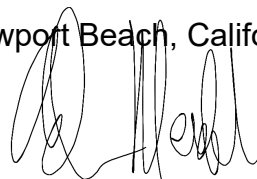
20 13. I, along with the Debtor’s general counsel and finders, negotiated at arm’s  
21 length with Bristol and HMS for the sale of the Hospice Assets and Home Health Assets.  
22 There was no collusion or sweetheart deal struck with Bristol or HMS. To my knowledge,  
23 I have never met or interacted with Bristol, HMS, or their agents, until I became involved  
24 with the Debtor’s bankruptcy case.

25 14. I believe that a sale of the Hospice Assets and Home Health Assets  
26 pursuant to a public auction and in according with the procedures proposed in the Motion  
27 will maximize competitive bidding and ensure the highest and best prices and terms are  
28 received for the Hospice Assets and the Home Health Assets.

1 15. I further believe that a sale of the Hospice Assets and the Home Health  
2 Assets on the timeline set forth in the Motion presents the best opportunity to maximize  
3 value for all interested parties.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on this 5<sup>th</sup> day of May, 2020, at Newport Beach, California.



Adam Meislik

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Costa Mesa, California 92626  
Tel 714-966-1000 Fax 714-966-1002

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**DECLARATION OF HYRUM KIRTON**

I, Hyrum Kirton, declare as follows:

1. Except as otherwise stated, I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am the Chief Executive Officer at Bristol Hospice, LLC ("Bristol"). I have served in this role since 2017. As a result of my experience as CEO of Bristol, my review of relevant documents, and my discussions with members of Bristol's management team and other advisors, I am familiar with Bristol's day-to-day operations, business affairs, and books and records.

3. Bristol was formed in 2006, focusing on the delivery of hospice services in California and other geographic areas throughout the United States. Bristol's programs provide hospice services to meet the physical, psychosocial, and spiritual needs of our patients and their families/caregivers. At Bristol, an interdisciplinary group of professionals and volunteers develops an individualized plan of care which includes, as appropriate, the following services: nursing, physicians, home health aides, counseling, spiritual support, therapy, dietary, volunteers, durable medical equipment, supplies, and bereavement services.

4. Bristol, including its representatives and advisors, engaged in good faith, arm's length negotiations with the Debtor and its representatives and advisors regarding the terms of the Hospice Asset Purchase Agreement.

5. Bristol has invested significant time, money, energy and other resources in connection with its proposed purchase of the Hospice Assets.

6. Bristol has the financial wherewithal to consummate the transactions contemplated by the Hospice Asset Purchase Agreement and to perform under all executory contracts and unexpired leases proposed to be assumed and assigned to Bristol (if any), which are reflected on the schedules to the Hospice Asset Purchase Agreement, as such schedules may be amended (the "Assigned Contracts"). Specifically,

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1 in 2019, Bristol recorded approximately \$210 million in revenue and EBITDA of \$25.575  
2 million.<sup>3</sup>

3 7. Bristol also has cash and cash equivalents on its balance sheet along with  
4 approximately \$10 million of availability remaining under its \$15 million revolving credit  
5 facility, which is sufficient to consummate the transactions contemplated by the Hospice  
6 Asset Purchase Agreement, operate the Hospice business presently owned by the Debtor  
7 and to perform under any Assigned Contracts.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed on this 5 day of May, 2020, at Salt Lake City UT

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12 \_\_\_\_\_  
13 Hyrum Kirton

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Tel 714-966-1000 Fax 714-966-1002

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28 <sup>3</sup> To the extent required by the Bankruptcy Court, Bristol is willing to provide additional financial information on a confidential basis to counterparties of Assigned Contracts upon reasonable and timely request by such party.

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**a. DECLARATION OF RAJNIT WALIA**

1. I, Rajnit Walia, declare as follows:

2. I am over 18 years of age. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, could and would competently testify thereto.

3. I submit this Declaration in support of the motion (“Motion”) of Visiting Nurses Association of the Inland Counties, a California non-profit corporation and the debtor in this chapter 11 case (“VNA” or the “Debtor”) for approval of bidding procedures in connection with the stalking horse bid of HealthSure Management Services, LLC (“HMS”) for the purchase of the Debtor’s Home Health Business. HMS and the Debtor have entered into an Asset Purchase Agreement (“APA”) to document the sale, subject to Bankruptcy Court approval, which is attached to the Motion. Unless otherwise stated, all capitalized terms in this declaration have the same meaning or definition as capitalized terms in the Motion.

4. I am the President and Chief Executive Officer of HMS, a California limited liability company. Since October 2016, HMS has managed the day-to-day operations of VNA and the services provided by VNA to its hundreds of hospice and other home health patients. Those services include the clinical supervision and provision of home healthcare, medical outreach, and hospice services to VNA’s patients, and state and federal healthcare regulatory compliance, including Medicare compliance. For over the past 20 years, I also have been the owner and operator on several Visiting Nurse Association companies that provide home health and hospice care to clients in Los Angeles and Orange counties.

5. The senior management team at HMS is comprised of myself and my husband Jay Walia. We each have more than 25 years of experience in the home health and hospice care industries. I have been a health care “administrator” as that term is used by Medicare and other state and federal healthcare agencies and regulatory bodies, meaning the responsible person for reporting and compliance to those governmental agencies and regulatory bodies. The VNA Board of Directors (its “Governing Body” as that term is used in healthcare regulatory parlance) appointed me as Administrator of VNA with the day-to-day responsibility of ensuring clinical compliance with

1 local, state, and federal laws and regulations governing hospice, home health, and the provision of  
2 healthcare services generally.

3 6. Based on its strong reputation in the healthcare industry, HMS has preferred provider  
4 relationships with the following Southern California hospitals: VA Loma Linda (Veterans  
5 Administration), USC Keck, USC Norris Cancer Center, UC Irvine Medical Center, Riverside  
6 Community Hospital, Verdugo Hills Hospital, Methodist Hospital, St. Joseph Hospital, St. Jude  
7 Hospital, Mission Hospital, Hoag Hospital of Newport Beach, Hoag Hospital of Irvine, and  
8 Huntington Memorial Hospital of Pasadena. VNA benefited from those HMS hospital relationships  
9 through: (a) consistent new patient referrals from the hospitals; (b) development of inpatient-to-  
10 home clinical pathways for the most prevalent disease categories, including but not limited to: CHF,  
11 COPD, pneumonia, sepsis, joint replacement, and digestive diseases; and (c) collaboration with  
12 hospital leadership on ways to innovate in reducing adverse events, such as hospital readmissions  
13 and ER visits.

14 7. Pursuant to Section 2.5 of the APA between the Debtor and HMS, prior to the  
15 Closing of the sale, HMS will provide the Debtor with the identity of the HMS affiliates that are  
16 licensed and permitted home health care companies that will offer to provide continuing care after  
17 the Closing to the Debtor's then current home health clients. Through those home health care  
18 company affiliates, HMS has direct relationships with substantially all of the counter-parties to the  
19 Assigned Contracts, and can readily perform under those contracts. HMS has managed the Debtor's  
20 Home Health Business since October 2016, and is best situated to continue to provide home health  
21 services to the Debtor's then current clients at Closing.

22 8. I declare under the penalty of perjury that the foregoing is true and correct. Executed  
23 this 5th day of May, 2020, in Diamond Bar, California.

24  
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27 \_\_\_\_\_  
28 Rajnit Walia

# **EXHIBIT A**



1 David M. Goodrich, State Bar No. 208675  
dgoodrich@wglp.com  
2 Beth E. Gaschen, State Bar No. 245894  
bgaschen@wglp.com  
3 **WEILAND GOLDEN GOODRICH LLP**  
650 Town Center Drive, Suite 600  
4 Costa Mesa, California 92626  
Telephone 714-966-1000  
5 Facsimile 714-966-1002

6 Counsel for Debtor and  
Debtor-In-Possession  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11 In re  
12 VISITING NURSE ASSOCIATION OF THE  
INLAND COUNTIES,  
13  
14 Debtor and  
Debtor-in-Possession.

Case No. 6:18-bk-16908-MH

Chapter 11

**ORDER APPROVING BIDDING  
PROCEDURES, STALKING HORSE  
BIDDER PROTECTIONS, FORM OF  
ASSET PURCHASE AGREEMENTS, AND  
ASSUMPTION AND ASSIGNMENT  
PROCEDURES, IN CONNECTION WITH  
SALE OF DEBTOR'S HOSPICE AND  
HOME HEALTH CARE BUSINESSES**

Hearing Date, Time and Location:

DATE: May 12, 2020  
TIME: 2:00 p.m.  
CTRM: 303

21 A hearing was held on May 12, 2020 at 2:00 p.m. at the above-referenced time and  
22 location for the Court to consider approval of the motion (the "Motion")<sup>1</sup> of Visiting Nurse  
23 Association of the Inland Counties, the debtor and debtor in possession in the above-  
24 captioned bankruptcy case (the "Debtor"), for entry of an Order, pursuant to sections  
25 105(a), 363, 365 and 1107 of Title 11 of the United States Code (the "Bankruptcy Code"),  
26

27 \_\_\_\_\_

28 <sup>1</sup> Capitalized terms not defined herein shall have the meanings set forth in the Motion.

1 Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure  
2 (as amended from time to time, the "Bankruptcy Rules"), and Rule 6004-1 and 9013-1 of  
3 the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District  
4 of California ("LBR" or "Local Rules"): (i) approving the bidding procedures, auction sale  
5 format and stalking horse bid protections (the "Bidding Procedures") relating to the  
6 proposed sale (the "Hospice Sale") of certain of the Debtor's hospice business assets (the  
7 "Hospice Assets") free and clear of any claim, charge, lien (statutory or otherwise),  
8 mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, rights of  
9 use, right of first offer, right of first refusal, easement, servitude, restrictive covenant,  
10 encroachment, license and other restriction and interest (the "Encumbrances") to Bristol  
11 Hospice, L.L.C. or its nominee ("Bristol"), and the proposed sale (the "Home Health Sale")  
12 and together with Hospice Sale, "Sales") of certain of the Debtor's home health business  
13 assets (the "Home Health Assets") free and clear of any Encumbrance to Healthsure  
14 Management Services LLC ("HMS") or its nominee, (ii) setting the deadline for potential  
15 bidders to submit a proposal to purchase the Hospice Assets, the Home Health Assets or  
16 both (the "Bid Deadline"), (iii) authorizing and scheduling an auction (the "Auction"), and  
17 scheduling a hearing with respect to the approval of the Sales (the "Sale Hearing"); (iii)  
18 authorizing and approving the form and manner the Notice Procedures ; (iv) authorizing  
19 and approving (a) the form of the asset purchase agreement by and between the Debtor  
20 and Bristol dated April 24, 2020 ("Hospice Asset Purchase Agreement," and (b) the form  
21 of the asset purchase agreement by and between the Debtor and HMS dated May 4, 2020  
22 ("Home Health Asset Purchase Agreement," and together with the Hospice Asset Purchase  
23 Agreement, the "Asset Purchase Agreements"); (v) approving the procedures for the  
24 assumption and assignment (the "Assumption and Assignment Procedures") of the  
25 Debtor's executory contracts and unexpired leases (the "Assigned Contracts") and the  
26 determination of the amount necessary to cure any defaults under the Assigned Contracts  
27 (the "Cure Costs"); (vi) authorizing and approving the form and manner of notice to each  
28 relevant non-Debtor counterparty to an executory contract or unexpired lease (collectively,

1 the "Contract Counterparties") regarding the Debtor's potential assumption and  
2 assignment of certain executory contracts and unexpired leases of the Debtor and of the  
3 Debtor's calculation of the Cure Costs (the "Cure Notice"); and (vii) granting any necessary  
4 and appropriate related relief.

5 The Court having found that (i) the Court has jurisdiction to consider the Motion and  
6 the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in  
7 this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant  
8 to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances  
9 and properly given, and it appearing that no other or further notice need be provided; and  
10 a hearing on the proposed bid and sale procedures as detailed in the Motion having been  
11 held on May 12, 2020; and after due deliberation the Court having determined that the  
12 relief requested in the Motion with respect to proposed bid and sale procedures is in the  
13 best interests of the Debtor, its creditors and its estate and good and sufficient cause  
14 having been shown;

15 **THE COURT FINDS AND CONCLUDES THAT:<sup>2</sup>**

16 A. The statutory and legal predicates for the relief requested in the Motion and  
17 provided for herein are sections 105(a), 363, 365 and 1107 of Title 11 of the United States  
18 Code ("Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, 9013 and 9014 of the Federal  
19 Rules of Bankruptcy Procedure ("Bankruptcy Rules"), and Rules 6004-1 and 9013-1 of the  
20 Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of  
21 California ("LBR").

22  
23 B. In the Motion and at the hearing on the Motion, the Debtor demonstrated that  
24 good and sufficient notice of the relief granted by this Order has been given and no further  
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26 \_\_\_\_\_  
27 <sup>2</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law  
28 pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.  
To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such.  
To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

1 notice is required. A reasonable opportunity to object or be heard regarding the relief  
2 granted by this Order has been afforded to those parties entitled to notice pursuant to  
3 Bankruptcy Rule 2002 and all other interested parties pursuant to LBR 6004-1(b).

4 C. The Debtor's proposed Notice Procedures are appropriate and reasonably  
5 calculated to provide all interested parties with timely and proper notice, and provided the  
6 terms of this Order are timely complied with by the Debtor, no other or further notice is  
7 required.

9 D. The Debtor's proposed Bidding Procedures are appropriate and reasonably  
10 calculated to provide all interested parties with sufficient information to qualify for bidding  
11 and attend the Auction, should their bid be qualified.

12 E. The Bidding Procedures and the Asset Purchase Agreements were  
13 negotiated by the parties at arm's length and in good faith by the Debtor, on one hand, and  
14 Bristol and HMS, on the other hand.

16 F. The Bidding Procedures substantially in the form attached hereto as **Exhibit**  
17 **1** (which does not include the exhibits thereto and shall be appended to the Court's  
18 mandatory Form 6004-2 before they are published on the Court's website, in any occasion,  
19 and served upon all parties entitled to notice) are fair, reasonable, and appropriate and are  
20 designed to maximize the recovery from the Sales.

22 G. The forms of the Asset Purchase Agreements are fair and reasonable and  
23 can readily be used by potential overbidders to formulate competing bids.

24 H. The Bristol Break-Up Fee and Expense Reimbursement and the HMS Break-  
25 up Fee and Expense Reimbursement, in the amounts set forth below, (i) are reasonable  
26 and appropriate given, among other things, the size and nature of the Sales and the efforts  
27 and resources that have been expended, and will continue to be expended, by Bristol and  
28

1 HMS in connection with the Sales, and (ii) is a material inducement for, and a condition of,  
2 Bristol and HMS entry into their respective Asset Purchase Agreements.

3 I. The Assumption and Assignment Procedures and the Cure Notice are  
4 reasonable and appropriate and consistent with the provisions of 11 U.S.C. § 365 and  
5 Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Cure Notice  
6 have been narrowly tailored to provide an adequate opportunity for all non-debtor  
7 counterparties to the Assigned Contracts to assert an objection to the proposed  
8 assumption and assignment of an executory contract and/or unexpired lease ("Assumption  
9 Objection").

10  
11 J. The Motion, this Order, and the Assumption and Assignment Procedures set  
12 are reasonably calculated to provide counterparties to any Contracts to be assumed by the  
13 Debtor and assigned to the Successful Bidder or Successful Bidders with proper notice of  
14 the intended assumption and assignment of their Contracts, the procedures in connection  
15 therewith, and any cure amounts relating thereto.

16  
17 K. Entry of this Order is in the best interests of the Debtor, its estate and  
18 creditors, and all other parties in interest.

19 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 20  
21 1. The Motion is **GRANTED** as set forth herein.  
22 2. The Bidding Procedures attached hereto as **Exhibit 1** are **APPROVED**.  
23 3. The Bid Deadline shall be **June 25, 2020 at 5:00 p.m. (prevailing Pacific**  
24 **Time)**. In order to be eligible to participate in the Auction, a Qualified Bidder that desires to  
25 make a bid shall deliver a written copy of its bid no later than the Bid Deadline to counsel  
26 for the Debtor: Weiland Golden Goodrich LLP, 650 Town Center Dr. Suite 600 Costa Mesa,  
27 CA 92626 (Attn: David M Goodrich, Beth Gaschen, Ryan W Beall ), with email copy  
28

1 to rbeall@lwgfllp.com; bgaschen@wglp.com; dgoodrich@wglp.com. The Debtor shall  
2 deliver copies of all bids received to counsel for the Official Committee of Unsecured  
3 Creditors appointed in this case ("Committee") via email and within one (1) business day  
4 of receipt of each bid, regardless of whether the Debtor believes the bid is a Qualified Bid.

5  
6 4. The Auction, if necessary, shall be held on **June 30, 2020 at 2:00 p.m.**  
7 **(prevailing Pacific Time)** at the Court.

8 5. The Debtor shall file a Sale Motion and serve written notice of the Sale  
9 Hearing consistent with LBR 6004-1(c)(3) and 9013-1(d).

10 6. Within two (2) business days after the entry of this Order or as soon as  
11 reasonably practicable thereafter, the Debtor shall serve a copy of this Order upon (i) all  
12 entities reasonably known to have expressed an interest in a transaction with respect to all  
13 or part of the Hospice Assets and Home Health Assets within the past year; (ii) all entities  
14 known to have asserted any lien, claim, interest, or encumbrance in or upon any of the  
15 Hospice and Home Health Assets; (iii) counsel for the Committee; (iv) the patient care  
16 ombudsman appointed in this case; and (v) the U.S. Trustee; *provided, however*, that to  
17 the extent email addresses are available for any of the foregoing parties, such parties may  
18 be served by email.  
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20 7. The Debtors are directed to (i) publish a notice in the Riverside Press-  
21 Enterprise on one occasion no later than twenty-one (21) days before the Sale Hearing or  
22 as reasonably practicable thereafter describing, in summary, the salient terms and  
23 conditions of the Sales, (ii) post a copy of the Court's Notice of Sale of Estate Property  
24 (Local Bankruptcy Form 6004-2) ("Sale Notice"), without exhibits, in a common area at the  
25 Debtor's Riverside and Palm Desert premises no later than twenty-one (21) days before  
26 the Sale Hearing, (iii) file with the Court and serve on all parties-in-interest, no later than  
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1 twenty-one (21) days before the Sale Hearing, a copy of the Sale Notice, which shall  
2 include a copy of this Order, including all exhibits hereto, and (iv) serve and file a notice of  
3 sale hearing, including the disclosures and exhibits required by Local Bankruptcy Rule  
4 6004-1(b)(2), no later than twenty-one (21) days before the Sale Hearing.

5  
6 8. The Sale Hearing shall be held on **June 30, 2020 at 2:00 p.m. (prevailing**  
7 **Pacific Time)** before this Court, the U.S. Bankruptcy Court for the Central District of  
8 California, Courtroom 303, 3420 Twelfth Street, Riverside, CA 92501. Any objections to  
9 the Sales (other than an Assumption Objection), shall be governed by the procedures set  
10 forth below) (a "Sale Objection"), must: (i) be in writing; (ii) comply with the Bankruptcy  
11 Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be  
12 electronically filed with the Court or, if filed in person, at United States Bankruptcy Court,  
13 Central District of California, 3420 Twelfth Street, Riverside, CA 92501 (Attn: the Honorable  
14 Mark D. Houle), together with proof of service, no later than fourteen (14) days before the  
15 Sale Hearing (the "Sale Objection Deadline"); (v) be served, so as to be actually received  
16 on or before the Sale Objection Deadline by counsel to: (a) the Debtor: Weiland Golden  
17 Goodrich LLP, 650 Town Center Dr. Suite 600 Costa Mesa, CA 92626 (Attn: David M  
18 Goodrich, Beth Gaschen and Ryan W Beall ), with email copy to rbeall@lwgflp.com;  
19 bgaschen@wgllp.com; dgoodrich@wgllp.com, (b) Bristol: Goodwin Procter LLP, 620  
20 Eighth Avenue, New York, NY 10018 (Attn: Gregory W. Fox), with email copy to  
21 GFox@goodwinlaw.com, and (c) the Committee: Marshack Hays LLP, 870 Roosevelt  
22 Avenue Irvine, CA 92620 (Attn: Richard A Marshack and David Wood), with email copy to  
23 rmarshack@marshackhays.com; dwood@marshackhays.com; and (vi) as otherwise  
24 required pursuant to applicable rules.  
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1 9. If a Sale Objection is not filed and served on or before the Sale Objection  
2 Deadline in accordance with the terms of this Order, the objecting party may be barred  
3 from objecting to the Sales and deemed to have consented to the relief requested in the  
4 Sale Motion.

5 10. The Cure Notice, in the form substantially similar to that attached hereto as  
6 **Exhibit 2**, is **APPROVED**

7 11. The Assumption and Assignment Procedures, in the form substantially  
8 similar to that attached hereto as **Exhibit 3**, are **APPROVED**.

9 12. By no later than fourteen (14) days before the Sale Hearing, the Debtor shall  
10 file with the Court and serve upon each counterparty to an Assigned Contract the Cure  
11 Notice, which shall identify the amounts, if any, that the Debtor believes are owed to each  
12 counterparty to an Assigned Contract in order to cure any defaults that exist under such  
13 contract (the "Cure Amounts").  
14

15 13. The Sale Hearing may be adjourned from time to time without further notice  
16 to creditors or parties in interest other than by announcement of the adjournment in open  
17 court on the date scheduled for the Sale Hearing, and the Debtor shall have the exclusive  
18 right, in the exercise of its fiduciary obligations and business judgment, to cancel the Sales  
19 at any time, in accordance with the terms of this Order and the Asset Purchase  
20 Agreements.  
21

22 14. The Auction shall be conducted in accordance with the provisions of the  
23 Bidding Procedures approved hereby.  
24

25 15. The Debtor may qualify any bid that meets the requirements as a Qualified  
26 Bid. Notwithstanding the foregoing, Bristol and HMS are deemed a Qualified Bidders, and  
27 the Hospice Asset Purchase Agreement and the Home Health Purchase Agreements are  
28



1 deemed Qualified Bids, for all purposes in connection with the Bidding Process, the  
2 Auction, and the Sales.

3 16. The Debtor shall notify the Committee, Bristol, HMS, and all Qualified Bidders  
4 via email as to whether or not the Debtor has determined that any bids constitute Qualified  
5 Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such  
6 Qualified Bidder's bid constitutes a Qualified Bid) and provide copies of the Asset Purchase  
7 Agreements relating to any such Qualified Bid to Bristol, HMS and such Qualified Bidders  
8 within two business days after any bid other than the Bristol and HMS Bids has been  
9 deemed a Qualified Bid.  
10

11 17. In accordance with the provisions of the Bidding Procedures approved  
12 hereby, prior to the conclusion of the Auction, the Debtor shall review and evaluate each  
13 Qualified Bid and Overbid in accordance with the procedures set forth in the Bidding  
14 Procedures and determine which offer is the highest or otherwise best from among the  
15 Qualified Bids submitted at the Auction (the "Successful Bid" and the bidder making such  
16 bid, the "Successful Bidder"), and communicate to the Qualified Bidders the identity of the  
17 Successful Bidder(s) and the details of the Successful Bid(s). The determination of the  
18 Successful Bid(s) by the Debtor at the conclusion of the Auction shall be subject to approval  
19 by the Court.  
20

21 18. In accordance with the provisions of the Bidding Procedures approved  
22 hereby, unless otherwise agreed to by the Debtor, the Successful Bidder(s), within one (1)  
23 business day after the conclusion of the Auction, the Successful Bidder(s) shall complete  
24 and execute all agreements, contracts, instruments, and other documents evidencing and  
25 containing the terms and conditions upon which the Successful Bid(s) was/were made.  
26 Within twenty-four (24) hours following the conclusion of the Auction, the Debtor shall file a  
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1 notice with the Court identifying the Successful Bidder(s) and Back-Up Bidder(s) and shall  
2 serve such notice by fax, email, or if neither is available, by overnight mail to all  
3 counterparties whose contracts are to be assumed and assigned, which notice shall  
4 include any updated proposed Cure Amounts.

5  
6 19. To the extent there is a contract added to the list of contracts to be assumed  
7 by the Successful Bidder(s) pursuant to the Successful Bidder's Purchase Agreement  
8 selected at the Auction, the Motion shall be deemed to constitute a motion to assume and  
9 assign that contract to the Successful Bidder(s) pursuant to § 365 of the Bankruptcy Code.  
10 In the event that any Successful Bidder(s) is/are not Bristol and/or HMS, any counterparty  
11 to an Assigned Contract whose proposed treatment differs from that proposed under the  
12 Asset Purchase Agreements shall be entitled to file an Assumption Objection by no later  
13 than 24 hours prior to the Sale Hearing.

14  
15 20. The inclusion of a contract, lease, or other agreement on the Cure Notice  
16 shall not constitute or be deemed a determination or admission by the Debtor and its estate  
17 or any other party in interest that such contract, lease, or other agreement is, in fact, an  
18 executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any  
19 and all rights with respect thereto shall be reserved.

20  
21 21. To the extent the Assigned Contract counterparty wishes to object to the Cure  
22 Amount, if any, set forth in the Cure Notice, or object to the proposed assumption and  
23 assignment of the Assigned Contract, its Assumption Objection must (i) be in writing; (ii)  
24 state the name and address of the objecting party and the amount and nature of the claim  
25 or interest of such party; (iii) state with particularity the basis and nature of any objection,  
26 and provide proposed language that, if accepted and incorporated by the Debtor, would  
27 obviate such objection; (iv) conform to the Bankruptcy Rules and the LBRs; (v) be filed with  
28

1 the Court and be served on: (a) the Debtor: Weiland Golden Goodrich LLP, 650 Town  
2 Center Dr. Suite 600 Costa Mesa, CA 92626 (Attn: David M Goodrich, Beth Gaschen and  
3 Ryan W Beall), with email copy to rbeall@lwgflp.com; bgaschen@wgllp.com;  
4 dgoodrich@wgllp.com; (b) Bristol: Goodwin Procter LLP, 620 Eighth Avenue New York,  
5 NY 10018 (Attn: Gregory W. Fox), with email copy to GFox@goodwinlaw.com; (c) the  
6 Committee: Marshack Hays LLP, 870 Roosevelt Avenue Irvine, CA 92620 (Attn: Richard  
7 A Marshack and David Wood), with email copy to rmarshack@marshackhays.com;  
8 dwood@marshackhays.com; (d) to The H. N. and Frances C. Berger Foundation: Levene  
9 Neale Bender Yoo & Brill LLP, 10250 Constellation Blvd Ste 1700 Los Angeles, CA 90067  
10 (Attn: David B Golubchik), with email copy to dbg@lnbyb.com; and (e) Simione Healthcare  
11 Consultants, LLC, 130 Newport Center Drive, Suite 140 Newport Beach, CA 92660 (Attn:  
12 Sean A O'Keefe), with email copy to sokeefe@okeefelc.com, no later than fourteen (14)  
13 days before the Sale Hearing.  
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16 22. Any counterparty to an Assigned Contract that is properly served with the  
17 Cure Notice and fails to serve an objection to the Cure Amounts shall be forever barred  
18 from asserting that a Cure Amount is owed in an amount in excess of that set forth in the  
19 Cure Notice.  
20

21 23. If any contract or lease is assumed and assigned pursuant to Court order,  
22 the Assigned Contract counterparty shall receive no later than ten (10) business days  
23 following the closing of the Sales, the Cure Amount, if any, as set forth in the Cure Notice.

24 24. Assumption Objections (including those related to adequate assurance of  
25 future performance) will be resolved by the Court at the Sale Hearing. Notwithstanding, in  
26 the event that the Debtor and the counterparty cannot resolve the Cure Amount, such  
27 dispute may be resolved by the Court at the Sale Hearing or such later date as may be  
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1 agreed to by the Debtor, the Successful Bidder(s) and such counterparty or ordered by the  
2 Court.

3 25. The Successful Bidder(s) shall be responsible for the requirements regarding  
4 adequate assurance of future performance that may be imposed under section 365(b) of  
5 the Bankruptcy Code in connection with the proposed assignment of any Assigned  
6 Contract, and the failure to provide adequate assurance of future performance to any  
7 counterparty to any Assigned Contract shall not excuse the Successful Bidder(s) from  
8 performance of any and all of its obligations pursuant to the Successful Bidder's Asset  
9 Purchase Agreement. The Court will make any and all determinations concerning adequate  
10 assurance of future performance under the Assigned Contracts pursuant to sections 365(b)  
11 and (f)(2) of the Bankruptcy Code at the Sale Hearing.  
12

13 26. The Bristol Break-Up Fee and Expense Reimbursement, as set forth in the  
14 Hospice Asset Purchase Agreement, is **APPROVED** for the reasons stated on the record.  
15 If Bristol is not the Successful Bidder for the Hospice Assets and is not then in breach of  
16 the Hospice Asset Purchase Agreement, and the Hospice Asset Purchase Agreement has  
17 not otherwise been terminated, Bristol shall be paid in cash by the Successful Bidder for  
18 the Hospice Assets at the closing of the sale transaction with the Successful Bidder the  
19 aggregate of (i) the out-of-pocket costs and expenses of Bristol and its affiliates in an  
20 amount not to exceed \$250,000 ("Bristol Expense Reimbursement"), and (ii) a break-  
21 up fee equal to 3% of the Purchase Price (as defined in the Hospice Asset Purchase  
22 Agreement) minus the Bristol Expenses Reimbursement ("Bristol Break-up Fee," and  
23 together with the Bristol Expense Reimbursement, the "Bristol Stalking Horse  
24 Protections").  
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1 27. Bristol Stalking Horse Protections shall be paid out of the proceeds of the  
2 Hospice Sale or Combined Asset Sale without any further order of the Court.

3 28. Bristol shall have a lien (the "Break-Up Lien") on its deposit held by escrow  
4 for the Hospice Asset Sale should Bristol not be the Successful Bidder as well as an  
5 allowed administrative claim against the Estate (the "Administrative Expense Break-Up  
6 Claim"), both of which shall be automatically satisfied and released upon payment of the  
7 entire amount of the Bristol Stalking Horse Protections to Bristol.  
8

9 29. This Order shall be sufficient and conclusive evidence of the validity,  
10 perfection, and priority of the Break-Up Lien and Administrative Expense Break-Up Claim,  
11 without the necessity of filing or recording any financing statement, proof of claim or other  
12 instrument or document which may otherwise be required under the law or regulation of  
13 any jurisdiction or the taking of any other action to validate or perfect (in accordance with  
14 applicable non-bankruptcy law) the Break-Up Lien and Break-Up Administrative Expense  
15 Claim.  
16

17 30. The HMS Break-up Fee and Expense Reimbursement, as set forth in the  
18 Home Health Asset Purchase Agreement is **APPROVED** for the reasons stated on the  
19 record. If the HMS is not the Successful Bidder for the Home Health Assets and is not then  
20 in breach, and the Home Health Asset Purchase Agreement has not otherwise been  
21 terminated, HMS shall be paid in cash by the Successful Bidder of the Home Health Assets  
22 at the closing of the sale transaction with the Successful Bidder the aggregate of (i) an  
23 amount not to exceed \$21,000 ("HMS Expense Reimbursement and Break-up Fee") (the  
24 HMS Expense Reimbursement and Break-up Fee is also referred to as the "HMS Stalking  
25 Horse Protections").  
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1 31. To the extent the provisions of this Order are inconsistent with the provisions  
2 of any exhibit hereto, the Asset Purchase Agreements, or the Motion, the provisions of this  
3 Order shall control.

4 32. The Court shall retain jurisdiction over all matters arising from or related to  
5 the interpretation and implementation of this Order.  
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7 33. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006,  
8 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately  
9 effective and enforceable.

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**Exhibit 1**

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**BIDDING PROCEDURES**

Set forth below are the bidding procedures (the "Bidding Procedures") relating to the Visiting Nurse Association of the Inland Counties, a California non-profit corporation's ("Debtor") proposed sale (the "Hospice Sale") of certain of the Debtor's hospice business assets (the "Hospice Assets") free and clear of any claim, charge, lien (statutory or otherwise), mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, rights of use, right of first offer, right of first refusal, easement, servitude, restrictive covenant, encroachment, license and other restriction and interest (the "Encumbrances") to Bristol Hospice, L.L.C. or its nominee ("Bristol"), and the proposed sale (the "Home Health Sale" and together with Hospice Sale, "Sales") of certain of the Debtor's home health business assets (the "Home Health Assets") free and clear of any Encumbrance to Healthsure Management Services LLC ("HMS") or its nominee, in connection with the Debtor's chapter 11 case pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), case number 6:18-bk-16908-MH.

On May 5, 2020, the Debtor filed with the Bankruptcy Court a *Motion for Order Approving Bidding Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements, and Assignment Procedures, In Connection With Sale of Debtor's Hospice Assets and Home Health Assets* [Docket No. \_\_\_] (the "Motion"), which attached copies of the Hospice Asset Purchase Agreement and the Home Health Asset Purchase Agreement, setting forth the terms and conditions of the proposed Sales. The proposed Sales are subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion.

On [\_\_\_], 2020, the Court entered the *Order (I) Approving Bidding Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements, and Assignment Procedures, In Connection With Sale of Debtor's Hospice and Home Health Care Businesses* (the "Bidding Procedures Order").

**I. ASSETS TO BE SOLD**

The Debtor seeks to complete a sale of certain of its Hospice Assets and its Home Health Assets Health free and clear of the Encumbrances. The Hospice Assets and the Home Health Assets are collectively referred to herein as the "Assets". The Hospice Asset Purchase Agreement will serve as the "stalking-horse" bid for Hospice Assets. The Home Health Asset Purchase Agreement with serve as the "stalking-horse" bid for the Home Health Assets.

**II. THE BIDDING PROCEDURES**

To ensure that the Debtor receives the maximum value for the Assets, it intends to conduct a sale process for the Assets pursuant to the procedures and on the timeline proposed herein.

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1 **A. Provisions Governing Qualifications of Bidders**

2 Unless otherwise ordered by the Court or set forth in these procedures, in order to  
3 be qualified to receive any confidential information from the Debtor in connection with the  
4 Sale, an interested party (each, an "Interested Party") must submit each of the following  
5 to the Notice Parties (defined below) on ten (10) business days prior to the Bid Deadline  
(defined below):

6 (a) A written disclosure of the identity of each entity that will be bidding for the  
7 hospice and/or home health care business or otherwise participating in connection with  
such bid;

8 (b) An executed confidentiality agreement (to be delivered prior to the  
9 distribution of any confidential information by the Debtor) in a form and substance  
10 satisfactory to the Debtor and which shall inure to the benefit of any purchaser of the  
Hospice Assets and/or Home Health Assets;

11 (c) A statement demonstrating, to the Debtor's satisfaction that the Interested  
12 Party has a bona fide interest in purchasing the Hospice Assets and/or Home Health  
Assets; and

13 (d) Such other information with respect to an Interested Party's experience and  
14 financial wherewithal (which may include, but is not limited to, any cure and adequate  
15 assurance obligations as the case may be) as the Debtor requests, if any, which may  
include, but is not limited to, the internal corporate, legal or other authorizations to close a  
16 purchase transaction.

17 If the Debtor determines, after receipt of the items identified above and a  
18 determination by the Debtor, in its sole discretion, that an Interested Party has a bona  
19 fide interest in purchasing the Debtor's Hospice Assets and/or Home Health Assets, and  
the financial wherewithal to do so, such Interested Party will be deemed a "Potential  
Bidder." As promptly as practicable after the Interested Party is deemed to be a Potential  
20 Bidder, the Debtor will notify the Interested Party as to such determination.

21 **1. Due Diligence**

22 The Debtor will afford any Potential Bidder such due diligence access or additional  
23 information as the Debtor deems appropriate, in its business judgment. Such information  
24 shall be provided through the data room created by the Debtor to facilitate diligence  
25 respecting the hospice and home health care businesses to Potential Bidders ("Data  
Room"). The Debtor shall endeavor to provide all such information to all Potential  
26 Bidders concurrently by placing the information in the Data Room and informing all  
27 Potential Bidders of the addition of the information. For any Potential Bidder who is a  
28 competitor of the Debtor or is the subject of a claim or potential claim of the Debtor, the  
Debtor reserves the right to withhold any materials or information that the Debtor  
determines is: (i) sensitive or confidential business records, (ii) not appropriate for  
disclosure to such a Potential Bidder, (iii) has not been made available to any other  
competitor of the Debtor or affiliate thereof, and (iv) cannot be reasonably redacted to

1 remove any sensitive or confidential business information; provided that the Debtor shall  
2 notify the applicable Potential Bidder of the determination to withhold such information  
3 and shall provide reasonable detail as to the information withheld. The due diligence  
4 period shall extend through and include the Bid Deadline. Additional due diligence will  
not be provided after the Bid Deadline unless such Potential Bidder has submitted a  
Qualified Bid.

5 **2. Provisions Governing Qualifications of Qualified Bids and**  
6 **Overbids**

7 **a. Hospice Asset Qualified Bids**

8 A bid submitted by a Potential Bidder with respect to the Hospice Assets will be  
9 considered a Qualified Hospice Bid (each, a "Qualified Hospice Bid," and each such  
10 Potential Bidder thereafter a "Qualified Hospice Bidder") only if the bid complies with the  
following requirements:

11 (a) accept the terms of the proposed Hospice Asset Purchase Agreement, a  
12 copy of which is attached hereto **Exhibit B to the Motion**, or includes an alternative  
13 proposed purchase agreement, including all exhibits and schedules thereto, and contains  
14 terms and conditions that, taken as a whole, are higher or otherwise better than the terms  
15 and conditions of the Hospice Asset Purchase Agreement, as determined by the Debtor  
16 using its business judgment; ("Competing Asset Purchase Agreement"), duly authorized  
17 and executed by the Potential Bidder, along with a redlined, marked copy showing all  
changes between the Competing Purchase Agreement and the proposed Hospice Asset  
Purchase Agreement. Any Qualified Hospice Bid that accepts the terms of the Hospice  
Asset Purchase Agreement, or, alternatively, proposes a Competing Purchase  
Agreement, must agree or provide for the following:

18 (i) the bid must have a value to the Debtor that is greater than the sum of the  
19 value offered under the Hospice Asset Purchase Agreement, plus (i) the out-of-pocket  
20 costs and expenses of Bristol (not to exceed \$250,000 and to be determined before  
the Sale Hearing); (ii) a break-up fee of 3% of the Purchase Price under the Hospice  
21 Asset Purchase Agreement; and (iii) \$250,000.00 ("Hospice Asset Minimum  
Overbid");

22 (ii) if the Potential Bidder wishes to acquire assets of the hospice business that  
23 are not being sold under the Hospice Asset Purchase Agreement, the Hospice  
Minimum Overbid shall include an additional cash price offer;

24 (iii) a disclaimer of any right of the Potential Bidder to receive a breakup fee or  
25 termination fee, and waiver of any claim to compensation under section 503(b) of the  
Bankruptcy Code for making a substantial contribution;

26 (iv) an identification, with particularity, which liabilities, executory contracts and  
27 unexpired leases that have been identified to Potential Bidders through the diligence  
28 process the Potential Bidder would agree to assume;

1 (v) a contact person(s) for the proposed assignee that the applicable  
2 counterparty may directly contact in connection with adequate assurance of future  
performance issues; and

3 (vi) a proposed closing date that is not later than August 1, 2020;

4 (b) includes a cashier's check made payable to the order of "Visiting Nurse  
5 Association of the Inland Counties" or evidence of electronic funds transfer in accordance  
6 with instructions to be provided by the Debtor equal to 5% of the Hospice Minimum  
7 Overbid, which will be retained by the Debtor as a refundable deposit for application  
against the purchase price at the closing of the transaction, returned to the Potential  
Bidder, or forfeited to the Debtor as set forth below;

8 (c) identifies the full legal name of the Potential Bidder (including any equity  
9 holders or other financial backers sponsoring or participating in connection with such bid);

10 (d) includes a signed writing that the Potential Bidder's offer will remain open  
11 and irrevocable as follows (i) until the closing of the Sale if it is designated as the  
12 Successful Bid, (ii) until the Back-Up Expiration Date (as defined below) if it is designated  
13 as the Back-Up Bid (as defined below), and (iii) in all other cases, three (3) business days  
after conclusion of the Sale Hearing;

14 (e) is accompanied by evidence establishing the Potential Bidder's ability to  
15 provide adequate assurance of future performance with respect to the executory  
16 contracts and unexpired leases to be assumed and assigned. If the Debtor concludes,  
17 exercising its business judgment, that the information establishing adequate assurance is  
not sufficient, then the Debtor may request specific additional information from the  
Potential Bidder in writing and the Potential Bidder shall have a reasonable period of time  
to supplement the information it provided to establish adequate assurance;

18 (f) is accompanied by evidence establishing, based upon the Debtor's  
19 business judgment, that the Potential Bidder has the financial ability to pay, including  
20 through committed financing, or otherwise fulfill the conditions relating to payment of the  
21 Hospice Minimum Overbid; such evidence shall include, but is not limited to, (i) current  
22 audited financial statements (to the extent they are otherwise prepared in the ordinary  
23 course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an entity  
24 that has been capitalized recently for the purpose of acquiring the hospice business,  
current audited financial statements of its equity holder(s) or their affiliate(s) (to the extent  
25 they are otherwise prepared in the ordinary course of business) who shall either  
26 guarantee the obligations of the Potential Bidder or provide such other form of financial  
27 disclosure and credit-quality support information or enhancement or (ii) documents  
evidencing committed financing for the Hospice Minimum Overbid, as deemed  
28 reasonably acceptable by the Debtor, in its sole discretion. The Potential Bidder may  
elect to only provide the information required under this subsection upon the execution of  
confidentiality agreement by the Debtor and the Potential Bidder, its equity holders and  
its affiliates. The form of confidentiality agreement shall be provided by the Debtor to any  
Potential Bidder upon request;

1 (g) is accompanied by evidence establishing, based upon the Debtor's  
2 business judgment, that the Potential Bidder is capable and qualified, financially, legally  
3 and otherwise, of unconditionally performing all obligations under the Hospice Asset  
Purchase Agreement or the Competing Purchase Agreement;

4 (h) includes confirmation that there are no conditions precedent to the Potential  
5 Bidder's ability to enter into a definitive agreement and that all necessary internal  
governance and shareholder approvals have been obtained prior to the bid;

6 (i) is not subject to any due diligence or financing contingencies of any kind, or  
7 any contingencies related to any internal or investment committee or similar approvals;

8 (j) includes an acknowledgement and representation, in form and substance  
9 satisfactory to the Debtor that the Potential Bidder: (a) has had an opportunity to conduct  
any and all required due diligence regarding the Hospice Assets prior to making its offer,  
10 (b) has relied solely upon its own independent review, investigation, and/or inspection of  
any documents and/or the hospice business in making its bid, (c) did not rely upon any  
11 written or oral statements, representations, promises, warranties, or guaranties  
whatsoever, whether express or implied (by operation of law or otherwise), regarding the  
12 hospice business, and (d) affirmatively consents to the jurisdiction of the Court,  
affirmatively consents to the Court entering a final order, and waives any right to a jury  
13 trial, in each case in connection with any disputes relating to the relief sought in the  
Motion and the construction and enforcement of any sale transaction documents;

14 (k) includes proof that the Potential Bidder is licensed, or will be able to obtain  
15 licenses, by the California Department of Social Services (RCFE) and the California  
16 Department of Health Services (SNF), if necessary, and must submit a viable business  
and licensing plan (whether a business and licensing plan is viable shall be determined  
17 by the Debtor using its reasonable business judgment);

18 (l) contains such other information reasonably requested by the Debtor; and

19 (m) is received by each of the Notice Parties prior to the Bid Deadline.  
20

21 Notwithstanding the foregoing, Bristol is deemed as a Qualified Hospice Bidder  
and the Hospice Asset Purchase Agreement is deemed a Qualified Hospice Bid, for all  
22 purposes and in connection with the Bidding Procedures, Auction and Hospice Asset  
Sale.

23 **b. Home Health Qualified Bids.**

24 A bid submitted by a Potential Bidder with respect to the Home Health Assets will  
25 be considered a Qualified Home Health Bid (each, a "Qualified Home Health Bid," and  
each such Potential Bidder thereafter a "Qualified Home Health Bidder") only if the bid  
26 complies with the following requirements:

27 (a) accept the terms of the proposed Home Health Asset Purchase Agreement,  
attached hereto as **Exhibit C to the Motion**, or includes a Competing Purchase  
28 Agreement, including to the extent feasible, all exhibits and schedules thereto, and

1 contains terms and conditions that, taken as a whole, are higher or otherwise better than  
2 the terms and conditions of the Home Health Asset Purchase Agreement, as determined  
3 by the Debtor using its business judgment, duly authorized and executed by the Potential  
4 Bidder, along with a redlined, marked copy showing all changes between the Competing  
5 Purchase Agreement and the proposed Home Health Asset Purchase Agreement. Any  
6 Qualified Home Health Bid that accepts the terms of the Home Health Asset Purchase  
7 Agreement, or, alternatively, proposes a Competing Purchase Agreement, must agree or  
8 provide for the following:

9 (i) the cash purchase price shall be no less than \$800,000, plus the out-of-  
10 pocket costs and expenses of HMS (not to exceed \$21,000) ("Home Health Care  
11 Minimum Overbid");

12 (ii) if the Potential Bidder wishes to acquire assets of the home health care  
13 business that are not being sold under the Home Health Asset Purchase Agreement,  
14 the Home Health Care Minimum Overbid shall include an additional cash price offer;

15 (iii) a disclaimer of any right of the Potential Bidder to receive a breakup fee or  
16 termination fee, and waives any claim to compensation under section 503(b) of the  
17 Bankruptcy Code for making a substantial contribution;

18 (iv) an identification, with particularity, which liabilities, executory contracts and  
19 unexpired leases that have been identified to Potential Bidders through the diligence  
20 process the Potential Bidder would agree to assume;

21 (v) a contact person(s) for the proposed assignee that the applicable  
22 counterparty may directly contact in connection with adequate assurance of future  
23 performance issues; and

24 (vi) a proposed closing date that is not later than August 1, 2020;

25 (b) includes a cashier's check made payable to the order of "Visiting Nurse  
26 Association of the Inland Counties" or evidence of electronic funds transfer in accordance  
27 with instructions to be provided by the Debtor equal to 5% of the Home Health Care  
28 Minimum Overbid, which will be retained by the Debtor as a refundable deposit for  
application against the purchase price at the closing of the transaction, returned to the  
Potential Bidder, or forfeited to the Debtor as set forth below;

(c) identifies the full legal name of the Potential Bidder (including any equity  
holders or other financial backers sponsoring or participating in connection with such bid);

(d) provides that such offer remains open and irrevocable as follows (i) until the  
closing of the Sale if it is designated as the Successful Bid, (ii) until the Back-Up  
Expiration Date if it is designated as the Back-Up Bid, and (iii) in all other cases, three (3)  
business days after conclusion of the Sale Hearing;

(e) is accompanied by evidence establishing the Potential Bidder's ability to  
provide adequate assurance of future performance with respect to the executory

1 contracts and unexpired leases identified in subparagraph (a)(iv) above. If the Debtor  
2 concludes, exercising its business judgment, that the information establishing adequate  
3 assurance is not sufficient, then the Debtor may request specific additional information  
4 from the Potential Bidder in writing and the Potential Bidder shall have a reasonable  
5 period of time to supplement the information it provided to establish adequate assurance;

6 (f) is accompanied by evidence establishing, based upon the Debtor's  
7 business judgment, that the Potential Bidder has the financial ability to pay, including  
8 through committed financing, or otherwise fulfill the conditions relating to payment of the  
9 Home Health Care Minimum Overbid; such evidence shall include, but is not limited to, (i)  
10 current audited financial statements (to the extent they are otherwise prepared in the  
11 ordinary course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an  
12 entity that was recently capitalized for the purpose of acquiring the home health care  
13 business, current audited financial statements of its equity holder(s) or their affiliate(s) (to  
14 the extent they are otherwise prepared in the ordinary course of business) who shall  
15 either guarantee the obligations of the Potential Bidder or provide such other form of  
16 financial disclosure and credit-quality support information or enhancement or (ii)  
17 documents evidencing committed financing for the Home Health Care Minimum Overbid,  
18 as deemed reasonably acceptable by the Debtor, in its sole discretion. The Potential  
19 Bidder may elect to only provide the information required under this subsection upon the  
20 execution of confidentiality agreement by the Debtor and the Potential Bidder, its equity  
21 holders and its affiliates. The form of confidentiality agreement shall be provided by the  
22 Debtor to any Potential Bidder upon request;

23 (g) is accompanied by evidence establishing, based upon the Debtor's  
24 business judgment, that (a) the Potential Bidder is capable and qualified, financially,  
25 legally and otherwise, of unconditionally performing all obligations under the proposed  
26 Home Health Asset Purchase Agreement or the Competing Purchase Agreement, and  
27 (b) all necessary internal, board, and shareholder approvals related to the submission,  
28 execution, delivery, and closing of the Home Health Asset Purchase Agreement or the  
29 Competing Purchase Agreement, have been or can timely be obtained;

30 (h) is not subject to any due diligence or financing contingencies of any kind, or  
31 any contingencies related to any internal or investment committee or similar approvals;

32 (i) includes an acknowledgement and representation, in form and substance  
33 satisfactory to the Debtor that the Potential Bidder: (a) has had an opportunity to conduct  
34 any and all required due diligence regarding the home health care business prior to  
35 making its offer, (b) has relied solely upon its own independent review, investigation,  
36 and/or inspection of any documents and/or the hospice business in making its bid, (c) did  
37 not rely upon any written or oral statements, representations, promises, warranties, or  
38 guaranties whatsoever, whether express or implied (by operation of law or otherwise),  
39 regarding the home health care business, and (d) affirmatively consents to the jurisdiction  
40 of the Court, affirmatively consents to the Court entering a final order, and waives any  
41 right to a jury trial, in each case in connection with any disputes relating to the relief  
42 sought in the Motion and the construction and enforcement of any sale transaction  
43 documents;

1 (j) includes proof that the Potential Bidder is licensed, or will be able to obtain  
2 licenses, by the California Department of Social Services (RCFE) and the California  
3 Department of Health Services (SNF), if necessary, and must submit a viable business  
4 and licensing plan (whether a business and licensing plan is viable shall be determined  
5 by the Debtor using its reasonable business judgment);

6 (k) contains such other information reasonably requested by the Debtor; and

7 (l) is received by each of the Notice Parties (as defined herein) prior to the Bid  
8 Deadline.

9 Notwithstanding the foregoing, HMS is deemed as a Qualified Home Health Bidder  
10 and the Home Health Asset Purchase Agreement is deemed a Qualified Home Health  
11 Bid, for all purposes and in connection with the Bidding Procedures, Auction and Home  
12 Health Asset Sale.

13 **c. Combined Hospice and Home Health Care Qualified Bids**

14 A bid submitted by a Potential Bidder with respect to both the Hospice Assets and  
15 the Home Health Assets (collectively, the "Combined Assets") will be considered will be  
16 considered a Qualified Combined Asset Bid (each, a "Qualified Combined Asset Bid,"  
17 and together with any Qualified Hospice Bid and Qualified Home Health Bid, the  
18 "Qualified Bids" and each such Potential Bidder thereafter a "Qualified Combined Asset  
19 Bidder") only if the bid complies with the following requirements:

20 (a) submit a Competing Asset Purchase Agreement, including all exhibits and  
21 schedules thereto, and contains terms and conditions that, taken as a whole, are higher  
22 or otherwise better than the terms and conditions of the Asset Purchase Agreements, to  
23 the extent such agreements do not conflict, as determined by the Debtor using its  
24 business judgment. Any Qualified Combined Asset Bid that proposes a Competing  
25 Purchase Agreement, must agree or provide for the following:

26 (i) the cash purchase price that is greater than the aggregate value of the  
27 Hospice Asset Minimum Overbid and Home Health Care Minimum Overbid  
28 ("Combined Asset Minimum Overbid");

(ii) a disclaimer of any right of the Potential Bidder to receive a breakup fee or  
termination fee, and waives any claim to compensation under section 503(b) of the  
Bankruptcy Code for making a substantial contribution;

(iii) an identification, with particularity, which liabilities, executory contracts and  
unexpired leases that have been identified to Potential Bidders through the diligence  
process the Potential Bidder would agree to assume;

(iv) a contact person(s) for the proposed assignee that the applicable  
counterparty may directly contact in connection with adequate assurance of future  
performance issues; and

1 (v) a proposed closing date that is not later than August 1, 2020;

2 (b) includes a cashier's check made payable to the order of "Visiting Nurse  
3 Association of the Inland Counties" or evidence of electronic funds transfer in accordance  
4 with instructions to be provided by the Debtor equal to 5% of the Combined Asset  
5 Minimum Overbid, which will be retained by the Debtor as a refundable deposit for  
6 application against the purchase price at the closing of the transaction, returned to the  
7 Potential Bidder, or forfeited to the Debtor as set forth below;

6 (c) identifies the full legal name of the Potential Bidder (including any equity  
7 holders or other financial backers sponsoring or participating in connection with such bid);

8 (d) includes a signed writing that the Potential Bidder's offer will remain open  
9 and irrevocable as follows (i) until the closing of the Sale if it is designated as the  
10 Successful Bid, (ii) until the Back-Up Expiration Date if it is designated as the Back-Up,  
11 and (iii) in all other cases, three (3) business days after conclusion of the Sale Hearing;

11 (e) is accompanied by evidence establishing the Potential Bidder's ability to  
12 provide adequate assurance of future performance with respect to the executory  
13 contracts and unexpired leases identified in subparagraph (a)(iv) above. If the Debtor  
14 concludes, exercising its business judgment, that the information establishing adequate  
15 assurance is not sufficient, then the Debtor may request specific additional information  
16 from the Potential Bidder in writing and the Potential Bidder shall have a reasonable  
17 period of time to supplement the information it provided to establish adequate assurance;

15 (f) is accompanied by evidence establishing, based upon the Debtor's  
16 business judgment, that the Potential Bidder has the financial ability to pay, including  
17 through committed financing, or otherwise fulfill the conditions relating to payment of the  
18 Combined Asset Minimum Overbid; such evidence shall include, but is not limited to, (i)  
19 current audited financial statements (to the extent they are otherwise prepared in the  
20 ordinary course of business) of (a) the Potential Bidder, or (b) if the Potential Bidder is an  
21 entity recently capitalized a for the purpose of acquiring the hospice and home health  
22 care businesses, current audited financial statements of its equity holder(s) or their  
23 affiliate(s) (to the extent they are otherwise prepared in the ordinary course of business)  
24 who shall either guarantee the obligations of the Potential Bidder or provide such other  
25 form of financial disclosure and credit-quality support information or enhancement or (ii)  
26 documents evidencing committed financing for the Combined Asset Minimum Overbid, as  
27 deemed reasonably acceptable by the Debtor, in its sole discretion. The Potential Bidder  
28 may elect to only provide the information required under this subsection upon the  
execution of confidentiality agreement by the Debtor and the Potential Bidder, its equity  
holders and its affiliates. The form of confidentiality agreement shall be provided by the  
Debtor to any Potential Bidder upon request;

26 (g) is accompanied by evidence establishing, based upon the Debtor's  
27 business judgment, that the Potential Bidder is capable and qualified, financially, legally  
28 and otherwise, of unconditionally performing all obligations under the Competing  
Purchase Agreement;



1 (h) includes confirmation that there are no conditions precedent to the Potential  
2 Bidder's ability to enter into a definitive agreement and that all necessary internal  
governance and shareholder approvals have been obtained prior to the bid;

3 (i) is not subject to any due diligence or financing contingencies of any kind, or  
4 any contingencies related to any internal or investment committee or similar approvals;

5 (j) includes an acknowledgement and representation, in form and substance  
6 satisfactory to the Debtor that the Potential Bidder: (a) has had an opportunity to conduct  
7 any and all required due diligence regarding the hospice and home health care  
8 businesses prior to making its offer, (b) has relied solely upon its own independent  
9 review, investigation, and/or inspection of any documents and/or the hospice and home  
10 health care businesses in making its bid, (c) did not rely upon any written or oral  
11 statements, representations, promises, warranties, or guaranties whatsoever, whether  
express or implied (by operation of law or otherwise), regarding the hospice and home  
12 health care businesses, and (d) affirmatively consents to the jurisdiction of the Court,  
13 affirmatively consents to the Court entering a final order, and waives any right to a jury  
14 trial, in each case in connection with any disputes relating to the relief sought in the  
15 Motion and the construction and enforcement of any sale transaction documents;

16 (k) includes proof that the Potential Bidder is licensed, or will be able to obtain  
17 licenses by the California Department of Social Services (RCFE) and the California  
18 Department of Health Services (SNF), if necessary, and must submit a viable business  
19 and licensing plan (whether a business and licensing plan is viable shall be determined  
20 by the Debtor using its reasonable business judgment);

21 (l) contains such other information reasonably requested by the Debtor; and

22 (m) is received by each of the Notice Parties (as defined herein) prior to the Bid  
23 Deadline.

24 **d. Determination of Qualified Bid**

25 Any Potential Bidder that timely submits a Qualified Bid, as set forth above, shall  
26 be deemed a "Qualified Bidder" and may bid for the Hospice or Home Health Assets, or  
27 both, and may modify its bid in subsequent rounds to include or exclude assets or  
28 liabilities and to modify other terms of its bid, as it deems appropriate, at the Sale  
Hearing. Any Potential Bidder that fails to submit a timely, conforming Qualified Bid, as  
set forth above, shall be disqualified from bidding at the Sale Hearing, unless the Court  
orders otherwise.

The Debtor, in the exercise of its business judgment, may consider, as a single  
Qualified Bid, multiple bids for the Hospice and/or Home Health Assets, or both, or any  
portion thereof, when taken together in the aggregate, such bids would otherwise meet  
the standards for a single Qualified Bid. The Debtor may permit Potential Bidders who  
submitted such multiple bids by the Bid Deadline but who were not identified as a  
component of a single Qualified Bid consisting of such multiple bids and which otherwise  
satisfy the Qualified Bid criteria set forth above, to participate at the Sale Hearing and to

1 submit at the Sale Hearing a higher or otherwise better bid that in subsequent rounds of  
2 bidding may be considered, together with other bids, as part of a single Qualifying Bid for  
overbid purposes.

3 The Debtor shall provide a copy of (i) all Qualifying Hospice Bids and Qualifying  
4 Combined Asset Bids to Bristol within one (1) business day after any such bid has been  
deemed a Qualified Bid and (ii) all Qualifying Home Health Bids and Qualifying Combined  
5 Asset Bids to HMS, in each case no later than within one (1) business day after any such  
bid has been deemed a Qualified Bid.

6  
7 All Qualified Bidders at the Sale Hearing shall be deemed to have consented to  
the jurisdiction of the Court and waived any right to a jury trial in connection with any  
8 disputes relating to the Sale Hearing and the construction and enforcement of any sale  
transaction documents.

9  
10 **2. Bid Deadline**

11 A Potential Bidder that desires to make an Qualified Bid will deliver written copies  
of its Qualified Bid to each of the following parties by electronic mail: (i) Adam Meislik, the  
12 Debtor's Chief Restructuring Officer (email: ameislik@force10partners.com); (ii) David  
M. Goodrich, counsel to the Debtor (email: dgoodrich@wglp.com); and (iii) Andre Ulloa,  
13 the Debtor's finders (email: andre@ahcteam.com) (collectively, the "Notice Parties"), no  
later than June 25, 2020 at 5:00 p.m. (Prevailing Pacific Time). A failure to be timely be  
14 qualified as a bidder may result in an exclusion from bidding at the Sale Hearing. The  
Debtor, however, reserves the right to extend the Bid Deadline.

15  
16 **3. Evaluation of Competing Bids**

17 In the event that there are competing bids for the Hospice Assets or the Home  
Health Assets, or both, a Qualified Bid will be evaluated by the Debtor and shall be  
18 analyzed using several factors including, but not limited to: (i) the amount of the proposed  
purchase price, including the liabilities being assumed, (ii) the assets to be purchased,  
19 (iii) the risks and timing associated with consummating such bid, (iv) the terms of the  
Competing Purchase Agreement, should one be presented, (v) to the extent applicable,  
20 the ability of the Qualified Bidder to obtain appropriate regulatory approvals, (vi) the  
capitalization and adequate assurance provided by the Potential Bidder with respect to its  
21 likely future performance and satisfaction of any liabilities related to assumed executory  
contracts and unexpired leases as well as any other assumed liabilities, including any  
22 pension related obligations, and (vii) any other factors deemed relevant by the Debtor in  
the exercise of its business judgment.

23  
24  
25 **4. No Competing Bid**

26 If the Debtor does not receive any Qualified Bids other than the Asset Purchase  
Agreements, then the Debtor will not hold an Auction and Bristol and HMS will be named  
27 the Successful Bidders. But if the Debtor receives any Qualified Bids, the Debtor will  
proceed to conduct an Auction, otherwise pursuant to the terms and conditions set forth  
28 herein, to consider such Qualified Bids.

1                   **5.     Combined Asset Auction Procedures**

2                   If one or more Qualified Combined Asset Bids are received for the Combined  
3 Assets, the Debtor will conduct an Auction at the Sale Hearing on June 30, 2020 at 2:00  
4 p.m. (prevailing Pacific Time) (the "Auction Date"), at the Court (such Auction, the  
5 "Combined Asset Auction"). A Combined Asset Auction shall be governed by the  
6 following procedures:

7                   (a)     the Auction will be conducted openly and the actual identity of each  
8 Qualified Combined Asset Bidder will be disclosed on the record at the Auction;

9                   (b)     any Qualified Combined Asset Bidder must attend in person (unless no  
10 Auction is to be conducted);

11                  (c)     all Qualified Bidders (including Bristol and HMS) shall be entitled to bid at  
12 the Auction, including on subsets of the Combined Assets;

13                  (d)     each Qualified Combined Asset Bidder shall be required to confirm that it  
14 has not engaged in any collusion with respect to the bidding or the sale, and that its  
15 Qualified Combined Asset Bid is a good faith bona fide offer and that it intends to  
16 consummate the proposed transaction if selected as the Successful Bidder;

17                  (e)     at least one (1) business day prior to the Auction, each Qualified Combined  
18 Asset Bidder who has timely submitted a Qualified Combined Asset Bid must inform the  
19 Debtor whether it intends to attend the Auction; provided that in the event a Qualified  
20 Combined Asset Bidder elects not to attend the Auction, such Qualified Combined Asset  
21 Bidder's Qualified Combined Asset Bid shall nevertheless remain fully enforceable  
22 against such Qualified Combined Asset Bidder and such Qualified Combined Asset  
23 Bidder may still be designated by the Debtor as the leading bid, Successful Bidder or the  
24 Back-Up Bidder.

25                  (f)     prior to the Auction, the Debtor will provide a summary of the Qualified  
26 Combined Asset Bid or combination of Qualified Combined Asset Bids which the Debtor  
27 believes, in its business judgment, is the highest or otherwise best offer ("Combined  
28 Asset Starting Bid") to Bristol, HMS and each Qualified Combined Asset Bidder that  
submitted a Qualified Combined Asset Bid. The Debtor may aggregate Qualified  
Combined Asset Bids from unaffiliated persons to create the Combined Asset Starting  
Bid; provided that all Qualified Combined Asset Bids shall remain subject to the  
provisions of 11 U.S.C. § 363(n) regarding collusive bidding;

(g)     bidding will commence at the Combined Asset Starting Bid;

(h)     each subsequent bid shall be in increments of no less than \$100,000 higher  
than the immediately preceding bid;

(i)     the Auction shall be conducted openly and on the Court's record; and

1 (j) the Auction shall continue until, in the Debtor's business judgment and  
2 subject to Court approval, there is a highest or otherwise best bid or combination of bids  
(collectively, the "Successful Bid") and the party deemed to have made the Successful  
3 Bid shall become the "Successful Bidder".

4 As used herein, the term "Successful Combined Asset Purchase  
5 Agreement" shall mean the Competing Purchase Agreement(s) of the Successful  
Bidder(s).

6 **6. Hospice Auction Procedures**

7 In the absence of a Combined Asset Auction, if no Qualified Combined Asset Bid  
8 is received and one or more Qualified Hospice Bids are received for the Hospice Assets,  
the Debtor will conduct an Auction at the Sale Hearing on the Auction Date, at the Court  
9 (such Auction, the "Hospice Auction"). The Hospice Auction shall be governed by the  
10 following procedures:

11 (a) the Auction will be conducted openly and the actual identity of each  
Qualified Combined Asset Bidder will be disclosed on the record at the Auction;

12 (b) each Qualified Hospice Bidder shall be required to confirm that it has not  
13 engaged in any collusion with respect to the bidding or the sale;

14 (c) only Bristol and the Qualified Hospice Bidders who have timely submitted a  
15 Qualified Hospice Bid will be entitled to make any subsequent bids at the Auction;

16 (d) all Qualified Hospice Bidders who have timely submitted a Qualified  
17 Hospice Bid will be entitled to be present at the Auction, and the actual identity of each  
Qualified Hospice Bidder will be disclosed on the record at the Auction; provided that all  
18 Qualified Hospice Bidders wishing to attend the Auction must have at least one individual  
representative with authority to bind such Qualified Hospice Bidder attending the Auction  
19 in person;

20 (e) at least one (1) business day prior to the Auction, each Qualified Hospice  
21 Bidder who has timely submitted a Qualified Hospice Bid must inform the Debtor whether  
it intends to attend the Auction; provided that in the event a Qualified Hospice Bidder  
22 elects not to attend the Auction, such Qualified Hospice Bidder's Qualified Hospice Bid  
shall nevertheless remain fully enforceable against such Qualified Hospice Bidder and  
23 such Qualified Hospice Bidder may still be designated by the Debtor as the leading bid,  
Successful Bidder or the Back-Up Bidder;

24 (f) bidding at the Auction will begin with a bid determined by the Debtor as  
25 being the then highest and best bid, which will be announced by the Debtor prior to the  
commencement of the Auction (the "Baseline Hospice Bid"). The Auction will continue in  
26 bidding increments of at least \$100,000.00 (each a "Hospice Overbid") until the selection  
of a Successful Bid (defined below) and a Back-Up Bidder in accordance with the  
27 procedures set forth below;

28

1 (g) the Debtor may employ and announce at the Auction additional procedural  
2 rules that are (i) reasonable under the circumstances for conducting the Auction, (ii) in  
3 the best interest of the Debtor's estate; provided, however, that any such rules are  
disclosed to Bristol and each Qualified Hospice Bidder participating in the Auction;

4 (h) the Auction shall be conducted openly and on the Court's record, if the  
latter is approved by the Court; and

5  
6 (i) the Auction shall continue until, in the Debtor's business judgment and  
7 subject to Court approval, there is a highest or otherwise best bid or combination of bids  
(collectively, the "Successful Bid") and the party deemed to have made the Successful  
Bid shall become the "Successful Bidder".

8  
9 As used herein, the term "Successful Hospice Bidder's Purchase Agreement" shall  
10 mean, as applicable, the (i) Hospice Asset Purchase Agreement or Competing Purchase  
Agreement of the Successful Bidder(s), if applicable.

11 **7. Home Health Care Auction Procedures**

12 In the absence of a Combined Asset Auction, if no Qualified Combined Asset Bid  
13 is received and one or more Qualified Home Health Bids are received for the Home  
14 Health Assets, the Debtor will conduct an auction at the Sale Hearing on the Auction  
Date, at the Court (such Auction, the "Home Health Auction"). The Home Health Auction  
shall be governed by the following procedures:

15 (a) the Auction will be conducted openly and the actual identity of each  
16 Qualified Home Health Bidder will be disclosed on the record at the Auction;

17 (b) HMS and any Qualified Home Health Bidder must attend the Auction in  
18 person (unless no Auction is to be conducted);

19 (c) only HMS and any Qualified Home Health Bidder shall be entitled to bid for  
the Home Health Assets at the Auction;

20 (d) each Qualified Home Health Bidder shall be required to confirm that it has  
21 not engaged in any collusion with respect to the bidding or the sale, and that its Qualified  
22 Home Health Overbid is a good faith bona fide offer and that it intends to consummate  
the proposed transaction if selected as the Successful Bidder;

23 (e) at least one (1) business day prior to the Auction, each Qualified Home  
24 Health Bidder who has timely submitted a Qualified Home Health Bid must inform the  
25 Debtor whether it intends to attend the Auction; provided that in the event a Qualified  
26 Home Health Bidder elects not to attend the Auction, such Qualified Home Health  
27 Bidder's Qualified Home Health Bid shall nevertheless remain fully enforceable against  
such Qualified Home Health Bidder and such Qualified Home Health Bidder may still be  
designated by the Debtor as the leading bid, Successful Bidder or the Back-Up Bidder.

28

1 (f) prior to the Auction, the Debtor will provide a summary of the Qualified  
2 Home Health Bid or combination of Qualified Bids which the Debtor believes, in its  
3 business judgment, is the highest or otherwise best offer ("Home Health Care Starting  
4 Bid") to HMS and each Potential Bidder that submitted a Qualifying Bid. The Home  
5 Health Care Starting Bid must be no less than the Home Health Care Minimum Overbid.  
6 The Debtor may aggregate Qualified Home Health Bids from unaffiliated persons to  
7 create the Home Health Care Starting Bid; provided that all Qualified Home Health  
8 Bidders shall remain subject to the provisions of 11 U.S.C. § 363(n) regarding collusive  
9 bidding;

10 (g) bidding will commence at the Home Health Care Starting Bid;

11 (h) each subsequent bid shall be in increments of no less than \$50,000 higher  
12 than the immediately preceding bid; and

13 (i) the Auction shall be conducted openly and on the Court's record, if the  
14 latter is approved by the Court; the Auction shall continue until, in the Debtor's business  
15 judgment and subject to Court approval, there is a highest or otherwise best bid or  
16 combination of bids (collectively, "Successful Bid") and the party deemed to have made  
17 the Successful Bid shall become the "Successful Bidder".

18 As used herein, the term "Successful Home Health Bidder's Purchase Agreement"  
19 shall mean, as applicable, the (i) Home Health Asset Purchase Agreement or Competing  
20 Purchase Agreement(s) of the Successful Bidder(s), if applicable.

21 **8. Selection of Successful Bidder; As-Is Where-Is**

22 The determination of the Successful Bids and the Back-Up Bids (as defined below)  
23 by the Debtor at the conclusion of the Auction(s) shall be final, subject only to approval by  
24 the Court. The Sales will be on an "as is, where is" basis and without representations or  
25 warranties of any kind by the Debtor, their agents or the Debtor's chapter 11 estate,  
26 except and solely to the extent expressly set forth in the Successful Hospice Bidder's  
27 Purchase Agreement and the Successful Home Health Bidder's Purchase Agreement or  
28 Successful Combined Asset Bidder's Purchase Agreement.

Unless otherwise agreed to by the Debtor and the applicable Successful Bidder(s),  
should it not be Bristol or HMS, within two (2) business days after the conclusion of the  
Auction(s), the Successful Bidder(s) shall complete and execute all agreements,  
contracts, instruments, and other documents evidencing and containing the terms and  
conditions upon which the bid(s) of the Successful Bidder(s) bid was made.

**I. Return of Deposits**

All deposits shall be returned to each Qualified Bidder not selected by the Debtor  
as the Successful Bidder or the Back-Up Bidder no later than five (5) business days  
following the conclusion of the Auction(s). The Successful Bidder's deposit will be  
credited towards the purchase price at the closing under the Successful Bidder's  
Purchase Agreement. The Back-Up Bidder's deposit shall be returned to it no later than

1 five (5) business days after the Back-Up Expiration Date (as defined below) or, if the  
2 Back-Up Bidder is selected as the Successful Bidder and the Debtor elects to  
3 consummate the sale with the Back-Up Bidder, its deposit will be credited towards the  
purchase price at the closing under the Back-Up Bid.

4 If the Successful Bidder fails to consummate the Sale because of a breach or failure to  
5 perform on the part of the Successful Bidder, the Successful Bidder's deposit shall be  
6 forfeited to the Debtor, and the Debtor shall have the right to seek any and all other  
remedies and damages from the defaulting Successful Bidder.

7 **J. Back-Up Bidder**

8 To the extent applicable to either Auction, the Qualified Bidder with the next  
9 highest or otherwise best Qualified Bid ("Back-Up Bid"), as determined by the Debtor may  
10 select, in its sole discretion, to serve as the back-up bidder ("Back-Up Bidder"). The  
11 Back-Up Bidder shall be required to keep the applicable Back-Up Bid open and  
12 irrevocable until the earlier of (i) the closing under the applicable Successful Bidder's  
13 Purchase Agreement and (ii) 5:00 p.m. (Prevailing Pacific Time) of the first business day  
14 that is 60 days after the Auction Date (the "Back-Up Expiration Date"). If a Successful  
15 Bidder fails to consummate the approved sale because of a breach or failure to perform  
16 on the part of such Successful Bidder, the Debtor shall have the right, but not the  
17 obligation, to accept the applicable Back-Up Bidder's bid, in which case the Back-Up  
Bidder will be immediately notified and deemed to be the Successful Bidder for all  
18 purposes under these Bidding Procedures (and the applicable asset purchase agreement  
19 or Competing Purchase Agreement relating to the applicable Back-Up Bid will be deemed  
20 to be the Successful Bidder's Purchase Agreement for all purposes hereunder), and the  
21 Debtor will be authorized to consummate the Sale with the Back-Up Bidder without  
further order of the Court; provided, however, that any sale to a Back-Up Bidder shall be  
22 consummated no later than the Back-Up Expiration Date.

18 **K. Credit Bid Rights**

19 Subject to applicable law, secured creditors of the Debtor shall have the right to  
20 use their allowed prepetition secured claims and post-petition secured claims, in all cases  
21 subject to section 363(k) of the Bankruptcy Code, to credit bid with respect to the  
proposed sales of the Hospice Assets and Home Health Assets.

22 **L. Break-Up Fee**

23 In recognition of the expenditure of time, energy, and resources by Bristol and  
24 HMS, the Debtor has agreed that if the Hospice Asset Purchase Agreement is terminated  
25 because the Debtor consummates a transaction with another Qualified Hospice Bidder(s)  
26 or Qualified Combined Asset Bidder(s) at the Auction, Bristol will be paid at the closing of  
27 the sale of the Hospice Assets or Combined Assets an amount in cash equal of out-of-  
28 pocket costs and expenses of Bristol and its affiliates incurred in connection with the  
diligence, negotiation, documentation, and bidding and auction process (including any  
legal and financial advisory fees and expenses) in an amount not to exceed \$250,000  
 ("Bristol Expense Reimbursement"), and a break-up fee equal to 3% of the Purchase

1 Price (as defined in the Hospice Asset Purchase Agreement) minus the Bristol Expense  
2 Reimbursement ("Bristol Break-up Fee," and together with the Bristol Expense  
3 Reimbursement, the "Bristol Stalking Horse Protections"). The Bristol Stalking Horse  
4 Protections shall be paid out of the proceeds of the Hospice Sale or Combined Asset  
5 Sale without any further order of the Court.

6 The Bristol Stalking Horse Protections will only be enforceable by Bristol so long  
7 as: (i) Bristol is not in default of its obligations under the Hospice Asset Purchase  
8 Agreement; (ii) the Hospice Assets are not sold to Bristol, but sold to another Successful  
9 Bidder at the Auction; and (iii) the sale to the other Successful Bidder is consummated.  
10 The Bristol Stalking Horse Protections, if payable, will be the sole and exclusive remedy  
11 of Bristol if the proposed sale to Bristol is not consummated.

12 The Debtor has also agreed to payment from the Successful Bidder to HMS,  
13 should HMS not be determined to be the Successful Bidder for the home health care  
14 business, of out-of-pocket costs and expenses of HMS and its affiliates incurred in  
15 connection with the diligence, negotiation, documentation, and bidding and auction  
16 process (including any legal and financial advisory fees and expenses) in an amount not  
17 to exceed \$21,000 ("HMS Expense Reimbursement and Break-up Fee") (the HMS  
18 Expense Reimbursement and Break-up Fee is also referred to as the "HMS Stalking  
19 Horse Protections"). The HMS Stalking Horse Protections also provide for an allowed  
20 administrative claim against the Estate, which shall be automatically satisfied and  
21 released upon payment of the entire amount of HMS Stalking Horse Protections to HMS  
22 by the Successful Bidder. The HMS Stalking Horse Protections will only be enforceable  
23 by HMS so long as: (i) HMS is not in default of its obligations under the Purchase  
24 Agreement, and (ii) the home health care business is sold to a Successful Bidder at the  
25 Auction and the sale to the other Successful Bidder is consummated. The Stalking Horse  
26 Protections, if payable, will be the sole and exclusive remedy of HMS if the proposed sale  
27 to HMS is not consummated. Only the Successful Bidder, and not the Debtor, shall be  
28 responsible for payment of the HMS Stalking Horse Protections to HMS.

19 **III. Sale Hearing**

20 The Debtor will seek entry of the Sale Order at the Sale Hearing on June 30, 2020  
21 at 2:00 p.m. (prevailing Pacific Time) (or at another date and time convenient to the  
22 Court). As the Sale Hearing the Debtor will seek Court approval of the sale to the  
23 Successful Bidder(s) (or, in the event the Successful Bidder fails to close, the Back-Up  
24 Bidder), free and clear of the Encumbrances pursuant to 11 U.S.C. § 363, with the  
25 Encumbrances, as applicable, to attach to the sale proceeds with the same validity and  
26 in the same order of priority as they attached to the Assets, including the assumption by the  
27 Debtor and assignment to the Successful Bidder(s) of the Assigned Contracts pursuant to  
28 11 U.S.C. § 365. The Debtor will submit and present additional evidence, as necessary,  
at the Sale Hearing demonstrating that the sale is fair, reasonable, and in the best  
interest of the Debtor's estate and all interested parties, and satisfies the standards  
necessary to approve a sale of the Assets.



1 **IV. Reservation**

2 Notwithstanding any of the foregoing, the Debtor reserves the right to modify the  
3 Bidding Procedures at or prior to the Auction, including, without limitation, to extend the  
4 deadlines set forth herein, modify bidding increments, waive terms and conditions set  
5 forth herein with respect to any or all potential bidders, impose additional terms and  
6 conditions with respect to any or all Potential Bidders; adjourn or cancel the Auction at or  
7 prior to the Auction, and adjourn or cancel the Sale Hearing and withdraw the sale motion  
8 if the proposed sale is impractical or improvident at the time of the Sale Hearing. The  
9 Debtor will not, however, modify the Bidding Procedures in a manner that violates the  
10 Asset Purchase Agreement. The Debtor further reserve the right, in the exercise of its  
11 business judgment, to terminate discussions with any or all Potential Bidders at any time  
12 without specifying the reasons therefor.

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**Exhibit 2**

1 David M. Goodrich, State Bar No. 208675  
dgoodrich@wglp.com  
2 Beth E. Gaschen, State Bar No. 245894  
bgaschen@wglp.com  
3 **WEILAND GOLDEN GOODRICH LLP**  
650 Town Center Drive, Suite 600  
4 Costa Mesa, California 92626  
Telephone 714-966-1000  
5 Facsimile 714-966-1002

6 Counsel for Debtor and  
7 Debtor-In-Possession

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11 In re

Case No. 6:18-bk-16908-MH

12 VISITING NURSE ASSOCIATION OF THE  
13 INLAND COUNTIES,

Chapter 11

14 Debtor and  
15 Debtor-in-Possession.

**NOTICE TO COUNTERPARTIES TO  
EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES OF THE  
DEBTOR THAT MAY BE ASSUMED AND  
ASSIGNED UNDER THE ASSET  
PURCHASE AGREEMENTS**

Sale Hearing Date, Time and Location:

16 DATE: June 30, 2020  
17 TIME: 2:00 p.m.  
18 CTRM: 303  
19

20  
21  
22  
23 **PLEASE TAKE NOTICE** that on May 12, 2020, the above-captioned debtor and

24 debtor in possession (the "Debtor") filed a *Motion for Order Approving Bidding*  
25 *Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements,*  
26 *and Assignment Procedures, In Connection With Sale of Debtor's Hospice Assets and*  
27

28 1192130.1

ACTIVE/102906769.4

**Weiland Golden Goodrich LLP**  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626  
Tel 714-966-1000 Fax 714-966-1002

1 *Home Health Assets* [Docket No. \_\_\_\_] (the "Motion"). Capitalized terms used herein and  
2 not otherwise defined shall have the meanings set forth in the Motion.

3 **PLEASE TAKE FURTHER NOTICE** that, by the Motion the Debtor seeks, among  
4 other things, to (1) sell certain assets related to the Debtor's hospice business (the  
5 "Hospice Assets") free and clear of any claim, charge, lien (statutory or otherwise),  
6 mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, rights of  
7 use, right of first offer, right of first refusal, easement, servitude, restrictive covenant,  
8 encroachment, license and other restriction and interest (the "Encumbrances") to Bristol  
9 Hospice, L.L.C. or its nominee ("Bristol"), and (2) to sell certain assets related to the  
10 Debtor's home health business (the "Home Health Assets") free and clear of any  
11 Encumbrance to Healthsure Management Services LLC ("HMS") or its nominee  
12 (collectively, the "Sales"). The Hospice Assets and the Home Health Assets are  
13 collectively referred to herein as the "Assets".  
14  
15

16 **PLEASE TAKE FURTHER NOTICE** that, the Bankruptcy Court will hold a hearing  
17 (the "Sale Hearing") to approve the Sale and to authorize the assumption and assignment  
18 of the Assigned Contracts on June 30, 2020 at 2:00 p.m. (prevailing Pacific Time), before  
19 the United States Bankruptcy Court for the Central District of California, 3420 Twelfth  
20 Street, Riverside, CA 92501, Courtroom 303. The Sale Hearing may be adjourned from  
21 time to time without further notice to creditors or parties in interest other than by  
22 announcement of the adjournment in open court on the date scheduled for the Sale  
23 Hearing.  
24

25 **PLEASE TAKE FURTHER NOTICE** that, on [\_\_\_\_, 2020], the Bankruptcy Court  
26 entered an Order (the "Bidding Procedures Order") approving, among other things, the  
27 Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i)  
28

1 the bidding process for the Assets, and (ii) procedures for the potential assumption and  
2 assignment of the Debtor's executory contracts and unexpired leases in connection with  
3 the proposed sale.

4 **PLEASE TAKE FURTHER NOTICE** that, consistent with the Bidding Procedures  
5 Order, the Debtor may seek to assume an executory contract or unexpired lease to which  
6 you may be a party. Attached hereto as **Exhibit A** is a list of all executory contracts or  
7 unexpired leases that Bristol has informed the Debtor that it may seek to be assumed  
8 and assigned to Bristol (the "Bristol Assigned Contracts") as part of the Hospice Sale,  
9 along with the amount of money that the Debtor asserts is owed to cure any defaults  
10 existing under each Bristol Assigned Contract (the "Cure Amount").  
11

12 **PLEASE TAKE FURTHER NOTICE** that, attached hereto as **Exhibit B** is a list of  
13 all executory contracts or unexpired leases that HMS has informed the Debtor that it may  
14 seek to be assumed and assigned to HMS (the "HMS Assigned Contracts") as part of the  
15 Home Health Sale, along with the Cure Amount.  
16

17 **PLEASE TAKE FURTHER NOTICE** that, attached hereto as **Exhibit C** is a list of  
18 all executory contracts or unexpired leases that include terms and conditions that are  
19 related to the Hospice Assets **and** the Home Health Assets (the "Mixed-Use Contracts").  
20

21 Bristol has informed the Debtor that it seeks that the Debtor assume and assign the  
22 terms and conditions of the Mixed-Use Contracts that relate specifically to the Hospice  
23 Assets (the "Hospice Mixed-Use Contracts") to Bristol as part of the Hospice Sale. HMS  
24 has informed the Debtor that it seeks that the Debtor assume and assign the terms and  
25 conditions of the Mixed-Use Contracts that relate specifically to the Home Health Assets  
26 (the "Home Health Mixed-Use Contracts") to HMS as part of the Home Health Sale.  
27

28 Following the entry of the order approving the Sales, the Mixed-Use Contracts identified

1 on **Exhibit C** hereto shall be duplicated, and only the Hospice Mixed-Use Contracts shall  
2 be assigned to Bristol, and only the Home Health Mixed-Use Contracts shall be assigned  
3 to HMS. For avoidance of doubt, following assignment of the Mixed-Use Contracts  
4 identified on **Exhibit C** hereto, the applicable Mixed-Use Contracts counterparty will have  
5 one contract with Bristol related to the Hospice Assets and one contract with HMS related  
6 to Home Health Assets.  
7

8 **PLEASE TAKE FURTHER NOTICE** that, if you disagree with the Cure Amount  
9 shown for any Assigned Contract to which you are a party, then by no later seven (7)  
10 days before the Sale Hearing (the "Objection Deadline") you must file an objection in  
11 writing with the United States Bankruptcy Court for the Central District of California, which  
12 objection shall be electronically filed or, if filed in person, at United States Bankruptcy  
13 Court, Central District of California, 3420 Twelfth Street, Riverside, CA 92501 (Attn: the  
14 Honorable Mark D. Houle), and provide a copy of such written objection to counsel to: (a)  
15 the Debtor: Weiland Golden Goodrich LLP, 650 Town Center Dr. Suite 600 Costa Mesa,  
16 CA 92626 (Attn: David M Goodrich, Beth Gaschen and Ryan W Beall), with email copy to  
17 rbeall@lwgllp.com; bgaschen@wgllp.com; dgoodrich@wgllp.com; (b) Bristol: Goodwin  
18 Procter LLP, 620 Eighth Avenue New York, NY 10018 (Attn: Gregory W. Fox), with email  
19 copy to GFox@goodwinlaw.com; (c) the Committee: Marshack Hays LLP, 870 Roosevelt  
20 Avenue Irvine, CA 92620 (Attn: Richard A Marshack and David Wood), with email copy to  
21 rmarshack@marshackhays.com; dwood@marshackhays.com; (d) to The H. N. and  
22 Frances C. Berger Foundation: Levene Neale Bender Yoo & Brill LLP, 10250  
23 Constellation Blvd Ste 1700 Los Angeles, CA 90067 (Attn: David B Golubchik), with  
24 email copy to dbg@lnbyb.com; and (e) Simione Healthcare Consultants, LLC, 130  
25 Newport Center Drive Suite 140 Newport Beach, CA 92660 (Attn: Sean A O'Keefe), with  
26  
27  
28

1 email copy to sokeefe@okeefelc.com (the "Objection Notice Parties"). Any objection  
2 must set forth the specific default or defaults alleged and set forth any cure amount as  
3 alleged by you.

4 **PLEASE TAKE FURTHER NOTICE** that if you have any other objection to the  
5 Debtor's proposed sale of the Hospice Assets and/or Home Health Assets or the  
6 assumption and assignment of any Assigned Contract to which you are a party, then you  
7 must file any such objection with the Bankruptcy Court by the Objection Deadline, which  
8 objection shall be electronically filed or, if filed in person, at United States Bankruptcy  
9 Court, Central District of California, 3420 Twelfth Street, Riverside, CA 92501 (Attn: the  
10 Honorable Mark D. Houle), and serve a copy thereof on the Objection Recipients, so as  
11 to be actually received no later than seven (7) days before the Sale Hearing.  
12

13 **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND**  
14 **SERVE AN OBJECTION ON THE OBJECTION RECIPIENTS AS STATED ABOVE,**  
15 **THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO**  
16 **FURTHER NOTICE. ANY COUNTERPARTY TO ANY ASSIGNED CONTRACT WHO**  
17 **DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH**  
18 **ASSIGNED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH**  
19 **CURE AMOUNT AND THE PROPOSED ASSUMPTION AND ASSIGNMENT OF THE**  
20 **ASSIGNED CONTRACT.**  
21

22 **PLEASE TAKE FURTHER NOTICE** that any objections that are timely filed and  
23 served in accordance with this Notice will be heard by the Court at the Sale Hearing.  
24

25 **PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided  
26 under the Asset Purchase Agreements, the Debtor and its estate shall be relieved of all  
27

1 liability accruing or arising after the effective date of assumption and assignment of the  
2 Assigned Contracts.

3 **PLEASE TAKE FURTHER NOTICE** that the inclusion of any executory contract or  
4 unexpired lease on **Exhibit A** or **Exhibit B** shall not constitute or be deemed a  
5 determination or admission by the Debtors that such contract or other document is, in  
6 fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code  
7 (all rights with respect thereto being expressly reserved).  
8

9 **PLEASE TAKE FURTHER NOTICE** that, notwithstanding the inclusion of any  
10 executory contract or unexpired lease on **Exhibit A** or **Exhibit B**, the Debtors are not  
11 obligated to assume any executory contract or unexpired lease identified on **Exhibit A** or  
12 **Exhibit B**. The Debtors (in consultation with the applicable purchaser) may amend or  
13 modify **Exhibit A** and **Exhibit B** in their sole discretion until the closing of the Sales.  
14

15  
16 Dated:

WEILAND GOLDEN GOODRICH LLP

17  
18 By: /s/ David M. Goodrich  
19 DAVID M. GOODRICH  
20 BETH E. GASCHEN  
21 Attorneys for Debtor and  
22 Debtor-in-Possession  
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**Exhibit 3**

7

**ASSUMPTION AND ASSIGNMENT PROCEDURES**

Set forth below are the assumption and assignment procedures (the "Assumption and Assignment Procedures") relating to the Visiting Nurse Association of the Inland Counties, a California non-profit corporation's ("Debtor") proposed sale (the "Hospice Sale") of certain of the Debtor's hospice business assets (the "Hospice Assets") free and clear of any claim, charge, lien (statutory or otherwise), mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, rights of use, right of first offer, right of first refusal, easement, servitude, restrictive covenant, encroachment, license and other restriction and interest (the "Encumbrances") to Bristol Hospice, L.L.C. or its nominee ("Bristol"), and the proposed sale (the "Home Health Sale" and together with Hospice Sale, "Sales") of certain of the Debtor's home health business assets (the "Home Health Assets") free and clear of any Encumbrance to Healthsure Management Services LLC ("HMS") or its nominee, in connection with the Debtor's chapter 11 case pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), case number 6:18-bk-16908-MH.

On May 12, 2020, the Debtor filed with the Bankruptcy Court a *Motion for Order Approving Bidding Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements, and Assignment Procedures, In Connection With Sale of Debtor's Hospice Assets and Home Health Assets* [Docket No. \_\_\_\_] (the "Motion"), which attached copies of the Hospice Asset Purchase Agreement and the Home Health Asset Purchase Agreement, setting forth the terms and conditions of the proposed Sales. The proposed Sales are subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion.

On [\_\_\_\_], 2020, the Court entered the *Order (I) Approving Bidding Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements, and Assignment Procedures in Connection with Sale of Debtor's Hospice and Home Health Care Businesses* (the "Bidding Procedures Order").

**I. ASSETS TO BE SOLD**

The Debtor seeks to complete a sale of certain of its hospice business assets ("Hospice Assets") and its home health care assets ("Home Health Assets") free and clear of the Encumbrances. The Hospice Assets and the Home Health Assets are collectively referred to herein as the "Assets".

**II. ASSIGNMENT AND ASSUMPTION PROCEDURES**

In the event the Debtor decides to transfer the Assigned Contracts in connection with a Sales. The Debtor will file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties at least fourteen (14) days prior to the Sale Hearing or (ii) such later date otherwise specified in the Cure Notice or set by the Court.

1       Objections to the Cure Costs set forth on the Cure Notice (a "Cure Objection") and  
2 provision of adequate assurance of future performance (an "Adequate Assurance  
3 Objection") must: (i) be in writing; (ii) state the name and address of the objecting party and  
4 the amount and nature of the claim or interest of such party; (iii) state with particularity the  
5 basis and nature of any objection, and provide proposed language that, if accepted and  
6 incorporated by the Debtor, would obviate such objection; (iv) conform to the Bankruptcy  
7 Rules and the Local Rules; (v) be filed with the Court and be served on the Objection Notice  
8 Parties (as defined in the Cure Notice) no later than seven (7) days before the Sale Hearing  
9 or, if applicable by the deadline provided in the applicable Cure Notice or otherwise set by  
10 the Court.

11       **ANY COUNTERPARTY TO AN ASSIGNED CONTRACT THAT IS PROPERLY**  
12 **SERVED WITH THE CURE NOTICE AND FAILS TO FILE AND SERVE AN CURE**  
13 **OBJECTION AND/OR ADEQUATE ASSURANCE OBJECTION IN ACCORDANCE**  
14 **WITH THE PARAGRAPHS ABOVE WILL FOREVER BARRED FROM MAKING SUCH**  
15 **OBJECTIONS.**

# **EXHIBIT B**

*Execution Version*

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**BRISTOL HOSPICE, L.L.C.**

**AND**

**VISITING NURSE ASSOCIATION OF THE INLAND COUNTIES,  
D/B/A VNA CALIFORNIA, A CALIFORNIA NONPROFIT CORPORATION**

**Dated as of April [24], 2020**

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**EXHIBITS**

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**SCHEDULES**

Schedule 2.1(a)	Schedule of Assigned Contracts
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Schedule 5.3	Schedule of Required Notices and Consents
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Schedule 8.1(b)	Schedule of Exceptions to Seller's General Pre-Closing Prohibitions

## ASSET PURCHASE AGREEMENT

**ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of April [24], 2020 (the “Execution Date”), is entered into by and between Bristol Hospice, L.L.C., a Utah limited liability company (the “Buyer”), and Visiting Nurse Association of the Inland Counties d/b/a VNA California, a California nonprofit corporation (the “Seller”). Certain capitalized terms used herein are defined in Article I.

### RECITALS

**A.** Seller is engaged two separate and distinct businesses, as follows:

(1) The business of providing hospice and palliative care services, and operating, managing, developing, designing and marketing hospice and palliative care programs, which is the subject of this Agreement (the “Hospice Business”); and

(2) The business of providing home healthcare services, and operating, managing, developing, designing and marketing home healthcare programs, which is not the subject of this Agreement (the “Home Health Business”).

**B.** Subject to the terms and conditions hereof, the Buyer desires to, among other things, acquire or assume from the Seller, and the Seller desires to, among other things, sell, assign, transfer and deliver to the Buyer all rights, titles and interests of the Seller in and to certain assets of, used in or relating to the conduct of operating and administering the Hospice Business or otherwise owned by or on account of the Seller.

**C.** On August 15, 2018 (the “Petition Date”), the Seller commenced a case (the “Chapter 11 Case”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), as Case No. 6:18-bk-16908-MH (the “Bankruptcy Case”).

**D.** In connection with the Chapter 11 Case, following the entry of the Sale Order approving the transactions contemplated hereby, upon the terms and conditions contained herein (including the satisfaction of the conditions set forth in Sections 9.1 and 9.2 hereof or the waiver thereof by the party entitled to the benefit of the applicable condition) and in the Sale Order, the Seller shall transfer and assign to the Buyer, and the Buyer shall acquire and accept from the Seller, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets (as defined below), and shall assume from the Seller the Assumed Liabilities (as defined below), in each case as more specifically provided herein and in the Sale Order.

**E.** The Seller has determined, in the exercise of its business judgment, that it is advisable and in the best interest of its bankruptcy estate and the beneficiaries thereof to consummate the transactions contemplated by this Agreement and the Ancillary Agreements pursuant to the Sale Order.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Buyer and the Seller hereby covenant, agree, warrant, represent and declare as follows:

## Article I

### DEFINITIONS

**1.1** Certain Definitions. For purposes of this Agreement, the following terms used in this Agreement shall have the respective meanings assigned to them below:

(a) “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(b) “Ancillary Agreements” means, collectively, the agreements to be executed in connection with the transactions contemplated by this Agreement, including the Bill of Sale.

(c) “Auction” means that certain auction, if any, conducted pursuant to the terms of the Bidding Procedures Order.

(d) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

(e) “Bid Protections” means payment to the Buyer in cash at the closing of any other sale of the Purchased Assets from the proceeds of such transaction in the aggregate of (i) the out-of-pocket costs and expenses of the Buyer and its affiliates incurred in connection with the diligence, negotiation, documentation, bidding and auction process (including any legal and financial advisory fees and expenses) in an amount not to exceed \$250,000 (the “Expense Reimbursement”); and (ii) a break-up fee equal to 3% of the Purchase Price minus the Expense Reimbursement (the “Break-Up Fee”).

(f) “Bidding Procedures Order” means an Order of the Bankruptcy Court in substantially the form attached hereto as Exhibit B or otherwise in form and substance satisfactory to Buyer in its reasonable judgment that, among other things, approves the Bid Protections, establishes a date by which qualified bids meeting the requirements approved in the Bidding Procedures Order must be submitted by bidders and establishes procedures for the Auction process.

(g) “Bill of Sale” means a combined bill of sale and assignment and assumption agreement, properly executed in identical counterpart by the parties hereto, for the sale, transfer and assignment by the Seller to the Buyer of all rights, titles and interests of the Seller in and to the Purchased Assets, including the Assigned Contracts, if any, the Assumed Liabilities, if any, and the Assigned Leases, if any, that does not expand, reduce, waive or otherwise modify the obligations, representations, warranties, guaranties, indemnities, releases, disclaimers and waivers set forth in this Agreement, substantially in the form attached hereto as Exhibit A.

(h) “Business Day” means any day of the year on which national banking institutions in New York, NY, are open to the public for conducting business (other than Saturday or Sunday) and are not required or authorized to close, and shall be deemed to open at 9:00 a.m. Eastern Time and close at 5:00 p.m. Eastern Time.

(i) “Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

(j) “Code” means the Internal Revenue Code of 1986, as amended.

**(k)** “Contract” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is binding upon a Person or its property.

**(l)** “Cure Costs” means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts to the extent required by Section 365(b) of the Bankruptcy Code and any Order of the Bankruptcy Court approving the assumption and assignment of the Assigned Contracts, to the extent not already paid or to be paid by the Seller in the ordinary course of business pursuant to an Order of the Bankruptcy Court.

**(m)** “Documents” means all of the Seller’s written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

**(n)** “Employee Plans” means (A) employee benefit plans within the meaning of Section 3(3) of ERISA whether or not subject to ERISA; (B) stock option plans, stock purchase plans, bonus or incentive award plans, severance pay plans, programs or arrangements, deferred compensation arrangements or agreements, employment agreements, executive compensation plans, programs, agreements or arrangements, change in control plans, programs or arrangements, supplemental income arrangements, vacation plans, and all other employee benefit plans, agreements, and arrangements, not described in (A) above; and (C) plans or arrangements providing compensation to employee and non-employee directors.

**(o)** “Encumbrance” means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interest, title defect, hypothecation, easement, right of way, restrictive covenant, condition, restriction, encroachment, rights of first refusal, preemptive right, judgment, conditional sale or other title retention agreements and other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

**(p)** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

**(q)** “ERISA Affiliate” means any entity that would have ever been considered a single employer with the Seller under Section 4001(b) of ERISA or part of the same “controlled group” as the Seller for purposes of Section 302(d)(3) of ERISA.

**(r)** “Final Adjustment” is equal to the amount by which the total aggregate Cure Costs, as finally determined pursuant to Section 3.3 or by the Neutral Auditor, exceed the total aggregate amount of the Cure Costs set forth in the Closing Statement.

**(s)** “Final Order” means an Order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the

docket in the Chapter 11 Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (ii) if an appeal, writ of certiorari, new trial, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such Order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause such Order not to be a Final Order.

(t) “GAAP” means United States generally accepted accounting principles, consistently applied throughout the periods involved.

(u) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state, provincial or local, or any ministry agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) or any judicial, quasi-judicial or administrative body, or any regulatory body of applicable jurisdiction or any private contractor engaged on behalf of such Governmental Body.

(v) “Gross Purchase Price” means \$7,100,000.

(w) “Home Health Business” is defined in Recital A(2).

(x) “Hospice Business” is defined in Recital A(1).

(y) “Indebtedness” means: (a) any obligations of a Person for borrowed money, (b) any obligations evidenced by any note, bond, debenture or other debt security or other instrument, (c) any guarantee or commitment by which a Person assures or guarantees a creditor or other Person against loss (including contingent reimbursement Liability with respect to letters of credit), (d) any Liabilities under leases that would be considered capitalized leases under GAAP, (e) any obligations for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise as obligor or otherwise, including earn-outs, holdbacks and similar deferred payment obligations, (f) any Liability guaranteed in any manner by a Person (including guarantees in the form of an agreement to repurchase or reimburse), (g) any indebtedness secured by an Encumbrance on a Person’s assets, (i) any retainers or similar payment obligations of such Person, (h) any amounts owed to any Person under any bonus arrangements, noncompetition arrangements, severance arrangements or any similar arrangements, (i) all accrued but unpaid vacation and employee bonuses, (j) any deferred or unearned revenue, (k) the face amount of all letters of credit issued for the account of a Person (or for which such Person is liable) and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments issued by a Person (or for which such Person is liable), (l) all obligations under any interest rate, currency or other hedging or derivative arrangements and (m) any accrued and unpaid interest on, and any prepayment premiums, penalties, “make whole amounts,” indemnities, expenses, consent or other fees, breakage costs or similar charges in respect of, any of the foregoing obligations computed as though payment is being made in respect thereof on the Closing Date.

(z) “Knowledge” means the actual knowledge, after reasonable inquiry, of Adam Meislik, Bruce Gordon or Oscar Brambilia.

(aa) “Laws” means all federal, state, provincial, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, Orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other legal requirement or rule of law, including common law.

(bb) “Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

(cc) “Liability” means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including all costs and expenses relating thereto.

(dd) “Material Adverse Effect” means any change, effect, event, occurrence, development, circumstance or state of facts which has had or would reasonably be expected to have a materially adverse effect on the Purchased Assets, or which would materially impair the Seller’s ability to perform its obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

(ee) “Medicare Cap Liability” means any payments received by the Seller in excess of the cap for Medicare hospice payments, as set forth at 42 CFR § 418.309, in any given “cap year”, either self-determined or identified by the Centers for Medicare & Medicaid Services (“CMS”), that must be refunded by the Seller to CMS.

(ff) “Multiemployer Plan” means an employee pension or welfare benefit plan to which more than one unaffiliated employer contributes and which is maintained pursuant to one or more collective bargaining agreements.

(gg) “Neutral Auditor” means the dispute resolution group of Grant Thornton LLP or, if the dispute resolution group of Grant Thornton LLP is unable to serve, the dispute resolution group of an impartial nationally recognized firm of independent certified public accountants (other than the Seller’s accountants or the Buyer’s accountants) or financial consulting firm, mutually agreed to by the Buyer and the Seller.

(hh) “Order” means any order, writ, judgment, injunction, decree, stipulation, determination, decision, verdict, ruling, subpoena, or award entered by or with any Governmental Body (whether temporary, preliminary or permanent).

(ii) “Permits” means licenses, permits (including environmental, construction and operation permits), provider billing numbers, enrollments, franchises, certificates, approvals, accreditations, consents, waivers, clearances, exemptions, classifications, registrations, orders and other similar documents and authorizations issued by or pending with any Governmental Body and/or any self-regulatory body or organization.

**(jj)** “Person” means an individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

**(kk)** “Petition Date” is defined in Recital “C”.

**(ll)** “Representatives” means, as to any Person, its officers, directors, managers, members, employees, agents, counsel, accountants, financial advisors, restructuring advisors, bankers, insurers, financing sources and consultants.

**(mm)** “Sale Motion” means the motion filed with the Bankruptcy Court seeking Bankruptcy Court approval of this Agreement and entry of the Bidding Procedures Order and the Sale Order.

**(nn)** “Sale Order” means an Order of the Bankruptcy Court in substantially the form attached hereto as Exhibit C or otherwise in form and substance satisfactory to Buyer in its reasonable judgment, pursuant to, inter alia, Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving the transactions contemplated by this Agreement; provided, that neither the Buyer nor the Seller shall be required to accept a Sale Order that does not, and it shall be deemed reasonable for the Buyer or the Seller to find a Sale Order unsatisfactory if it does not: (i) provide for the sale, transfer and assignment of all of the Seller’s rights, titles and interests in and to the Purchased Assets to the Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances (including any successor liability), other than the Assumed Liabilities; (ii) provide for the assumption and assignment of the Assigned Contracts, if any, Assigned Leases, if any, and the Assumed Liabilities, if any, by and to the Buyer; (iii) contain findings of fact and conclusions of Law that the transactions contemplated by this Agreement are undertaken by the Buyer and the Seller at arm’s length, without collusion and that the Buyer has acted in “good faith” within the meaning and entitled to the protections of Section 363(m) of the Bankruptcy Code; (iv) provide that, other than the Assumed Liabilities, the Buyer shall not be responsible for any Liability of the Seller; (v) find the transfer by the Seller to the Buyer of the rights, titles and interests of Seller in and to Purchased Assets constitutes transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the Laws of the State of California; (vi) hold that the Buyer is a not a successor to the Seller or its estate by reason of any theory of Law or equity with respect to any Encumbrances against the Seller or the Purchased Assets and to the extent permitted by applicable Law permanently enjoining each and every holder of any claim for such Liabilities from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or Encumbrance against the Buyer or the Purchased Assets related thereto; and (vii) hold that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan submitted to the Bankruptcy Court or any other court for confirmation or sanction, shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement.

**(oo)** “Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation, association, partnership, limited liability company, trust or other entity of which fifty percent (50%) or more of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by the pertinent Person.

**(pp)** “Tax” and “Taxes” mean any and all taxes, charges, fees, tariffs, duties, impositions, levies or other assessments, imposed by any Laws or Governmental Body, and including any interest, penalties or additional amounts attributable to, imposed upon, or with respect thereto.

(qq) “Tax Return” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including attachments thereto and amendments thereof.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Acquired Books and Records	2.1(d)
Agreement	Preamble
Assigned Contracts	2.1(a)
Assigned Leases	2.1(b)
Assumed Liabilities	2.3
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Chapter 11 Case	Recitals
Closing	4.1
Closing Date	4.1
Confidential Information	8.5
Exceptions	5.2
Excluded Assets	2.2
Health Care Laws	5.11(a)
Home Health Business	Recital A(2)
Hospice Business	Recital A(1)
Purchased Assets	2.1
Purchase Price	3.1(a)
Representatives	8.2(a)
Sale Order	7.1
Seller	Preamble



<u>Term</u>	<u>Section</u>
Seller Broker Fee	5.10
Seller Disclosure Schedule	Article V
Transfer Tax	8.4

## Article II

### ACQUISITION AND TRANSFER OF ASSETS; NO ASSUMPTION OF LIABILITIES

**2.1** Acquisition and Transfer of Purchased Assets. At the Closing, and upon the terms and conditions set forth herein and in the Sale Order, the Seller shall transfer, assign, convey and deliver to the Buyer, and the Buyer shall acquire and accept from the Seller, all rights, titles and interests of the Seller in, to and under (in each case free and clear of any and all Encumbrances) the following assets relating to the Hospice Business (collectively, the "Purchased Assets");

- (a) The Contracts, if any, listed on Schedule 2.1(a) (the "Assigned Contracts");
- (b) The leases, if any, listed on Schedule 2.1(b) (the "Assigned Leases");
- (c) The equipment, fixtures, tools and other personal property relating to the Hospice Business set forth on Schedule 2.1(c); and
- (d) Copies of all books and records of Seller applicable to the ownership and operation of the Hospice Business, but not any books and records applicable to the ownership and operation of the Home Health Business (the "Acquired Books and Records"); provided, however, that if and to the extent any books and records of Seller are applicable to both the ownership and operation of the Hospice Business and the ownership and operation of the Home Health Business, then Seller shall retain such books and records and the Acquired Books and Records shall include a copy of such books and records;
- (e) Copies of all medical records, including all patient consents, DNRs, living wills, and similar documents, relating to all of the current Hospice Business patients of the Seller who elect to continue hospice services with Buyer, and all of the active bereavement records for any such patients for the 13 month period prior to the Closing Date.
- (f) All rights and interests in and to all avoidance claims or causes of action arising under the Bankruptcy Code or any other law, including all rights and avoidance claims of the Seller arising under Chapter 5 of the Bankruptcy Code and any proceeds of the foregoing against (i) parties to the Assigned Contracts and Assigned Leases; and (ii) suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, and others that did business with the Sellers in connection with the operation and utilization of the Purchased Assets prior to the Closing Date.
- (g) All rights, Claims or causes of action of the Seller against other parties to the Assigned Contracts occurring prior to the Closing Date (including, for the avoidance of doubt, rights, Claims or causes of action arising out of events occurring prior to or after the Petition Date), to the extent the foregoing arose in connection with the Purchased Assets, the Assigned Contracts or the Assumed Liabilities.

(h) Notwithstanding anything to the contrary in this Agreement, upon written notice to the Buyer at any time prior to the Closing Date, the Buyer may amend Schedule 2.1(a) in order to remove any Contract from Schedule 2.1(a) in its sole discretion. For the avoidance of doubt, any Contract removed from Schedule 2.1(a) pursuant to this Section 2.1(h) shall no longer be considered an Assigned Contract and instead shall be considered an Excluded Asset hereunder, and any Cure Costs associated with such Contract shall no longer be included in the Closing Statement.

## 2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, the Purchased Assets are the only properties, rights and assets transferred to, or otherwise acquired by the Buyer under this Agreement. All assets of the Seller that are not included as Purchased Assets as provided herein shall not be acquired by the Buyer (all of such assets, properties and rights, collectively, the “Excluded Assets”). For the avoidance of doubt, Excluded Assets shall include:

(a) All cash and cash equivalents, including the Purchase Price, and all accounts receivable, promissory notes receivable, and other receivables due to Seller on or before the Closing and all Claims relating to all accounts receivable, promissory notes receivable and other receivables due to the Seller on or before Closing.

(b) To the extent not included as Purchased Assets pursuant to Section 2.1(g), all rights and interests in and to all avoidance claims or causes of action arising under the Bankruptcy Code or any other law, including all rights and avoidance claims of the Seller arising under Chapter 5 of the Bankruptcy Code and any proceeds of the foregoing.

(c) All rights and interests in and to all claims and potential claims, including any proceeds generated therefrom, against (1) the Seller’s former and current directors and officers, (2) Seller’s former and current management companies, including all principals, shareholders, members, employees, agents and affiliates of Seller’s former and current management companies, and (3) Seller’s current and former attorneys, including all employees and agents; and any proceeds of the foregoing.

(d) All Contracts, including this Agreement, other than the Assigned Contracts.

(e) Any assets at the Seller’s premises in Riverside, California and Palm Desert, California, that is not owed by the Seller.

(f) Any claim, right, benefit or interest of the Seller in and to any refund of taxes of any kind relating to any period on or before the Closing Date and any deferred tax asset of the Seller.

(g) All rights and benefits of the Seller arising out of any employee benefit or health and welfare plan.

(h) All rights, claims or benefits under (1) any insurance policy of the Seller or related to any of the Seller’s assets, properties or rights, including both the Hospice Business and the Home Health Business, and any right to unearned premiums and refunds due with respect to such insurance policy, and (2) any warranty, representation or guarantee made by any third party in connection with the Hospice Business, the Home Health Business, or any other assets, properties or rights of Seller, other than the Purchased Assets.

(i) All assets, rights, claims or benefits related to any self-insurance plan.

(j) All (1) tax and financial accounting records of the Seller, (2) all governance documents and agreements, as well as ownership records and corporate record books, including board meeting minutes of the Seller, (3) business, patient and bereavement records of the Seller that are not Purchased Assets, and (4) all documentation that the Seller is required by law to retain or that is necessary and appropriate to conclude the administration of the Bankruptcy Case (collectively “Excluded Records”).

(k) Seller’s Permits and any other authorizations issued by any Governmental Authority to the Seller and the Seller’s Medicare and Medi-Cal provider agreements and billing numbers used or held for use in connection with the ownership and operation of the Hospice Business, including any associated liabilities (including but not limited to Medicare Cap Liability).

(l) All claims or rights relating to liens asserted against the Purchased Assets.

(m) The Home Health Business and all assets and records related to the Home Health Business (including any Permits).

(n) The Seller’s trade name, including “VNA of Inland Counties dba VNA California.”

**2.3** No Assumption of Liabilities. Except for (a) Cure Costs, (b) executory obligations arising under the Assigned Contracts, if any, and the Assigned Leases, if any, following the Closing, and (c) other obligations arising from or related to the Purchased Assets arising on the basis of events, acts, omissions or conditions or any other state of facts occurring or coming into existence on or after the Closing Date (collectively, the “Assumed Liabilities”), the Buyer shall neither assume nor be liable for, and the Seller shall retain and remain responsible for, all of the Seller’s debts, liabilities, Taxes and obligations of any nature whatsoever, whether accrued, absolute or contingent, whether known or unknown, including any liabilities or obligations now or hereafter arising from the Seller’s business activities that took place prior to the Closing or any liabilities arising out of or connected to any action or inaction of the Seller in connection with the Chapter 11 Case and the reorganizing and/or winding down of the Seller’s business. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against the Buyer or the Seller as compared to the rights and remedies that such third party would have had against the Seller absent these Chapter 11 Case and this Agreement. For the avoidance of doubt, the Buyer shall not be the successor of, or successor to, the Seller upon consummation of the transactions contemplated hereby.

**2.4** Assignment of Contracts and Rights. To the maximum extent permitted by the Bankruptcy Code, the Purchased Assets, including the Assigned Contracts, shall be assumed by and assigned to the Buyer pursuant to Section 365 of the Bankruptcy Code as of the Closing Date or such other date as specified in an Order of the Bankruptcy Court.

### **Article III**

#### **CONSIDERATION**

**3.1** Consideration and Closing Payment Determination.

(a) Purchase Price. The consideration to be paid at the Closing for the Purchased Assets (the “Purchase Price”) shall consist of (i) an amount equal to (A) Gross Purchase Price, *minus* (B) the Deposit Amount (the “Adjusted Cash Consideration”); and (ii) the Assumed Liabilities.

(b) Deposit. Within five (5) Business Days of the Bankruptcy Court approving the Bidding Procedures Order, the Buyer shall deposit \$355,000.00 (the “Deposit”) into a bank account of the Seller designated specifically for holding the Deposit (the “Deposit Escrow Account”) in accordance with the terms and conditions of the Sale Order. The Deposit shall not be subject to any Encumbrance, attachment, trustee process or any other judicial process of any creditor of the Seller or the Buyer. Interest accrued on the Deposit shall become a part of the Deposit (such collective amount, the “Deposit Amount”) and shall be paid to the party entitled to the Deposit in accordance with Section 3.1(c).

(c) Disbursement of the Deposit Amount. The Deposit Amount shall be held and disbursed as follows:

(i) If a Sale Order is entered by the Bankruptcy Court, then the Deposit Amount (A) shall be credited against the Purchase Price as set forth in the calculation of Adjusted Cash Consideration and (B) shall be distributed to the Seller from the Deposit Escrow Account upon the Closing; or

(ii) If this Agreement is terminated pursuant to and in accordance with any provision of Section 4.4, then the Seller shall promptly (and no event later than three (3) Business Days after such termination) return the Deposit Amount to the Buyer pursuant to wire instructions delivered by the Buyer to the Seller.

(d) Payments. At the Closing, the Buyer shall pay, or cause to be paid, an amount equal to the Adjusted Cash Consideration as follows:

(i) An amount equal to the Cure Costs, shall be paid, on behalf of the Seller, to the Persons entitled thereto, in each case, in accordance with instructions to be delivered to the Buyer by the Seller at least three (3) Business Days prior to the Closing Date; and

(ii) Subject to Section 3.3, the remainder of the Adjusted Cash Consideration to the Seller pursuant to wire instructions delivered to the Buyer by the Seller at least three (3) Business Days prior to the Closing Date.

**3.2** Closing Statement. The Seller shall deliver to the Buyer no later than five (5) Business Days prior to the Closing Date a written statement certified by an authorized officer of the Seller (the “Closing Statement”) setting forth the Seller’s good faith estimate of the Cure Costs, together with information and documents to support the amount of the Cure Costs set forth in the Closing Statement. The Seller shall consider in good faith the Buyer’s comments to the Closing Statement and the estimated amounts set forth therein.

**3.3** Closing Adjustment.

(a) Notwithstanding anything to the contrary in this Agreement, if the Buyer objects to all or part of the calculation of the amounts set forth in the Closing Statement, the Buyer may deliver to the Seller written notice of such objection (the “Objection Notice”) at any time prior to the Closing. The Objection Notice, if any, shall specify in reasonable detail the nature and amount of any and all items in dispute, the amounts of any proposed adjustments (the “Disputed Amount”). If the Buyer delivers the Objection Notice to the Seller prior to the Closing, (i) at Closing, the Buyer shall hold back and retain a portion of the Adjusted Cash Consideration equal to the Disputed Amount, to be released as further set forth in this Section 3.3 and (ii) then for a period of thirty (30) days following

the Closing, the Buyer and the Seller shall use commercially reasonable efforts to resolve all objections relating to the Closing Statement and any determination resulting from such good faith negotiations shall be final, conclusive and binding on the parties.

**(b)** If the Buyer and the Seller do not reach a final resolution of all objections within thirty (30) days following the Closing, the Buyer and the Seller shall submit the issues remaining in dispute to the Neutral Auditor for resolution. The Buyer and the Seller each agree to sign a customary engagement letter, if requested to do so by the Neutral Auditor. The Neutral Auditor, acting as an arbitrator, shall resolve such disputed items and determine the values to be ascribed thereto, and using those values (together with other items not in dispute) shall determine the amount of the Final Adjustment. Any documents submitted by either the Buyer or the Seller to the Neutral Auditor, either unilaterally or at the Neutral Auditor's request, shall be simultaneously submitted to the other party. The parties hereby agree that the Neutral Auditor shall only decide the specific disputed items and the values ascribed thereto, and that using those values (together with the other undisputed items in the calculation of the amounts set forth in the Closing Statement) shall determine the Final Adjustment and the Neutral Auditor's decision with respect to such disputed items and values must be within the range of values assigned to each such item in the Closing Statement and the Objection Notice, respectively. The Neutral Auditor shall be directed to resolve the disputed items and amounts and deliver to the Buyer and the Seller a written determination (such determination to be made consistent with this Section 3.3(b)), to include a worksheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Neutral Auditor by the Buyer or the Seller) within thirty (30) days after being retained, which determination will be final, binding and conclusive on the parties and their respective Affiliates, and their respective Representatives, successors and assigns. Each of the Buyer and the Seller shall bear its own fees and expenses incurred by such party in connection with any dispute resolved under this Section 3.3(b), except that all fees and expenses charged by the Neutral Auditor relating to the work performed by the Neutral Auditor in connection with this Section 3.3(b) shall be borne by the Buyer, on the one hand, and the Seller, on the other hand, in inverse proportion as such parties may prevail on the disputed items resolved by the Neutral Auditor under this Section 3.3(b) (*i.e.*, so that the prevailing party bears a lesser amount of such fees and expenses), which proportionate allocation is to be determined by the Neutral Auditor and be included in the Neutral Auditor's written determination. Notwithstanding anything herein to the contrary, the dispute resolution mechanism contained in this Section 3.3(b) shall be the exclusive mechanism for resolving disputes, if any, regarding the adjustment to the Purchase Price contemplated by this Section 3.3(b).

**(c)** Within five (5) Business days of the determination of the Final Adjustment pursuant to Section 3.3(a) or Section 3.3(b), the Purchase Price shall be adjusted as follows:

**(i)** If the Final Adjustment is a positive amount, then the Purchase Price will be adjusted downward by the absolute value of such Final Adjustment and the Buyer shall (A) retain the amount of the Final Adjustment (up to a maximum amount equal to the then-remaining Disputed Amount) and (B) pay to the Seller the remaining portion of the Disputed Amount, after the retaining the amount of the Final Adjustment (if any), to the Seller. The payment of the Final Adjustment (if any) shall be deemed an adjustment to Purchase Price.

**(ii)** If the Final Adjustment is zero or a negative amount, then there shall be no adjustment to the Purchase Price, and the Buyer shall pay all of the Disputed Amount to the Seller.

**Article IV**

**CLOSING AND TERMINATION**

**4.1** Closing. Subject to the satisfaction of the conditions set forth in Sections 9.1 and 9.2 hereof or the waiver thereof by the party entitled to the benefit of the applicable condition, the closing of the acquisition and sale of the Purchased Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place by the execution and exchange, via .pdf or other electronic copies of originally signed documents and agreements contemplated herein on the date that is no later than the fifteenth (15th) day following the entry of the Sale Order. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of the Seller in the Purchased Assets to be acquired by the Buyer hereunder shall be considered to have passed to the Buyer and the assumption of all of the Assumed Liabilities shall be considered to have occurred as of 11:59 p.m. Pacific Time on the Closing Date.

**4.2** Closing Deliveries by the Seller. At the Closing, the Seller shall deliver to the Buyer:

- (a) A duly executed copy of the Bill of Sale;
- (b) Evidence as to the release of all recorded Encumbrances against the Purchased Assets, unless the Sale Order provides that the Seller's rights, titles and interests in and to the Purchased Assets are being sold, transferred and assigned to the Buyer free and clear of Encumbrances pursuant to 11 U.S.C. §§ 363(b) and (f);
- (c) A true and correct certified copy of the Sale Order, which Order shall constitute a Final Order;
- (d) All tangible embodiments of the Purchased Assets, including the Acquired Books and Records and the assignment of the Assigned Contracts;
- (e) A duly executed non-foreign-person affidavit of the Seller reasonably satisfactory to the Buyer and prepared in accordance with Treasury Regulations Section 1.1445-2(b)(2);
- (f) A certificate, executed by an officer of the Seller, dated as of the Closing Date, stating that the preconditions specified Sections 9.2(c), 9.2(d) and 9.2(e) have been satisfied;
- (g) Evidence of the receipt of any consents of, and the delivery of notice to, any third parties and/or Governmental Bodies, in each case as is necessary or required in connection with the consummation of the transactions contemplated by this Agreement, including in connection with any consent or notice requirements identified on Section 5.3 of the Seller Disclosure Schedule, in form and substance reasonably satisfactory to the Buyer; and
- (h) All other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by the Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

**4.3** Closing Deliveries by the Buyer. At the Closing, the Buyer shall deliver, or cause to be delivered, to the Seller (or to other Persons, at the direction of the Seller):

(a) A certificate, executed by an officer of the Buyer, dated as of the Closing Date, stating that the preconditions specified Sections 9.1(a) have been satisfied.

**4.4** Termination of Agreement. This Agreement may be terminated at any time prior to the Closing as follows:

(a) By the mutual written consent of the Seller and the Buyer;

(b) By either the Buyer or Seller, if: (1) the Bidding Procedures Order shall not have been entered by the Bankruptcy Court by the close of business on June 1, 2020; (2) the Sale Order shall not have been entered by the Bankruptcy Court by the close of business on July 31, 2020; (3) following its entry, the Bidding Procedures Order or Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of the Buyer and Seller; or (4) the Closing shall not have been consummated prior to August 31, 2020; (each, a "Triggering Event"); provided, however, that if the Triggering Event is due to a material breach of any representation, warranty, covenant or agreement contained in this Agreement by the Buyer or the Seller, then the Buyer (if the Buyer is in breach) or the Seller (if the Seller is so in breach), respectively, may not terminate this Agreement pursuant to this Section 4.4(b);

(c) By either the Buyer or the Seller, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the parties hereto shall promptly appeal any such adverse determination which is appealable (and pursue such appeal with reasonable diligence);

(d) By the Buyer, if any Chapter 11 Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of the Seller is appointed in the Chapter 11 Case, in each case without the consent of the Buyer;

(e) By the Seller, if the Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Section 9.1(a) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by the Buyer within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as the Buyer continues to exercise such commercially reasonable efforts the Seller may not terminate this Agreement under this Section 4.4(g) unless such breach is not cured within fifteen (15) days from written notice to the Buyer of such breach; provided, further, that the Seller is not then in material breach of the terms of this Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(f) By the Buyer, if the Seller has breached any representation, warranty, covenant or agreement contained in this Agreement, and as a result of such breach the conditions set forth in Section 9.2(c) and Section 9.2(d) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by the Seller within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as the Seller continues to exercise such commercially reasonable efforts the Buyer may not terminate this Agreement under this Section 4.4(f) unless such breach is not cured within fifteen (15) days from written notice to Seller of such breach; provided, further, that the Buyer is not then in material breach of the terms of this

Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured; or

(g) By the Buyer, if any creditor of the Seller obtains relief from the automatic stay to foreclose on any of the Purchased Assets.

**4.5** Procedure Upon Termination. In the event of a termination of this Agreement by the Buyer or the Seller, or both, pursuant to Section 4.4, (a) written notice thereof shall be given promptly by the terminating party to the other parties hereto, specifying the provision hereof pursuant to which such termination is made, (b) this Agreement shall thereupon terminate and become void and of no further force and effect; and (c) the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto.

**4.6** Effect of Termination. Notwithstanding anything to the contrary in this Agreement, in the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to the Buyer or the Seller; provided, however, that Section 4.4, Section 4.5, this Section 4.6, and Article X shall survive any such termination and shall be enforceable hereunder. In no event shall any termination of this Agreement relieve any party hereto of any Liability for fraud or willful breach of this Agreement by such party.

## Article V

### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Except as set forth in the correspondingly numbered Sections of the Seller Disclosure Schedule delivered as of the date hereof by the Seller to the Buyer (the "Seller Disclosure Schedule") the Seller hereby represents and warrants to the Buyer as of the date hereof and as of the Closing Date as follows:

**5.1** Organization. The Seller is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. To the Seller's Knowledge, the Seller has all requisite power and authority to own, lease, develop and operate the Purchased Assets (subject to the provisions of the Bankruptcy Code). The Seller is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary.

**5.2** Authorization and Validity. Subject to Bankruptcy Court approval, the Seller has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is or will be a party and to carry out its obligations hereunder and thereunder. Subject to Bankruptcy Court approval, the execution and delivery of this Agreement and the Ancillary Agreements, and the performance by the Seller of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate (or equivalent) action on behalf of the Seller, and no other proceedings on the part of the Seller are necessary to authorize such execution, delivery, and performance. This Agreement has been, and the Ancillary Agreements when delivered will be, duly executed by the Seller and, subject to Bankruptcy Court approval, will constitute the valid and binding obligation, enforceable against the Seller in accordance with the terms herein and therein, subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or effecting creditors' rights and to general principles of equity, including principles of commercial reasonableness and good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the "Exceptions").



**5.3** No Conflict. Subject to Bankruptcy Court approval and except with respect to the Exceptions or as otherwise set forth on Section 5.3 of the Seller Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements does not, and the consummation by the Seller of the transactions contemplated hereby and thereby, upon entry of the Sale Order, will not: (a) conflict with or result in the breach of any provision of the organizational documents of the Seller, (b) conflict with, violate or result in the breach by the Seller of any applicable Law, (c) require the Seller to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order, (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Assigned Contract, or (e) result in any Encumbrance on any of the Purchased Assets. Except as set forth on Section 5.3 of the Seller Disclosure Schedule, the Seller is not a party to, or subject to or bound by, any judgment, injunction or decree of any Governmental Body or agreement which may materially restrict or interfere with the Seller's performance of this Agreement or the Buyer's ability to use the Purchased Assets.

**5.4** Capitalization; Subsidiaries Except as set forth on Section 5.4 of the Seller Disclosure Schedule, the Seller is and always has been a nonprofit corporation. The Seller does not have any Subsidiaries

**5.5** Financial Statements.

(a) The Seller has delivered to the Buyer and set forth on Section 5.5(a) of the Seller Disclosure Schedule are: (i) the unaudited balance sheets as of December 31, 2018, and December 31, 2017, and the related Income Statements or Monthly Operating Reports for the Seller for the respective fiscal years then ended and (ii) the unaudited balance sheet of the Seller as of the most recent reportable period prior to Closing (the "Base Balance Sheet") and the related statements of operations for the year-to-date period then ended. Each of the foregoing financial statements (including in all cases the notes thereto, if any) (the "Financial Statements") is consistent with the books and records of the Seller (which, in turn, are accurate and complete in all material respects), has been prepared in accordance with GAAP on a consistent basis across periods and presents fairly in all material respects the financial condition and results of operations of the Seller as of and for the periods referred to therein, subject to changes resulting from normal year-end adjustments (none of which will be material individually or in the aggregate).

(b) The Seller does not have any Liabilities relating to the Hospice Business other than (i) Liabilities reflected on the Base Balance Sheet and (ii) immaterial Liabilities that have arisen after the date of the Base Balance Sheet in the ordinary course of business.

(c) Except as set forth on Section 5.5(c) of the Seller Disclosure Schedule, the Seller does not have any Indebtedness relating to the Hospice Business.

(d) The revenue recognition policies of the Seller, and the application of those policies, relating to the Hospice Business, are in compliance with the applicable standards under GAAP and such policies have not changed in the prior three (3) years.

(e) The Seller maintains a system of internal accounting controls and procedures relating to the Hospice Business that, to the Seller's Knowledge, are sufficient to provide reasonable assurance that: (i) transactions relating to the Hospice Business are recorded as necessary to permit preparation of audited financial statements in accordance with GAAP and to maintain accountability for assets relating to the Hospice Business, (ii) access to material assets relating to the Hospice Business is

permitted only in accordance with management's authorization, (iii) the recorded accountability for assets relating to the Hospice Business is compared with existing assets relating to the Hospice Business at reasonable intervals and appropriate action is taken with respect to any differences, and (iv) accounts, notes and other receivables relating to the Hospice Business are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. The Seller (including its personnel and independent accountants who have a role in the preparation of financial statements or the internal accounting controls utilized by the Seller) has not identified or been made aware of (x) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Seller relating to the Hospice Business, (y) any fraud, whether or not material, that involves the management of the Seller or any of its personnel relating to the Hospice Business, or (z) any claim or allegation regarding any of the foregoing.

**5.6** Permits. Section 5.6 of the Seller Disclosure Schedule sets forth a true, complete and correct list of the Permits necessary for the lawful ownership and operation of the Purchased Assets. With respect to each Permit listed on Section 5.6 of the Seller Disclosure Schedule: (a) such Permit is in full force and effect, (b) the Seller is in compliance in all material respects with its terms and conditions, (c) all required renewal applications have been timely filed and (d) no revocation notice has been received, nor is any proceeding pending or threatened, to suspend, revoke or limit such Permit.

**5.7** Law and Legal Proceedings. The Seller is and has always been in material compliance with all applicable Laws with respect to the Purchased Assets. As of the date of this Agreement, the Seller has not received a written (or, to the Seller's Knowledge, non-written) notice of any investigation or review by any Governmental Body with respect to the Purchased Assets that is pending, or, to the Seller's Knowledge, threatened. Except for the Chapter 11 Case and as set forth on Section 5.7 of the Seller Disclosure Schedule, there is not currently, nor has there ever been, a Legal Proceeding or Order pending, outstanding or, to the Seller's Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated by this Agreement or the Ancillary Agreements, or (b) would reasonably be expected to be material to the Purchased Assets or Assumed Liabilities.

**5.8** Assigned Contracts.

(a) Other than the Assigned Contracts, there are no Contracts currently in effect and to which the Seller is a party that are material to the Purchased Assets.

(b) Since December 31, 2019, (i) there has not been any written (or, to the Seller's Knowledge, non-written) claim or allegation by any Person that the Seller is in material breach or default under any Assigned Contract (other than any breach or default arising solely from the commencement of the Seller's Chapter 11 Cases) or that there exists an event or condition which (with or without notice or lapse of time or both) would result in a material breach or default by the Seller under any Assigned Contract, and (ii) to the Seller's Knowledge, no other party to any Assigned Contract is in material breach or default thereunder. As of the date hereof, no party to an Assigned Contract has provided the Seller with written notice (or, to the Seller's Knowledge, non-written notice) that it intends to cancel, terminate, fail to renew or materially reduce business conducted under any Assigned Contract. Except to the extent that a Assigned Contract is rejected, repudiated or terminated by the Seller after the execution of this Agreement in accordance with the terms of this Agreement, each of the Assigned Contracts is in full force and effect and is valid and binding on the Seller and, to the Seller's Knowledge, each other party thereto. The Seller has made available to the Buyer complete and accurate copies of each Assigned Contract.

**5.9** Title to Assets; Sufficiency. The Seller has good and valid title to and interest in all of its personal property that constitutes Purchased Assets. All tangible personal property that constitutes Purchased Assets (i) has been well maintained, (ii) is in good operating condition and repair, ordinary wear and tear excepted and (iii) is not in need of maintenance or repair, except for ordinary routine maintenance or repairs that are not material in nature or cost. Subject to the entry of the Sale Order and consummation of the sale of the Purchased Assets to the Buyer in accordance with the Sale Order, the Buyer will be vested with good title to the personal property that constitutes Purchased Assets, free and clear of all Encumbrances, Claims, and interests, other than Assumed Liabilities, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. Except as set forth in Section 5.9 of the Seller Disclosure Schedule, upon entry of the Sale Order, the Seller will have all requisite authority to transfer good and valid title to or leasehold interest in all of the Purchased Assets free and clear of all Encumbrances, to the fullest extent permissible under Sections 363 and 365 of the Bankruptcy Code, and shall convey the Purchased Assets to the Buyer at the time of the transfer.

**5.10** No Brokers or Finders. Except as set forth in Section 5.10 of the Seller Disclosure Schedule, the Seller shall not have incurred Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "Seller Broker Fee"). Neither the Buyer nor any Affiliate of the Buyer will have any Liability in connection with any Seller Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by the Seller.

**5.11** Compliance with Laws; Regulatory Matters.

(a) Except as set forth in Section 5.11(a) of Seller Disclosure Schedule, since February 23, 2013, the Purchased Assets have been owned, administered, held, and/or operated in compliance in all material respects with all applicable Laws including (A) the Public Health Service Act (42 U.S.C. Sections 201 et seq.) and the regulations promulgated thereunder; (B) the Veterans Health Care Act (38 U.S.C. Section 126) and the regulations promulgated thereunder; (C) federal Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act) statutes and the regulations promulgated thereunder, and any related Laws; (D) Laws relating to health care fraud and abuse, false claims and anti-kickback laws, including the Federal Anti-Kickback Statute (42 U.S.C. Sections 1320a-7b(b)), the Federal False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the criminal laws (18 U.S.C. §§ 286 and 287), the exclusion laws (42 U.S.C. § 1320a-7), or any similar Laws governing arrangements among providers, patients and health care professionals or rule of professional conduct relating to the regulation of the Seller; (E) Laws and other applicable standards with regard to the submission of claims to third party payors; (F) Laws governing the licensure of Seller's personnel; and (G) the Health Insurance Portability and Accountability Act of 1996, as amended by the final regulations promulgated pursuant to Health Information Technology for Economic and Clinical Health Act of 2009, the regulations promulgated thereunder and similar Laws pertaining to privacy, data protection, confidentiality of patients' personal and medical information, and information security (collectively, the "Health Care Laws").

(b) Neither the Seller nor any of its Affiliates has received any notice or other communication from the any Governmental Body alleging any violation of any Laws, including the Health Care Laws, in connection with Purchased Assets. The Seller has no unpaid overpayment debts, except for the Medicare Cap Liability, arising from audits or claims by any Governmental Body or

private payors. Complete and accurate copies of all correspondence with Governmental Bodies in connection with the Purchased Assets have been made available for the Buyer's review.

(c) The Seller has not received notice of or is subject to any pending or, to Seller's Knowledge, threatened investigation, Legal Proceeding, hearing, enforcement, audit, arbitration or other action by or any Governmental Body or third party payor alleging any violation of a Law or Health Care Law in connection with the Purchased Assets, nor has any Governmental Body or third party payor indicated to the Seller an intention to conduct or initiate the same.

(d) All of the Seller's personnel employed in connection with the Hospice Business that require any form of licensure, certification or registration under state or federal law possess such licenses in good standing and without restriction.

(e) Neither the Seller nor any of its officers, directors, managers or members, or any of its employees or contractors employed or engaged in connection with the Hospice Business, has been (i) debarred, excluded or suspended from participation in Medicare, Medicaid or any other federal or state health program or has had a billing privilege revocation or suspension thereunder, (ii) subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or (iii) convicted of a crime described at 42 U.S.C. §1320a-7b or any other federal or state law imposing sanctions relating to the furnishing of, or billing for, health care goods and services, nor is such debarment, exclusion suspension, termination, sanction or conviction pending or, to the Seller's Knowledge, threatened.

**5.12 Preemptive Rights.** No Person has any written or oral agreement or option, right of first refusal, right of first offer, right of first negotiation or similar right for the purchase, sale, use or other disposition of all or any of the Purchased Assets.

**5.13 Employees.**

(a) Section 5.13(a) of the Seller Disclosure Schedule contains a complete and accurate list of all of the employees of the Seller employed in connection with the Hospice Business, setting forth for each employee employed in connection with the Hospice Business his or her position or title; whether classified as exempt or non-exempt for wage and hour purposes; part-time or full-time status; whether paid on a salary, hourly or commission basis and the employee's actual annual base salary or other rates of compensation; bonus potential; average scheduled hours per week; date of hire; work location; status (*i.e.*, active or inactive and if inactive, the type of leave and estimated duration); any visa or work permit status and the date of expiration, if applicable; accrued, unused vacation, sick and/or paid time off; and the total amount of bonus, retention, severance and other amounts to be paid to such employee at the Closing or otherwise in connection with the transactions contemplated hereby. Section 5.13(a) of the Seller Disclosure Schedule also contains a complete and accurate list of all independent contractors, consultants, temporary employees or leased employees of the Seller or other agents employed or used by the Seller engaged in connection with the Hospice Business and classified by the Seller as other than employees ("Contingent Workers"), showing for each Contingent Worker such individual's role in the business, fee or compensation arrangements, initial date retained by the Seller to provide services, primary location from which services are performed, average hours worked per week, any notice period required for termination of the relationship, and any other material contractual terms with the Seller. Except as contemplated by this Agreement or as set forth on Section 5.13(a) of the Seller Disclosure Schedule, to the Seller's Knowledge, no employee or Contingent Worker has expressed any plans to terminate his, her or their employment or service arrangement with the Seller.

(b) (i) The Seller is, and for the past five (5) years has been, in compliance in all material respects with all applicable Laws respecting labor and employment matters, fair employment practices, workplace safety and health, terms and conditions of employment, wages and hours relating to the Hospice Business, including with respect to proper classification of employees as exempt or non-exempt for purposes of federal, state and local law, (ii) the Seller is not delinquent in any payments to any employee employed in connection with the Hospice Business or any Contingent Worker, for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it in connection with the Hospice Business or amounts required to be reimbursed to such employees or Contingent Workers in connection with the Hospice Business, (iii) there are no formal written grievances, complaints or charges with respect to employment or labor matters relating to Seller's employees employed in connection with the Hospice Business (including allegations of employment discrimination, harassment, retaliation or unfair labor practices) pending or, to the Seller's Knowledge, threatened against the Seller in any judicial, regulatory or administrative forum, under any private dispute resolution procedure or internally, (iv) to the Seller's Knowledge, none of the employment policies or practices of the Seller relating to the Hospice Business is currently being audited or investigated, (v) neither the Seller, nor to Seller's Knowledge any of its officers or any of employees employed in connection with the Hospice Business, is, or within the last five (5) years has been, subject to any order, decree, injunction or judgment by any Governmental Body or private settlement contract in respect of any labor or employment matters (excluding claims for worker's compensation or unemployment compensation), and (vi) the Seller is in material compliance with the requirements of the Immigration Reform Control Act of 1986.

(c) To the extent that any Contingent Workers are, or for the past five (5) years have been, engaged or used, to the Seller's Knowledge, the Seller has properly classified and treated them in accordance with applicable laws and for purposes of all wage, hour, classification and tax laws and regulations and employee benefit plans and prerequisites.

(d) To the Seller's Knowledge, the Seller is not a joint employer with any of its vendors, suppliers or any other Person.

(e) Except as set forth on Section 5.13(e) of the Seller Disclosure Schedule, (i) there is no, and during the past three (3) years there has not been, any labor strike, picketing of any nature, organizational campaigns, labor dispute, slowdown or any other concerted interference with normal operations, stoppage or lockout pending or, to the Seller's Knowledge, threatened against or affecting the Hospice Business of the Seller; (ii) to the Seller's Knowledge, the Seller does not have any duty to bargain with any union or labor organization or other person purporting to act as exclusive bargaining representative ("Union") of any employees or Contingent Workers with respect to the wages, hours or other terms and conditions of employment of any employee or Contingent Worker; (iii) there is no collective bargaining agreement or other contract with any Union, or work rules or practices agreed to with any Union, relating to the Hospice Business, binding on the Seller, or being negotiated, with respect to the Seller's Hospice Business, any employee employed by Seller in connection with the Hospice Business, or Contingent Worker; and (iv) the Seller has not engaged in any unfair labor practice.

(f) The Seller has not experienced a "plant closing," "business closing," or "mass layoff" or similar group employment loss as defined in the federal Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state, local or foreign law or regulation affecting any site of employment of the Seller or one or more facilities or operating units within any site of employment or facility of the Seller. During the ninety (90) day period preceding the date hereof, no

employee or Contingent Worker has suffered an “employment loss” as defined in the WARN Act with respect to the Seller.

(g) Section 5.13(g) of the Seller Disclosure Schedule identifies each employee of the Seller who is subject to a non-competition and/or non-solicitation agreement with the Seller and includes a form of each such agreement.

(h) Except as set forth on Section 5.13(h) of the Seller Disclosure Schedule, all employees of the Seller employed in connection with the Hospice Business are employed at-will and no employee is subject to any employment contract with the Seller, whether oral or written.

(i) The Seller is in compliance in all material respects with the requirements of the Immigration Reform Control Act of 1986, including all applicable policies with respect to collecting, verifying and retaining complete and accurate copies of U.S. Citizenship and Immigration Services Form I-9 for each of its current and former employees employed in connection with the Hospice Business.

(j) In the past six (6) months, the employment of no officer, and no employee employed in connection with the Hospice Business, that is material to the Hospice Business of the Seller has been terminated for any reason.

(k) During the past five (5) years, the Seller has not been a party to a settlement agreement with a current or former employee employed in connection with the Hospice Business or Contingent Worker that relates primarily to allegations of sexual harassment or sexual misconduct. During the past five (5) years no allegations of sexual harassment or sexual misconduct have been made against: (i) any officer or director of the Seller in his or her capacity as an officer or director of the Seller; or (ii) any employee of the Seller employed in connection with the Hospice Business in his or her capacity as an employee of the Seller.

#### **5.14** Employee Plans.

(a) Each Employee Plan of the Seller relating to the Hospice Business that is intended to qualify under Section 401(a) of the Code has received a favorable determination or approval letter from the Internal Revenue Service with respect to such qualification. Each Employee Plan of the Seller relating to the Hospice Business is, and has been, operated in material compliance with applicable Law and is and has been administered in all material respects in accordance with applicable Law and with its terms. All payments and/or contributions required to have been made with respect to all Employee Plans of the Seller relating to the Hospice Business either have been made or have been accrued in accordance with the terms of the applicable Employee Plan of the Seller and applicable Law.

(b) Neither the Seller nor any ERISA Affiliate has ever maintained, contributed to, or been required to contribute to (i) any employee benefit plan that is or was subject to Title IV of ERISA, Section 412 of the Code, Section 302 of ERISA or (ii) a Multiemployer Plan and neither of the Seller nor any ERISA Affiliate has ever incurred any liability under Title IV of ERISA that has not been paid in full.

(c) To the Seller’s Knowledge, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby could (either alone or in conjunction with any other event) (i) result in, or cause the accelerated vesting payment, funding or delivery of, or

increase the amount or value of, any payment or benefit to any Person; (ii) result in any “parachute payment” as defined in Section 280G(b)(2) of the Code (whether or not such payment is considered to be reasonable compensation for services rendered); or (iii) result in a requirement to pay any tax “gross-up” or similar “make-whole” payments to any Person.

(d) To the Seller’s Knowledge, none of the Employee Plans of the Seller, nor any Liability of any kind thereunder or with respect thereto, will be required by operation of Law or otherwise (except as otherwise provided herein) to be transferred to the Buyer and/or its Affiliates as a result of the transactions contemplated hereby.

#### **5.15 Taxes.**

(a) The Seller has timely filed (or caused to be filed) all material Tax Returns required to be filed on or prior to the Closing Date with respect to the Purchased Assets, and all such Tax Returns are and/or will be true, complete and correct in all material respects.

(b) All Taxes required to be paid on or prior to the date hereof by the Seller with respect to the Purchased Assets have been timely and duly paid (or where payment is not yet due, adequate provision has been made on the financial statements of the Seller), the nonpayment of which would result in a Liability for Taxes with respect to any of the Purchased Assets, would otherwise materially affect the business associated with the Purchased Assets or would result in the Buyer becoming liable or responsible for pre-Closing Taxes as a transferee or successor by Contract, Law or otherwise.

(c) With respect to the Purchased Assets, the Seller has complied with all applicable Laws relating to the collection, withholding and payment of Taxes (such as sales or use Taxes or Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, stockholder or any other third party).

(d) As of the date of this Agreement, there is no Encumbrance affecting any of the Purchased Assets that arose in connection with any failure or alleged failure to pay any Tax and as a result of the transactions contemplated hereby, none of the Purchased Assets will or could in the hands of the Buyer subject the Buyer to any Liability for Taxes of the Seller or any other Person as a transferee or successor by Contract, Law or otherwise.

### **Article VI**

#### **REPRESENTATIONS AND WARRANTIES OF BUYER**

The Buyer hereby represents and warrants to the Seller as of the date hereof and as of the Closing Date as follows:

**6.1 Organization.** The Buyer is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. The Buyer has all requisite power and authority to own, lease, develop and operate its properties and to carry on its business as now being conducted. The Buyer is duly licensed or qualified to do business in each jurisdiction in which the conduct of its businesses or the ownership of its properties requires such qualification or authorization, except where failure to be so qualified would not materially delay or impair the ability of the Buyer to perform its obligations under this Agreement or any of the Ancillary Agreements.

**6.2 Authorization and Validity.** The Buyer has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is a party and to carry

out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements and the performance of the Buyer's obligations hereunder and thereunder have been duly authorized by all necessary corporate (or equivalent) action on behalf of the Buyer, and no other proceedings on the part of the Buyer are necessary to authorize such execution, delivery, and performance. This Agreement and the Ancillary Agreements have been duly executed by the Buyer and constitute its valid and binding obligation, enforceable against it in accordance with the terms herein and therein (subject to the Exceptions).

**6.3** No Conflict. The execution, delivery and performance by the Buyer of this Agreement and the Ancillary Agreements does not, and the consummation by the Buyer of the transactions contemplated hereunder and thereunder will not, (a) conflict with or result in the breach of any provision of the organizational documents of the Buyer, (b) conflict with, violate or result in the breach by the Buyer of any applicable Law, (c) require the Buyer to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order, or (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Contract to which the Buyer is party; other than, in the case of the foregoing subclause (d), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, materially impair the Buyer's ability to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

**6.4** No Brokers or Finders. The Buyer shall not have incurred Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "Buyer Broker Fee"). Neither the Seller nor any Affiliate of the Seller will have any Liability in connection with any Buyer Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by the Buyer.

## Article VII

### **BANKRUPTCY COURT MATTERS**

#### **7.1** Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids pursuant to the Bidding Procedures Order. In no event will Seller be deemed or considered to be in breach or default of this Agreement, or to have acted improperly or in bad faith, by reason of seeking, soliciting, considering, negotiating, or accepting any higher or better competing bid prior to the Sale Order being entered and becoming a Final Order; provided, that Seller complies with all applicable terms of the Bidding Procedures Order.

(b) Subject to the terms and conditions of the Bidding Procedures Order, the Buyer shall have the right to bid against any alternative bids at the Auction.

#### **7.2** Bankruptcy Court Filings.

(a) Bidding Procedures Order. The Seller shall not request that the Bankruptcy Court change or modify any of the dates or procedures set forth in this Agreement or the Bidding Procedures Order, including the Bid Protections and the milestones contained in the Bidding Procedures Order,



without prior written consent of Buyer. The purchase and sale of the Purchased Assets will be in accordance with (and only in accordance with) the Bidding Procedures Order.

**(b) Sale Order.** Subject to the Buyer being designated as the successful purchaser of the Purchased Assets pursuant to the Bidding Procedures Order and following the Auction (if any), the Seller shall promptly use commercially reasonable efforts to obtain entry of the Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by the Seller of this Agreement, and the other Ancillary Agreements, (ii) the sale of the Purchased Assets to the Buyer on the terms set forth herein and free and clear of all Encumbrances, and (iii) the performance by the Seller of its obligations under this Agreement; (b) authorize and empower the Seller to assume and assign to the Buyer the Assigned Contracts; (c) find that the Buyer is a “good faith” the Buyer within the meaning of Section 363(m) of the Bankruptcy Code and grant the Buyer the protections of Section 363(m) of the Bankruptcy Code; (d) include an injunction against any holder of a Claim against the Seller with respect to the Purchased Assets from asserting, prosecuting or otherwise pursuing such Claim against the Buyer (other than with respect to the Assumed Liabilities); (e) include a finding that all Assigned Contracts that are subject to the provisions of Section 365 of the Bankruptcy Code or otherwise pursuant to applicable Law, remain in full force and effect with all parties to the Assigned Contracts enjoined from asserting against the Buyer any default, breach, acceleration, assignment fees, increases, or any other fees resulting from the Seller assumption and assignment of the Assigned Contracts to the Buyer; and (f) include a finding that the sale does not and will not subject the Buyer to any liability by reason of such sale pursuant to any bulk-transfer laws, successor liability, or similar theories to the maximum extent permitted by applicable Law, in all cases except as expressly provided in this Agreement. The Buyer agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (1) demonstrating that the Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (2) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court’s entry of the Sale Order shall be appealed, the Seller and the Buyer shall use reasonable efforts to defend such appeal(s).

**(c) Other Filings in the Bankruptcy Case.** The Seller shall promptly provide the Buyer with the proposed final drafts of any and all motions, applications, pleadings, schedules, statements, reports and other papers (including exhibits and supporting documentation) filed by or on behalf of Seller related to the Purchased Assets, the Assigned Contracts, this Agreement, the Ancillary Agreements or any provision thereof or herein, so as to provide the Buyer and its counsel with a reasonable opportunity to review and comment on such motions, applications, pleadings, schedules, statements, reports and other papers prior to filing with the Bankruptcy Court, and inasmuch as is consistent with the Seller’s fiduciary duties, consider such comments in good faith. The Buyer may file a notice of appearance in the Chapter 11 Case and the Seller acknowledges and agrees that the Buyer shall have standing to appear in connection with all proceedings regarding the sale of the Purchased Assets and Assumed Liabilities in the Chapter 11 Case.

**(d) Notice of Sale Motion.** Notice of the hearing on the Sale Motion, and request for entry of the Sale Order and the objection deadline shall be served by Seller in accordance with the Bankruptcy Code and Bankruptcy Rules, including Bankruptcy Rules 2002, 6004, 6006 and 9014, any applicable local rules of the Bankruptcy Court and any orders of the Bankruptcy Court on all persons required to receive notice, including: (i) the Office of the United States Trustee for the Central District of California; (ii) counsel to the Creditor’s Committee; (iii) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets and Assumed Liabilities during the past

nine (9) months; (iv) all counterparties to any contracts or leases, whether executory or not; (v) all parties with Encumbrances on or against any of the Seller's assets; (vi) all affected federal, state and local governmental regulator and taxing authorities, including the Internal Revenue Service; (vii) all known holders of claims against and equity interests in the Seller, (viii) all of the Seller's insurers; (ix) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002 and (x) to the extent not already included above, all parties in interest listed on the Seller's creditor matrix. The Seller shall also (i) prominently post a copy of such notice at each hospice facility in which it operates, and (ii) publish such notice in a publication of general circulation as determined by Buyer in order to provide constructive notice of the sale where any Seller has done substantial business. Such notices shall provide, if applicable, that all responses or objections to the Sale Motion shall be served on, among others, counsel to the Buyer.

### **Article VIII**

#### **COVENANTS AND AGREEMENTS**

##### **8.1 Conduct of the Seller.**

(a) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 8.1(a), or (4) with the prior written consent of the Buyer (such consent not to be unreasonably withheld, conditioned or delayed), the Seller:

(i) operate and maintain the Purchased Assets in the ordinary course of business; and

(ii) use commercially reasonable efforts to (x) preserve the goodwill of and relationships with Governmental Bodies, customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, employees and others with respect to the Purchased Assets; and (y) comply with all applicable Laws.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 8.1(b), or (4) with the prior written consent of the Buyer, the Seller shall not:

(i) further mortgage, pledge or subject to any Encumbrance any of the Purchased Assets;

(ii) sell, assign, license, transfer, convey, lease, surrender, relinquish, abandon, permit to lapse, waive any rights to or otherwise dispose of any of the Purchased Assets except to the extent permitted by this Agreement;

(iii) cancel, terminate, amend, modify, supplement, rescind or breach any Assigned Contract; or

(iv) enter into any Contract to do any of the foregoing or agree to do anything prohibited by this Section 8.1(b).

## **8.2** Access to Information.

(a) The Seller agrees that, between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Buyer shall be entitled, through its Representatives, to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, employees, accountants, auditors, counsel and operations of the Hospice Business as the Buyer's Representatives may reasonably request; provided, however, that the Seller shall not be obligated to provide information that it is not permitted to provide under applicable Law; provided, further, that Seller shall provide its consent, which shall not be unreasonably withheld or delayed, for the Buyer or its Representatives to have access to employees pursuant to this Section 8.2(a). Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, including Seller's right to have its Representatives accompany the Buyer and its Representatives upon the premises of the Seller at the time of any inspection or examination and shall be subject to restrictions under applicable Law. Pursuant to this Section 8.2, The Seller shall furnish to the Buyer and its Representatives such financial, operating and property related data and other information as such Persons reasonably request. The Seller shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with the Buyer and the Buyer's Representatives in connection with such investigations and examinations, and the Buyer shall, and use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with the Seller and its Representatives. The Buyer and its Representatives shall be permitted to contact, or engage in discussions or otherwise communicate with the Seller's suppliers and other Persons with which the Seller have commercial dealings.

(b) From and after the Closing Date, the Seller shall give the Buyer and the Buyer's Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, employees, Documents (including any Documents included in the Excluded Assets), personnel files and books and records of the Seller pertaining to the Purchased Assets. In connection with the foregoing, the Seller shall use commercially reasonable efforts to cause their respective Representatives to furnish to the Buyer, at the Buyer's expense, such financial, technical, operating and other information pertaining to the Purchased Assets as the Buyer's Representatives shall from time to time reasonably request and to discuss such information with such Representatives.

(c) No information received pursuant to an investigation made under this Section 8.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of the Seller set forth in this Agreement or any certificate or other instrument delivered to the Buyer in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of either party to invoke or rely on the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement set forth in Article IX.

**8.3** Rejected Contracts. The Seller shall not seek an order approving the rejection or assumption of any Assigned Contract in any bankruptcy proceeding following the date hereof unless in accordance with this Agreement without the prior written consent of the Buyer.

**8.4** Tax Matters.

(a) All transfer, documentary, sales, use, registration, filing, recordation, ad valorem, value added, bulk sales, stamp duties, excise, license or similar fees or taxes (including penalties and interest) payable in connection with the transactions contemplated by this Agreement and not exempted under the Sale Order or by section 1146(c) of the Bankruptcy Code (collectively, "Transfer Taxes") shall be borne by the Seller. The applicable parties shall cooperate in filing such forms and documents as may be necessary to permit any such Transfer Tax to be assessed and paid on or prior to Closing in accordance with any available pre-sale filing procedure, and to obtain any exemption or refund of any such Transfer Tax.

(b) The Buyer and the Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax.

(c) Between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Seller shall (i) provide appropriate notice of the Sale Motion and related matters to all Governmental Bodies that may seek to collect property Taxes or impose on the Seller, the Buyer or any Purchased Asset penalties for any property Taxes, and (ii) use all commercially reasonable efforts to obtain certificates, releases or other appropriate documentation from such Governmental Bodies to the extent such Governmental Bodies provide such certificates, releases or documentation in the ordinary course, providing that such property Taxes have been paid or are not owed.

(d) The Buyer shall prepare a draft IRS Form 8594, allocating the Purchase Price, Assumed Liabilities and all other relevant items, as determined for federal income tax purposes, to the Purchased Assets in a manner consistent with Code Section 1060 and the Treasury Regulations promulgated thereunder (and any similar provisions of state, local, or foreign law). The Buyer shall deliver such draft IRS Form 8594 to the Seller no later than ninety (90) days after the Closing. Each of the Buyer and the Seller shall timely file IRS Form 8594 in accordance with such draft IRS Form 8594 and shall file all other Tax Returns in a manner consistent with such draft IRS Form 8594. Neither the Buyer nor the Seller shall take any position for Tax purposes (whether in audits, Tax Returns, or otherwise) that is inconsistent with such final IRS Form 8594 unless otherwise required by applicable law, provided that the parties acknowledge that the Buyer may use a different methodology for financial reporting purposes.

(e) The Buyer shall be entitled to deduct and withhold from any amounts otherwise payable under this Agreement to the Seller such amounts as the Buyer, in its reasonable judgment, determines must be deducted and withheld with respect to the making of such payment under the Code, or any applicable provision of U.S. federal, state, local or non-U.S. tax law. Such amounts so deducted and withheld shall be treated for all purposes of this Agreement as having been paid to the Seller in respect of which such deduction and withholding was made by the Buyer.

**8.5** Non-Compete; Non-Solicitation.

(a) During the five (5) year period immediately following the Closing Date (the "Restricted Period"), the Seller will not, directly or indirectly: (i) anywhere in the State of California, whether as owner, partner, equity holder, consultant, agent, co-venturer or otherwise,

engage, participate, assist or invest or actively prepare to engage, participate, assist or invest in any Person that is engaged the Hospice Business; (ii) employ, recruit or hire any person, or attempt to employ, recruit or hire any person, that is employed or engaged by, or was employed or engaged by, the Seller in connection with the Hospice Business but not in connection with the Home Health Business, on the Closing Date or within twelve (12) months prior to the Closing Date, or otherwise solicit, induce or influence, or attempt to solicit, induce or influence, any such Person to leave employment with the Seller, the Buyer or any of their Affiliates; and (iii) solicit or encourage, or attempt to solicit or encourage, any referral source, customer, supplier or vendor to terminate or otherwise modify adversely its business relationship with the Seller, Buyer or any of their Affiliates. For purposes of clarity, nothing set forth in this clause (a), or elsewhere within this Section 8.5, is intended or will be deemed or construed to apply in any manner whatsoever with respect to any Person previously, presently or hereafter employed or engaged by the Seller in connection with the Home Health Business.

(b) The Seller understands that the restrictions set forth in this Section 8.5 are intended to protect the interests of the Buyer, its Affiliates and their Confidential Information (as defined below), for the avoidance of doubt including trade secrets, goodwill and established employee, customer, supplier, consultant and vendor relationships, and the Seller agrees that such restrictions are reasonable and appropriate for this purpose. The Seller further acknowledges and agrees that the time, scope, geographic area and other provisions of this Section 8.5 have been specifically negotiated by sophisticated parties and absent the Seller's agreement to and compliance with the restrictions set forth in this Section 8.5, the Buyer would not have entered into the transactions contemplated by this Agreement. The Restricted Period shall be extended with respect to the Seller by each day that such Seller is in breach of Section 8.5. The existence of any claim or cause of action by the Seller against the Buyer, or the Buyer against the Seller, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Buyer or the Seller of the restrictive covenants contained in this Section 8.5.

(c) The Seller understands that a breach of this Section 8.5 is likely to cause the Buyer and its Affiliates substantial and irrevocable damage and therefore, in the event of such breach, the Seller, the Buyer and its Affiliates, in addition to such other remedies which may be available, will be entitled to specific performance and other injunctive relief, without the posting of a bond. The Seller further acknowledges that a court may render an award extending the Restricted Period as one of the remedies in the event of the Seller's violation of this Section 8.5. The Seller agrees that if it violates this Section 8.5, in addition to all other remedies available to the Buyer and its Affiliates at law, in equity, and under contract, the Seller agrees that the Seller is obligated to pay all of the Buyer's and its Affiliates' costs of enforcement of this Agreement, including reasonable attorneys' fees and expenses.

**8.6** Confidentiality. The Seller agrees to, and shall require its agents, representatives, affiliates, employees, officers and directors to, treat and hold as confidential all confidential documents and information relating to the Purchased Assets, including any trade secrets, processes, patent applications, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of client and consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans and all other notes, analyses, compilations, studies, forecasts, interpretations or other documents that are derived from, contain, reflect or are based upon any such information (the "Confidential Information") and refrain from using any Confidential Information except in connection with this Agreement, and deliver promptly to the Buyer, at the Buyer's request, all Confidential Information (and all copies thereof in whatever form or medium) in its possession or under its control. Notwithstanding the foregoing, Confidential Information shall not include information

that relates to the Home Health Business or is or becomes available publicly and was not disclosed in breach of this Agreement. In the event that the Seller or any of its agents, representatives, affiliates, employees, officers or directors becomes legally compelled to disclose any Confidential Information, such person shall provide the Buyer with prompt written notice of such requirement so that the Buyer may seek a protective order or other remedy or waive compliance with these provisions. In the event that a protective order or other remedy is not obtained or if the Buyer waives compliance with these provisions, such person shall furnish only that portion of such Confidential Information that is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

**8.7** Cure Costs. Prior to the Closing, the Seller shall use commercially reasonable efforts to provide the Buyer with access to relevant business records, personnel, equipment, and the Buyer's other reasonable requests in order to allow the Buyer to assist with evaluating the Cure Costs.

**8.8** Mail. The Buyer authorizes and empowers the Seller from and after the Closing Date to receive and to open all mail received by the Seller relating to the Purchased Assets or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 8.8. The Seller shall (a) promptly deliver to the Buyer or its Affiliates any mail or other communication received by it after the Closing Date and relating to the Purchased Assets or the Assumed Liabilities, (b) promptly transfer in immediately available funds to the Buyer or its Affiliates any cash, electronic credit or deposit received by the Seller but solely to the extent that such cash, electronic credit or deposit are Purchased Assets and (c) promptly forward to the Buyer or its Affiliates any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Purchased Assets. From and after the Closing Date, the Seller shall refer all inquiries with respect to the Purchased Assets and the Assumed Liabilities to the Buyer.

**8.9** Further Assurances.

(a) Subject to the terms and conditions of this Agreement and applicable Law, the Seller and the Buyer shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other party reasonably informed with respect to the status of the matters contemplated by this Section 8.9 and supplying such reasonable assistance as may be reasonably requested by the other party in connection with the matters contemplated by this Section 8.6. Without limiting the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, the parties shall use their commercially reasonable efforts to take, and shall coordinate and cooperate with each other with respect to, the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) Obtain any required consents, approvals, waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party and provide all such information concerning such party as may be necessary or reasonably requested in connection with the foregoing,

(ii) Avoid the entry of, or have vacated or terminated, any injunction, decree, Order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) Take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible;

(iv) Execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to the Buyer and its successors and assigns, all of the Purchased Assets, and for the Buyer and its successors and assigns, to assume the Assumed Liabilities as contemplated in this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby; and

(v) Provide the Buyer with assistance in identifying and obtaining the permits necessary to use and operate the Purchased Assets.

(b) Following the Execution Date and until the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Seller, on the one hand, and the Buyer, on the other hand, shall keep each other reasonably informed as to the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by the Seller or the Buyer or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

**8.10** Preservation of Records. The Seller and the Buyer agree that each of them shall preserve and keep the Documents held by them or their Affiliates relating to the Purchased Assets and the Assumed Liabilities for a period of one (1) year from the Closing Date, in the case of the Buyer, and until the closing of the Chapter 11 Case or the liquidation and winding up of the estate of the Seller, in the case of the Seller, and shall make such Documents available to the other party as may be reasonably required by such other party in connection with, among other things, any insurance claims by, actions or Tax audits against or governmental investigations of the Seller or the Buyer or any of their respective Affiliates or in order to enable the Seller or the Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby.

**8.11** Publicity. Except as required by applicable Law (including by the Bankruptcy Court or the Bankruptcy Code), the Seller shall not issue a press release or make any other public announcement concerning this Agreement or the matters or transactions contemplated hereby without the prior written approval of the Buyer (which approval shall not be unreasonably withheld, conditioned or delayed).

**8.12** Notification of Certain Matters. Seller shall give prompt notice to the Buyer, and the Buyer shall give prompt notice to the Seller, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to Closing and (b) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court. To the extent permitted by applicable Law, the Seller shall give prompt notice to the Buyer of (w) any notice of any alleged violation of Law applicable to the Seller and (x) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Purchased Assets or that any such investigation, inquiry or review, to the Seller's Knowledge, is contemplated.

**8.13 Regulatory Affairs.** Seller shall, to the fullest extent permitted by applicable Law, (i) promptly advise the Buyer of the receipt of any communication from any Governmental Body whether oral, written, electronic or otherwise, (ii) provide the Buyer with a reasonable opportunity to participate in the preparation of any response thereto and the preparation of any other substantive submission or communication to any such Governmental Body and to review any such response, submission or communication prior to the filing or delivery thereof, and (iii) provide the Buyer with the opportunity to participate in any meetings or substantive telephone conversations that the Seller or its representatives may have from time to time with any such Governmental Body.

## Article IX

### CONDITIONS TO CLOSING

**9.1 Conditions Precedent to the Obligations of the Seller.** The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller (on behalf of the Seller) in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of the Buyer set forth in Article VI hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date);

(b) the Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date;

(c) the Buyer shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3; and

(d) there shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

**9.2 Conditions Precedent to the Obligations of the Buyer.** The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by the Buyer in whole or in part to the extent permitted by applicable Law):

(a) the Seller shall have delivered to the Buyer (i) a certified copy of the Sale Order, which shall, among other things, contain the terms described in Section 7.1 and effect the assignment of the Assigned Contracts to the Buyer, and such Sale Order shall constitute a Final Order with no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of the Seller;

(b) the representations and warranties of the Seller set forth in Article V hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date);



(c) the Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by the Seller on or prior to the Closing Date;

(d) between the Execution Date and the Closing Date, there shall not have occurred any event, circumstance, occurrence or fact that has had, or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect;

(e) the Seller shall have delivered, or caused to be delivered, to the Buyer all of the items set forth in Section 4.2;

(f) there shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(g) the average daily census of patients of the Seller on service for the thirty (30) days prior to the Closing Date shall have consisted of equal to or greater than one hundred twenty-five (125) patients, consistent with past operations of the Seller.

**9.3** Failure Caused by Party's Failure to Comply. Neither the Seller nor the Buyer may rely on the failure of any condition set forth in Sections 9.1 or 9.2, as the case may be, if such failure was caused directly by such party's failure to comply with any provision of this Agreement.

## Article X

### MISCELLANEOUS

**10.1** Payment of Expenses. Whether or not the transactions contemplated hereby are consummated, the Seller shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby. Other than the Break-Up Fee and Expense Reimbursement to be paid to Buyer pursuant to the Bidding Procedures Order in connection with the closing of an alternative transaction for the Purchased Assets, whether or not the transactions contemplated hereby are consummated, the Buyer shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

**10.2** Survival of Representations and Warranties. The parties hereto agree that the representations and warranties, and the covenants and agreements to be performed prior to the Closing, contained in this Agreement shall not survive, and thus shall expire upon, the Closing. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant, until fully performed. All of the representations and warranties set forth in this Agreement or any certificate or schedule that are so qualified as to "material," "materiality," "material respects," "Material Adverse Effect" or words of similar import or effect shall be deemed to have been made without such qualification for purposes of determining: (a) whether a breach of such representation or warranty has occurred and (b) the amount of losses resulting from, arising out of or relating to any such breach of such representation or warranty.

**10.3** Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

**10.4** Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

**10.5** Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

**10.6** Jurisdiction, Waiver of Jury Trial.

(a) SUBJECT TO SECTION 10.6(b), THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER THE PARTIES HERETO AND ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF DELAWARE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CENTRAL DISTRICT OF CALIFORNIA WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) THE COURTS OF THE STATE OF CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CENTRAL DISTRICT OF CALIFORNIA WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO SECTION 8.9 THIS AGREEMENT.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**10.7 Notices.** Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any party to the other parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) day after being sent by overnight courier or when sent by facsimile transmission or email PDF format (with a confirming copy sent by overnight courier), and (iii) three (3) days after being sent by registered or certified mail, postage prepaid, as follows:

If to the Seller, to:

Adam Meislik  
20341 SW Birch, Suite 220  
Newport Beach, CA 92660  
(949) 357-2360  
Email: ameislik@force10partners.com

With a copy (which shall not constitute effective notice) to:

Weiland Golden Goodrich LLP  
Attention: David M. Goodrich  
650 Town Center Drive – Suite 600  
Costa Mesa, California 92626  
Telephone: (714) 966-1000  
Email: dgoodrich@wglp.com

If to the Buyer, to:

Bristol Hospice, L.L.C.  
206 North 2100 West, Suite 202  
Salt Lake City, Utah 84116  
Attention: Hyrum Kirton  
Email: hyrum.kirton@bristolhospice.com

with copies to (which shall not constitute effective notice):

Goodwin Procter LLP  
100 Northern Avenue  
Boston, MA 02110  
Telephone: (617) 570-3925  
Attention: Chris Wilson  
Email: cwilson@goodwinprocter.com

or to such other Persons or addresses as may be designated in writing by the party to receive such notice.

**10.8 Binding Effect; Assignment.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by the Seller or the Buyer (by operation of Law or otherwise) without the prior written consent of the other

parties hereto and any attempted assignment without the required consent will be void; provided, however, that the Buyer may, without consent of the Seller, assign all of its rights and all of its obligations hereunder to an Affiliate prior to the Closing and assign its rights and interests hereunder as collateral to any of the Buyer's financing sources. For the avoidance of doubt, the parties hereto acknowledge and agree that following an assignment of its rights and obligations hereunder to an Affiliate (i) the Buyer shall not receive any Purchased Assets or assume any Assumed Liabilities, respectively, and (ii) the Buyer shall have no rights or obligations hereunder or in connection herewith. Except as otherwise expressly provided in this Section 10.8, no assignment of any obligations hereunder will relieve the parties hereto of any such obligations. Upon any permitted assignment, the references in this Agreement to Seller or the Buyer will apply to any such assignee unless the context otherwise requires.

**10.9 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**10.10 Injunctive Relief; Limitations on Relief.** The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by the Seller, and, accordingly, the Buyer shall be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants, promises or agreements or an Order enjoining the Seller from the continuation of any threatened or actual breach of its covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 10.10 shall be in addition to any other rights which the Buyer may have at Law or in equity pursuant to this Agreement.

**10.11 Time of the Essence.** Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

**10.12 Miscellaneous.**

**(a) Certain Interpretations.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

**(i)** All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

**(ii)** The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

**(iii)** The words "include," "includes" and "including," when used herein, shall be deemed in each case to be followed by the words "without limitation" (regardless of whether such words or similar words actually appear).

(iv) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(v) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(b) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**BUYER:**

**BRISTOL HOSPICE, L.L.C.**

By: \_\_\_\_\_

Name: Hyrum Kirton

Title: Chief Executive Officer

[Signature Page to Asset Purchase Agreement]

ACTIVE/100572967.11

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**SELLER:**

**VISITING NURSE ASSOCIATION OF THE  
INLAND COUNTIES D/B/A VNA CALIFORNIA**

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Asset Purchase Agreement]

ACTIVE/100572967.11

# **EXHIBIT C**



**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**HEALTHSURE MANAGEMENT SERVICES LLC  
AS THE BUYER**

**AND**

**VISITING NURSE ASSOCIATION OF THE INLAND COUNTIES,  
D/B/A VNA CALIFORNIA, A CALIFORNIA NONPROFIT CORPORATION,  
AS THE SELLER**

**Dated as of May 4, 2020**

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**EXHIBITS**

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Bidding Procedures Order
Exhibit C	Form of Sale Order
Exhibit D	Form of Addendum re Post-Closing Management Services

**SCHEDULES**

Schedule 2.1(1)	Schedule of Assigned Contracts (If Any)
Schedule 2.1(3)	Schedule of Acquired Permits (If Any)
Schedule 5	Seller Disclosure Schedule
Schedule 8.1	Schedule of Ordinary Course Conduct Obligation Exceptions

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made, executed and entered into effective as of April \_\_, 2020 (the “Execution Date”), by and between Healthsure Management Services LLC, a California limited liability company (“HMS”) and/or any California home health licensed business affiliate of HMS designated by HMS as Buyer within three business days prior to Closing (the “Buyer”), on the one hand, and Visiting Nurse Association of the Inland Counties d/b/a VNA California, a California nonprofit corporation and chapter 11 debtor (the “Seller”) on the other hand. Certain capitalized terms used herein are defined in Article I.

### RECITALS

**A.** The Seller is engaged two separate and distinct businesses, as follows:

(1) The business of providing home healthcare services, and operating, managing, developing and marketing home healthcare programs (the “Home Health Business”), which business is the subject of this Agreement; and

(2) The business of providing hospice and palliative care services, and managing, developing and marketing hospice and palliative care programs (the “Hospice Business”), which business is not the subject of this Agreement.

**B.** Subject to the terms and conditions hereof, the Buyer desires to, among other things, acquire or assume from the Seller, and the Seller desires to, among other things, sell, assign, transfer, deliver and delegate to the Buyer all rights, titles and interests of the Seller in and to certain assets used in or relating to the operation and administration of the Home Health Business, and certain obligations and liabilities of Seller relating to the Home Health Business.

**C.** On August 15, 2018 (the “Petition Date”), the Seller commenced a case (the “Chapter 11 Case”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), as Case No. 6:18-bk-16908-MH.

**D.** In connection with the Chapter 11 Case, following the entry of the Sale Order approving the transactions contemplated hereby, upon the terms and conditions contained in (i) this Agreement (including the satisfaction of the conditions set forth in Sections 9.1 and 9.2 of this Agreement or the waiver thereof by the party entitled to the benefit of the applicable condition), (ii) the Ancillary Documents and (iii) the Sale Order, the Seller shall transfer and assign to the Buyer, and the Buyer shall acquire and accept from the Seller, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Purchased Assets (as defined below), and shall assume from the Seller the Assumed Liabilities (as defined below), in each case as more specifically provided herein and in the Sale Order.

**E.** The Seller has determined, in the exercise of its business judgment, that it is advisable and in the best interest of its bankruptcy estate and the beneficiaries thereof to consummate the transactions contemplated by this Agreement and the Ancillary Agreements pursuant to the Sale Order.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Buyer and the Seller hereby covenant, agree, warrant, represent and declare as follows:

## Article I

### DEFINITIONS

**1.1** Certain Definitions. For purposes of this Agreement, the following terms used in this Agreement shall have the respective meanings assigned to them below:

(1) “Affiliate” means, with respect to any Person, any other person that: (1) owns or controls, is owned or controlled by, or is under common ownership or control with such person, directly or indirectly, with ownership of 5% or more of the equity of a person constituting ownership, and control of 5% or more of the voting interests of a person constituting control; (2) is an officer, director, manager, managing member, managing partner or general partner of the person; (3) is, if the person is any of the persons described in clause (2), the entity for which the person acts in such capacity; (4) is legally related to the person by birth, adoption or marriage; or (5) is an "affiliate" as defined in the Bankruptcy Code.

(2) “Ancillary Agreements” means, collectively, the agreements to be executed in connection with the transactions contemplated by this Agreement, including the Bill of Sale.

(3) “Auction” means that certain auction, if any, conducted pursuant to the terms of the Bidding Procedures Order.

(4) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

(5) “Bidding Procedures Motion” means a duly noticed motion filed by the Seller in the Bankruptcy Case seeking approval of the Bidding Procedures Order.

(6) “Bidding Procedures Order” means an Order of the Bankruptcy Court in substantially the form attached hereto as Exhibit A or otherwise in form and substance satisfactory to Buyer in its reasonable judgment that, among other things, approves the Bid Protections, establishes a date by which qualified bids meeting the requirements approved in the Bidding Procedures Order must be submitted by bidders and establishes procedures for the Auction process.

(7) “Bid Protections” means payment to the Buyer in cash at the closing of any other sale of the Purchased Assets, from the proceeds of such other sale, in the amount of all out-of-pocket costs and expenses of the Buyer and its affiliates incurred in connection with the diligence, negotiation, documentation, bidding and auction process (including any legal and financial advisory fees and expenses), not to exceed 3% of the Purchase Price, with the Purchase Price deemed for such purpose to be \$700,000.00 (the “Break-Up Fee”).

(8) “Bill of Sale” means the bill of sale with respect to the Purchased Assets, substantially in the form attached hereto as Exhibit A.

(9) “Business Day” means any day of the year on which national banking institutions in Riverside, California, are open to the public for conducting business (other than Saturday or Sunday) and are not required or authorized to close, and shall be deemed to open at 9:00 a.m. Pacific Daylight Saving Time and close at 5:00 p.m. Pacific Daylight Saving Time.

(10) “Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

(11) “Code” means the Internal Revenue Code of 1986, as amended.

(12) “Contract” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is binding upon a Person or its property.

(13) “Documents” means all of the Seller's written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(14) “Employee Plans” means (a) employee benefit plans within the meaning of Section 3(3) of ERISA whether or not subject to ERISA; (b) stock option plans, stock purchase plans, bonus or incentive award plans, severance pay plans, programs or arrangements, deferred compensation arrangements or agreements, employment agreements, executive compensation plans, programs, agreements or arrangements, change in control plans, programs or arrangements, supplemental income arrangements, vacation plans, and all other employee benefit plans, agreements, and arrangements, not described in (a) above; and (c) plans or arrangements providing compensation to employee and non-employee directors.

(15) “Encumbrance” means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed of trust, option, pledge, hypothecation, security interest or similar interest, title defect (excluding easements, rights of way, restrictive covenants, conditions, restrictions and encroachments of public record or discoverable upon inspection), right of first refusal, preemptive right, judgment, conditional sale or other title retention agreement, or other imposition, restriction on transfer or lawful use of any nature, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

(16) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

(17) “ERISA Affiliate” means any entity that would have ever been considered a single employer with the Seller under Section 4001(b) of ERISA or part of the same “controlled group” as the Seller for purposes of Section 302(d)(3) of ERISA.

(18) “Existing Claim” means that certain claim of Seller against Buyer based upon or related to the Notice of Circumstances that provided formal written notice of negligence and breach of fiduciary duty claims of Seller to Buyer’s insurance provider in May 2019.

(19) “Final Order” means an Order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in the Chapter 11 Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of

*certiorari*, new trial, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired, as a result of which such Order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause such Order not to be a Final Order.

(20) “GAAP” means United States generally accepted accounting principles, consistently applied throughout the periods involved.

(21) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state, provincial or local, or any ministry agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) or any judicial, quasi-judicial or administrative body, or any regulatory body of applicable jurisdiction or any private contractor engaged on behalf of such Governmental Body.

(22) “Home Health Business” is defined in Recital A(1).

(23) “Hospice Business” is defined in Recital A(2).

(24) “Indebtedness” means: (a) any obligations of a Person for borrowed money, (b) any obligations evidenced by any note, bond, debenture or other debt security or other instrument, (c) any guarantee or commitment by which a Person assures or guarantees a creditor or other Person against loss (including contingent reimbursement Liability with respect to letters of credit), (d) any Liabilities under leases that would be considered capitalized leases under GAAP, (e) any obligations for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise as obligor or otherwise, including earn-outs, holdbacks and similar deferred payment obligations, (f) any Liability guaranteed in any manner by a Person (including guarantees in the form of an agreement to repurchase or reimburse), (g) any indebtedness secured by an Encumbrance on a Person’s assets, (i) any retainers or similar payment obligations of such Person, (h) any amounts owed to any Person under any bonus arrangements, noncompetition arrangements, severance arrangements or any similar arrangements, (i) all accrued but unpaid vacation and employee bonuses, (j) any deferred or unearned revenue, (k) the face amount of all letters of credit issued for the account of a Person (or for which such Person is liable) and without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments issued by a Person (or for which such Person is liable), (l) all obligations under any interest rate, currency or other hedging or derivative arrangements and (m) any accrued and unpaid interest on, and any prepayment premiums, penalties, “make whole amounts,” indemnities, expenses, consent or other fees, breakage costs or similar charges in respect of, any of the foregoing obligations computed as though payment is being made in respect thereof on the Closing Date.

(25) “Law” means all federal, state, provincial, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, Orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other legal requirement or rule of law, including common law.

(26) “Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

(27) “Liability” means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including all costs and expenses relating thereto.

(28) “Material Adverse Effect” means any change, effect, event, occurrence, development, circumstance or state of facts which has had or would reasonably be expected to have a materially adverse effect on the Purchased Assets, or which would materially impair the Seller’s ability to perform its obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated by this Agreement.

(29) “Multiemployer Plan” means an employee pension or welfare benefit plan to which more than one unaffiliated employer contributes and which is maintained pursuant to one or more collective bargaining agreements.

(30) “Order” means any order, writ, judgment, injunction, decree, stipulation, determination, decision, verdict, ruling, subpoena, or award entered by or with any Governmental Body (whether temporary, preliminary or permanent).

(31) “Permits” means licenses, permits (including environmental, construction and operation permits), provider billing numbers, enrollments, franchises, certificates, approvals, accreditations, consents, waivers, clearances, exemptions, classifications, registrations, orders and other similar documents and authorizations issued by or pending with any Governmental Body and/or any self-regulatory body or organization.

(32) “Person” means and will be construed broadly to include an individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, trust, estate, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(33) “Petition Date” is defined in Recital C.

(34) “Purchased Assets” means and will be construed broadly to include all rights, titles and interests of Seller in and to the following described property:

(i) The Contracts, if any, listed on Schedule 2.1(a) (the “Assigned Contracts”);

(ii) All licenses, provider numbers and provider agreements and accreditations held by Seller and used by the Seller at any time in the operation of the Home Health Business (but excluding those related primarily to any of the Excluded Assets, any of the Excluded Liabilities, or the Hospice Business), including that certain home health license issued by the State of California with license number \_\_\_\_\_;

(iii) All Permits used by the Seller at any time in the operation of the Home Health Business, excluding those relating primarily to the conduct of the Hospice Business, but including the Permits set forth on Schedule 2.1(3) (the “Acquired Permits”);



(iv) Copies of all books and records of Seller acquired or developed by the Seller at any time in the operation of the Home Health Business, but not any books and records applicable to the ownership and operation of the Hospice Business (the “Acquired Books and Records”); provided, however, that if and to the extent any books and records of Seller are applicable to both the ownership and operation of the Hospice Business and the ownership and operation of the Home Health Business, then Seller shall retain such books and records and the Acquired Books and Records shall include a copy of such books and records;

(v) Copies of all medical records relating to the current (but not prior) Home Health Business patients of the Seller;

(vi) The following trade names used by Seller in connection with the Home Health Business: (a) "VNA of Inland Counties", (b) "VNA California", and (c) "VNA of Inland Counties dba VNA California"; and

(vii) The Purchased Claims.

(35) “Purchased Claims” means all claims and causes of action (and the proceeds, if any, thereof) of the Seller and its bankruptcy estate against Buyer or Buyer’s principals, affiliates, officers, members, shareholders, agents and employees, including all claims and causes of action of Seller and its bankruptcy estate arising under chapter 5 of title 11 of the U.S. Code, but not including the Existing Claim and claims for breach of this Agreement.

(36) “Representatives” means, as to any Person, its officers, directors, managers, members, employees, agents, counsel, accountants, financial advisors, restructuring advisors, bankers, insurers, financing sources and consultants.

(37) “Sale Motion” means the motion filed with the Bankruptcy Court seeking Bankruptcy Court approval of this Agreement.

(38) “Sale Order” means an Order of the Bankruptcy Court in substantially the form attached hereto as Exhibit C or otherwise in form and substance satisfactory to Buyer in its sole judgment, pursuant to, *inter alia*, Sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving this Agreement, the Ancillary Documents and the transactions contemplated by this Agreement; provided, that neither the Buyer nor the Seller shall be required to accept a Sale Order that does not: (a) provide for the sale, transfer and assignment by the Seller to the Buyer of all of the Seller’s rights, titles and interests in the Purchased Assets, on the terms and conditions set forth herein, free and clear of all Indebtedness and Liabilities of Seller, Claims against Seller and Encumbrances (including any successor liability) asserted against Seller or property of Seller, other than the Assumed Liabilities; (b) provide for the assumption and assignment of the Acquired Contracts and the Assumed Liabilities by and to the Buyer; (c) contain findings of fact and conclusions of Law that the transactions contemplated by this Agreement are undertaken by the Buyer and the Seller at arm’s length, without collusion and that the Buyer has acted in “good faith” within the meaning and entitled to the protections of Section 363(m) of the Bankruptcy Code; (d) provide that, other than the Assumed Liabilities, the Buyer shall not be responsible for any claims against the Seller or any Liabilities or Indebtedness of the Seller; (e) find the transfers of the Purchased Assets by the Seller to the Buyer constitutes transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the Laws of the State of California; (f) hold that the Buyer is a not a successor to the Seller or its estate by reason of any theory of Law or equity with respect to any Encumbrances against the Seller or the Purchased

Assets and permanently enjoining each and every holder of a claim for Indebtedness or Liabilities of Seller, or holder of a Claim or Encumbrances asserted against Seller or Seller's property, from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or Encumbrance against the Buyer or the Purchased Assets related thereto; (g) hold that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan submitted to the Bankruptcy Court or any other court for confirmation or sanction, shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, the Ancillary Documents or the Sale Order, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement; and (h) provide that Buyer shall not be required to offer employment to any employees of Seller.

(39) "Seller's Knowledge" means the actual personal knowledge, without the undertaking of any investigation or inquiry, of Adam Meislik, Bruce Gordon or Oscar Brambalia.

(40) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, association, partnership, limited liability company, trust or other entity of which fifty percent (50%) or more of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by the pertinent Person.

(41) "Tax" and "Taxes" mean any and all taxes, charges, fees, tariffs, duties, impositions, levies or other assessments, imposed by any Laws or Governmental Body, and including any interest, penalties or additional amounts attributable to, imposed upon, or with respect thereto.

(42) "Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including attachments thereto and amendments thereof.

**1.2 Terms Defined Elsewhere in this Agreement.** For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Acquired Books and Records	1.1(hh)(iv)
Acquired Permits	1.1(hh)(iii)
Agreement	Preamble
Assigned Contracts	1.1(hh)(i)
Assumed Liabilities	2.3
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Chapter 11 Case	Recitals
Closing	4.1
Closing Date	4.1
Confidential Information	8.6
Exceptions	5.2
Excluded Assets	2.2
Health Care Laws	5.9(a)
Home Health Business	Recital A(1)
Hospice Business	Recital A(2)
Purchase Price	3.1(a)
Seller	Preamble

<u>Term</u>	<u>Section</u>
Seller Broker Fee	5.8
Seller Disclosure Schedule	Article V
Transfer Tax	8.4(a)

## **Article II**

### **ACQUISITION AND TRANSFER OF ASSETS; NO ASSUMPTION OF LIABILITIES**

**2.1** Acquisition and Transfer of Purchased Assets. At the Closing, and upon the terms and conditions set forth herein and in the Sale Order, the Seller shall transfer, assign, convey and deliver to the Buyer, and the Buyer shall acquire and accept from the Seller, the Purchased Assets, free and clear of: (a) all Encumbrances; (b) all Indebtedness or Liabilities of Seller; and (c) all Claims and administrative expenses against the Debtor or the bankruptcy estate. The foregoing shall not impair in any way the Buyer's acquisition of the Purchased Claims and Buyer's right to bring claims for breach of this Agreement.

**2.2** Excluded Assets. Notwithstanding anything to the contrary in this Agreement, all assets, properties and rights of the Seller not included in the Purchased Assets are not being sold, transferred, conveyed or assigned to Purchaser under this Agreement, the Ancillary Agreements or the Sale Order, including the following assets, properties and rights (the "Excluded Assets"):

- (1) All rights of the Seller arising under this Agreement;
- (2) All cash and cash equivalents, including the Purchase Price, and all accounts receivable due to Seller on or before the Closing and all claims relating to all accounts receivable due to the Seller on or before Closing.
- (3) The Existing Claim.
- (4) All rights and interests in and to all claims and potential claims (but not including the Purchased Claims), including any proceeds generated therefrom, against (1) the Seller's former and current directors and officers, (2) Seller's former and current management companies, including all principals, shareholders, members, employees, agents and affiliates of Seller's former and current management companies, and (3) Seller's current and former attorneys, including all employees and agents; and any proceeds of the foregoing.
- (5) All Contracts, including this Agreement, other than the Assumed Contracts.
- (6) All furniture, furnishings, equipment, and other physical assets, including any physical assets located at the Seller's premises in Riverside, California and Palm Desert, California.
- (7) Any claim, right, benefit or interest of the Seller in and to any refund of taxes of any kind relating to any period on or before the Closing Date and any deferred tax asset of the Seller.
- (8) All rights and benefits of the Seller arising out of any employee benefit or health and welfare plan.
- (9) All rights, claims or benefits of Seller under any insurance policy of the Seller, and any right of Seller to unearned premiums and refunds due with respect to such insurance policy;

provided, however, that the foregoing and nothing else in this Agreement shall impair the rights of Buyer and its principals, affiliates, officers, members, shareholders, agents and employees in their capacities as additional assureds or insureds under any such insurance policy of Seller.

(10) All assets, rights, claims or benefits related to any self-insurance plan of Seller.

(11) All: (a) tax and financial accounting records of the Seller, except those relating to the Home Health Business, (b) governance documents and agreements, as well as ownership records and corporate record books, including board meeting minutes of the Seller, (3) business, patient and bereavement records of the Seller, other than patient records relating to current patients of the Seller as of the time of the Closing, and (4) documentation that the Seller is required by law to retain or that is necessary and appropriate to conclude the administration of the Bankruptcy Case (collectively the "Excluded Records").

(12) Except with respect to the Purchased Assets, all claims or rights of Seller relating to liens asserted against Seller's assets.

(13) The Hospice Business including all assets, records, claims and causes of action related to the Hospice Business; but not including the Purchased Claims.

### 2.3 No Assumption of Liabilities.

(1) Except for executory obligations arising under the Assigned Contracts following the Closing (the "Assumed Liabilities"), the Buyer shall neither assume nor be liable for, and the Seller shall retain and remain responsible for, all of the Seller's debts, Liabilities, Indebtedness and other obligations to its creditors of any nature whatsoever, including the Encumbrances, whether accrued, absolute or contingent, whether known or unknown, including any liabilities or obligations now or hereafter arising from the Seller's business activities that took place at any time prior to the Closing or any Liabilities arising out of or connected to any action or inaction of the Seller in connection with the Chapter 11 Case and the reorganizing and/or winding down of the Seller's business. For the avoidance of doubt, the Buyer shall not be the successor of, or successor to, the Seller or any of Seller's businesses upon consummation of the transactions contemplated hereby.

(2) Seller acknowledges that Buyer is not obligated pursuant to this Agreement or otherwise to provide employment to any of Seller's employees, but if Buyer does make such offers of employment, Seller will not object. The employment by Buyer of any of Seller's employees shall not constitute an assumption by Buyer of any Liabilities or obligations of any kind of Seller related to such employees, including with respect to their compensation or benefits.

2.4 Assignment of Contracts and Rights. To the maximum extent permitted by the Bankruptcy Code, the Purchased Assets, including the Assigned Contracts, shall be assumed by Seller and assigned to the Buyer pursuant to Section 365 of the Bankruptcy Code as of the Closing Date or such other date as specified in an Order of the Bankruptcy Court.

2.5 Clients of Home Health Business. No later than three days prior to the Closing, Buyer shall provide Seller with the names of Buyer's licensed and permitted home health affiliates that have agreed to provide continuing care to Seller's then current home health clients,

2.6 Addendum re Post-Closing Management Services. Buyer shall continue to provide post-closing management services to Seller on terms consistent with the Management Agreement previously

approved by the Bankruptcy Court and as such Management Agreement is amended or superseded pursuant to the terms of the Addendum attached hereto as Exhibit D. Seller agrees that the order approving this sale shall specifically approve the Addendum. In the event that Buyer is not the successful bidder at the sale of the Home Health Business, Seller shall seek separate Bankruptcy Court approval of the Addendum.

### **Article III**

#### **CONSIDERATION**

##### **3.1 Consideration and Closing Payment Determination.**

(1) Purchase Price. The consideration to be paid at the Closing for the Purchased Assets (the "Purchase Price") shall consist of:

(i) The forfeiture of \$300,000.00 of Buyer's unpaid post-petition management fees, with the remainder of the accumulated post-petition management fees paid at Closing (including a partial payment for the month in which the Closing occurs) notwithstanding any provision of the Management Agreement to the contrary, and the Sale Order shall so provide; and

(ii) The forfeiture of \$400,000.00 of the Buyer's prepetition general unsecured claim against the Seller's bankruptcy estate, with the remainder of the claim deemed an allowed prepetition unsecured claim in the amount of \$1,624,010.41 for all purposes (and the Sale Order shall so provide); and

(iii) The Assumed Liabilities.

(2) Delivery of Purchase Price. At the Closing, the Buyer shall deliver the Purchase Price by:

(i) Executing a stipulation with the Seller for the waiver of \$300,000.00 of the Buyer's post-petition management fees; and

(ii) Filing an amended prepetition general unsecured proof of claim with the Bankruptcy Court whereby the Buyer's total prepetition claim of \$2,024,010.41 shall be reduced by \$400,000.00 to \$1,624,010.41 and fixed in that amount; Buyer may not add in additional amounts to the proof of claim.

### **Article IV**

#### **CLOSING AND TERMINATION**

4.1 Closing. Subject to the satisfaction of the conditions set forth in Sections 9.1 and 9.2 hereof or the waiver thereof by the party entitled to the benefit of the applicable condition, the closing of the acquisition and sale of the Purchased Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place by the execution and exchange, via .pdf or other electronic copies of originally signed documents and agreements contemplated herein on the date that is no later than the fifteenth (15th) day following the entry of the Sale Order. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of the Seller in the Purchased Assets to be acquired by the

Buyer hereunder shall be considered to have passed to the Buyer and the assumption of all of the Assumed Liabilities shall be considered to have occurred as of 11:59 p.m. Pacific Time on the Closing Date.

**4.2** Closing Deliveries by the Seller. At the Closing, the Seller shall deliver to the Buyer:

- (1) A counterpart original of the Bill of Sale, duly executed by the Seller;
- (2) All tangible embodiments of the Purchased Assets, including the Acquired Books and Records and Acquired Permits;
- (3) Evidence of the receipt of any consents of, and the delivery of notice to, any third parties and/or Governmental Bodies, in each case as is necessary or required in connection with the consummation of the transactions contemplated by this Agreement, including in connection with any consent or notice requirements set forth on Section 4.2(e) of the Seller Disclosure Schedule, in form and substance reasonably satisfactory to the Buyer; and
- (4) All other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by the Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

**4.3** Closing Deliveries by the Buyer. At the Closing, the Buyer shall deliver, or cause to be delivered, to the Seller (or to other Persons, at the direction of the Seller), a counterpart original of the Bill of Sale, duly executed by the Buyer.

**4.4** Termination of Agreement. This Agreement may be terminated at any time prior to the Closing as follows:

- (1) By the mutual written consent of the Seller and the Buyer;
- (2) By either Buyer or Seller, if: (1) within five (5) Business Days following the date of the delivery by the Seller via email to the Buyer and Buyer's counsel of record of the Bidding Procedures Motion, the Buyer gives notice to the Seller of the Buyer's disapproval of the Bidding Procedures Motion or the Bidding Protections set forth therein;
- (3) By the Buyer if the Bidding Procedures Order shall not have been entered by the Bankruptcy Court by the close of business on [INSERT DATE];
- (4) By the Buyer if following its entry, the Bidding Procedures Order or Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of the Buyer and Seller; or (4) the Closing shall not have been consummated prior to [INSERT DATE]; (each, a "Triggering Event"); provided, however, that if the Triggering Event is due to a material breach of any representation, warranty, covenant or agreement contained in this Agreement by the Buyer, Buyer shall not have the right to terminate the Agreement pursuant to this Section 4.4(d);
- (5) By either the Buyer or the Seller, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that

the parties hereto shall promptly appeal any such adverse determination which is appealable (and pursue such appeal with reasonable diligence);

(6) By the Buyer, if the Seller's Chapter 11 Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of the Seller is appointed in the Seller's Chapter 11 Case, in each case without the consent of the Buyer;

(7) By the Seller, if the Buyer has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach any conditions set forth in Section 9.1 could not be satisfied; provided, however, that if such breach is curable by the Buyer within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as the Buyer continues to exercise such commercially reasonable efforts the Seller may not terminate this Agreement under this Section 4.4(g) unless such breach is not cured within fifteen (15) days from written notice to the Buyer of such breach; provided, further, that the Seller is not then in material breach of the terms of this Agreement that continues beyond the cure period;

(8) By the Buyer, if the Seller has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach any condition set forth in Section 9.2 could not be satisfied; provided, however, that if such breach is curable by the Seller within fifteen (15) days through the exercise of its commercially reasonable efforts, then for so long as the Seller continues to exercise such commercially reasonable efforts the Buyer may not terminate this Agreement under this Section 4.4(h) unless such breach is not cured within fifteen (15) days from written notice to Seller of such breach; provided, further, that the Buyer is not then in material breach of the terms of this Agreement that continues beyond the cure period; or

(9) By the Buyer, if any creditor of the Seller obtains relief from the automatic stay to foreclose on any of the Purchased Assets.

**4.5** Procedure Upon Termination. In the event of a termination of this Agreement by the Buyer or the Seller, or both, pursuant to Section 4.4, written notice thereof shall be given promptly by the terminating party to the other party hereto, specifying the provision hereof pursuant to which such termination is made. If notice of termination is given, the breaching party shall be given the opportunity to cure as provided in the Agreement or otherwise. If cure cannot be timely effected, and the parties have no made other arrangements to prevent termination, this Agreement shall thereupon terminate and become void and of no further force and effect, and the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto.

**4.6** Effect of Termination. Notwithstanding anything to the contrary in this Agreement, in the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to the Buyer or the Seller; provided, however, that the provisions of Article X, as applicable, shall survive any such termination and shall be enforceable hereunder.

## Article V

### REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth in the correspondingly numbered Sections of the Seller Disclosure Schedule, the Seller hereby represents and warrants to the Buyer as of the date hereof and as of the Closing Date as follows:

**5.1** Organization. The Seller is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. To the Seller's Knowledge, the Seller has all requisite power and authority to own, lease, develop and operate the Purchased Assets (subject to the provisions of the Bankruptcy Code). The Seller is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary.

**5.2** Authorization and Validity. Subject to Bankruptcy Court approval, the Seller has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is or will be a party and to carry out its obligations hereunder and thereunder. Subject to Bankruptcy Court approval, the execution and delivery of this Agreement and the Ancillary Agreements, and the performance by the Seller of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate (or equivalent) action on behalf of the Seller, and no other proceedings on the part of the Seller are necessary to authorize such execution, delivery, and performance. This Agreement has been, and the Ancillary Agreements when delivered will be, duly executed by the Seller and, subject to Bankruptcy Court approval, will constitute the valid and binding obligation, enforceable against the Seller in accordance with the terms of this Agreement, the Ancillary Agreements and the Sale Order.

**5.3** No Conflict. Subject to Bankruptcy Court approval, or as otherwise set forth on Section 5.3 of the Seller Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements does not, and the consummation by the Seller of the transactions contemplated hereby and thereby, upon entry of the Sale Order, will not: (a) conflict with or result in the breach of any provision of the organizational documents of the Seller, (b) to the Seller's Knowledge, conflict with, violate or result in the breach by the Seller of any applicable Law, (c) to the Seller's Knowledge, conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Assigned Contract or Acquired Permit, or (d) result in any new Encumbrance on any of the Purchased Assets. To the Seller's Knowledge, except as set forth on Section 5.3 of the Seller Disclosure Schedule, the Seller is not a party to, or subject to or bound by, any judgment, injunction or decree of any Governmental Body or agreement which may materially restrict or interfere with the Seller's performance of this Agreement or the Buyer's ability to use the Purchased Assets.

**5.4** Capitalization. To Seller's Knowledge, except as set forth on Section 5.4 of the Seller Disclosure Schedule, the Seller is and always has been a nonprofit corporation.

**5.5** Subsidiaries. The Seller does not have any Subsidiaries.

**5.6** Financial Statements.

**(1)** The Buyer has, in its capacity as the professional management company responsible for the day to day operation and management of the Seller's Home Health Business, had access to Seller's financial statements since the date Seller retained Buyer as its manager. Further, as set forth



on Section 5.5(1)(a) of the Seller's Disclosure Schedule, Seller has provided Buyer with the following financial statements: (i) the [unaudited] balance sheets as of December 31, 2018, and December 31, 2017, and the related statements of operations for the Seller for the respective fiscal years then ended and (ii) the unaudited balance sheet of the Seller as of [August 31], 2019 (the "Base Balance Sheet") and the related statements of operations for the [eight]-month period then ended. To the Seller's Knowledge, each of the foregoing financial statements (including in all cases the notes thereto, if any) (the "Financial Statements") is consistent with the books and records of the Seller (which, in turn, are accurate and complete in all material respects), has been prepared in accordance with GAAP on a consistent basis across periods and presents fairly in all material respects the financial condition and results of operations of the Seller as of and for the periods referred to therein, subject to changes resulting from normal year-end adjustments (none of which will be material individually or in the aggregate).

(2) To the Seller's Knowledge, the Seller does not have any Liabilities relating to the Home Health Business other than (i) Liabilities reflected on the Base Balance Sheet and (ii) immaterial Liabilities that have arisen after the date of the Base Balance Sheet in the ordinary course of business.

(3) To the Seller's Knowledge, or as set forth on Section 5.5(1) (b) and (c) of the Seller Disclosure Schedule, the Seller does not have any Indebtedness relating to the Home Health Business.

(4) To the Seller's Knowledge, the revenue recognition policies of the Seller, and the application of those policies, relating to the Home Health Business, are in compliance with the applicable standards under GAAP and such policies have not materially changed in the prior three (3) years.

(5) The Seller maintains a system of internal accounting controls and procedures relating to the Home Health Business that, to the Seller's Knowledge, are sufficient to provide reasonable assurance that: (i) transactions relating to the Home Health Business are recorded as necessary to permit preparation of audited financial statements in accordance with GAAP and to maintain accountability for assets relating to the Home Health Business, (ii) access to material assets relating to the Home Health Business is permitted only in accordance with management's authorization, (iii) the recorded accountability for assets relating to the Home Health Business is compared with existing assets relating to the Home Health Business at reasonable intervals and appropriate action is taken with respect to any differences, and (iv) accounts, notes and other receivables relating to the Home Health Business are recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. To the Seller's Knowledge, the Seller (including its personnel and independent accountants who have a role in the preparation of financial statements or the internal accounting controls utilized by the Seller) has not identified or been made aware of (x) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Seller relating to the Home Health Business, (y) any fraud, whether or not material, that involves the management of the Seller or any of its personnel relating to the Home Health Business, or (z) any claim or allegation regarding any of the foregoing.

**5.7 Permits.** To Seller's Knowledge: (a) Section 2.1(3) of the Seller Disclosure Schedule sets forth a true, complete and correct list of the Acquired Permits, (b) the Acquired Permits listed in Section 2.1(3) of the Seller Disclosure Schedule constitute all of the Permits necessary for the lawful ownership and operation of the Purchased Assets; and (c) with respect to each Acquired Permit listed on Section 2.1(3) of the Seller Disclosure Schedule: (1) such Acquired Permit is in full force and effect, (2) the Seller is in compliance in all material respects with its terms and conditions, (3) all required renewal

applications have been timely filed and (4) no revocation notice has been received, nor is any proceeding pending or threatened, to suspend, revoke or limit such Acquired Permit.

**5.8** Title to Assets; Sufficiency. To the Seller's Knowledge: (a) the Seller has good and valid title to all of the property that constitutes the Purchased Assets; (b) except as set forth in Section 5.8 of the Seller Disclosure Schedule, upon entry of the Sale Order, the Seller will have all requisite authority to transfer to Buyer good and valid title to or leasehold interest in all of the property that constitutes the Purchased Assets, free and clear of all Encumbrances, all Indebtedness and Liabilities of Seller, and all Claims and administrative expenses against Seller, other than Assumed Liabilities, to the fullest extent permissible under Section 363 and 365 of the Bankruptcy Code, and (c) upon entry of the Sale Order and occurrence of the Closing, the Buyer will be vested with good title to all of the property that constitutes the Purchased Assets, free and clear of all Encumbrances, all Indebtedness and Liabilities of Seller, and all Claims and administrative expenses against Seller, other than Assumed Liabilities, to the fullest extent permissible under Section 363 and 365 of the Bankruptcy Code.

**5.9** No Brokers or Finders. Except as set forth in Section 5.9 of the Seller Disclosure Schedule, the Seller shall not have incurred Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "Seller Broker Fee"). Neither the Buyer nor any Affiliate of the Buyer will have any Liability in connection with any Seller Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by the Seller.

**5.10** Compliance with Laws; Regulatory Matters.

(1) To the Seller's Knowledge, as set forth in Section 5.10(a) of the Seller Disclosure Schedule, since February 23, 2013, the Purchased Assets have been owned, administered, held, and/or operated in compliance in all material respects with all applicable Laws including (A) the Public Health Service Act (42 U.S.C. Sections 201 et seq.) and the regulations promulgated thereunder; (B) the Veterans Health Care Act (38 U.S.C. Section 126) and the regulations promulgated thereunder; (C) federal Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act) statutes and the regulations promulgated thereunder, and any related Laws; (D) Laws relating to health care fraud and abuse, false claims and anti-kickback laws, including the Federal Anti-Kickback Statute (42 U.S.C. Sections 1320a-7b(b)), the Federal False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the criminal laws (18 U.S.C. §§ 286 and 287), the exclusion laws (42 U.S.C. § 1320a-7), or any similar Laws governing arrangements among providers, patients and health care professionals or rule of professional conduct relating to the regulation of the Seller; (E) Laws and other applicable standards with regard to the submission of claims to third party payors; (F) Laws governing the licensure of Seller's personnel; and (G) the Health Insurance Portability and Accountability Act of 1996, as amended by the final regulations promulgated pursuant to Health Information Technology for Economic and Clinical Health Act of 2009, the regulations promulgated thereunder and similar Laws pertaining to privacy, data protection, confidentiality of patients' personal and medical information, and information security (collectively, the "Health Care Laws").

(2) To the Seller's Knowledge: (1) neither the Seller nor any of Seller's Affiliates has received any notice or other communication from the any Governmental Body alleging any violation of any Laws, including the Health Care Laws, in connection with Purchased Assets; and (2) the Seller has no unpaid overpayment debts, except for the overpayment debts, if any, owed by the Seller to

Medicare, arising from audits or claims by any Governmental Body or private payors, which obligations are currently being resolved, with any resulting liability owed to Medicare on account of any such obligations to be paid from net proceeds received by the Seller from the sale of the Hospice Business, except for those matters listed in Section 5.10(b) of the Seller Disclosure Schedule. The Sale Order shall provide that Buyer is not liable for any such overpayment obligation of Seller, or any other payment obligation of Seller to Medicare.

(3) To the Seller's Knowledge, complete and accurate copies of all correspondence with Governmental Bodies in connection with the Purchased Assets have been made available for the Buyer's review.

(4) To the Seller's Knowledge, the Seller has not received notice of, and is not subject to, any pending or threatened investigation, Legal Proceeding, hearing, enforcement, audit, arbitration or other action by or any Governmental Body or third party payor alleging any violation of a Law or Health Care Law in connection with the Purchased Assets, nor has any Governmental Body or third party payor indicated to the Seller an intention to conduct or initiate the same, except for those matters listed in Seller Disclosure 5.10(c).

(5) To the Seller's Knowledge, all of the Seller's personnel employed in connection with the Home Health Business that require any form of licensure, certification or registration under state or federal law possess such licenses in good standing and without restriction.

(6) To the Seller's Knowledge, neither the Seller nor any of its officers, directors, managers or members, or any of its employees or contractors employed or engaged in connection with the Home Health Business, has been (i) debarred, excluded or suspended from participation in Medicare, Medicaid or any other federal or state health program or has had a billing privilege revocation or suspension thereunder, (ii) subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or (iii) convicted of a crime described at 42 U.S.C. §1320a-7b or any other federal or state law imposing sanctions relating to the furnishing of, or billing for, health care goods and services, nor is such debarment, exclusion suspension, termination, sanction or conviction pending or threatened.

**5.11 Preemptive Rights.** No Person has any written or oral agreement or option, right of first refusal, right of first offer, right of first negotiation or similar right for the purchase, sale, use or other disposition of all or any of the Purchased Assets.

## Article VI

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

The Buyer hereby represents and warrants to the Seller as of the date hereof and as of the Closing Date as follows:

**6.1 Organization.** The Buyer is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. The Buyer has all requisite power and authority to own, lease, develop and operate its properties and to carry on its business as now being conducted. The Buyer is duly licensed or qualified to do business in each jurisdiction in which the conduct of its businesses or the ownership of its properties requires such qualification or authorization, except where failure to be so qualified would not materially delay or impair the ability of the Buyer to perform its obligations under this Agreement or any of the Ancillary Agreements.

**6.2** Authorization and Validity. The Buyer has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements and the performance of the Buyer's obligations hereunder and thereunder have been duly authorized by all necessary corporate (or equivalent) action on behalf of the Buyer, and no other proceedings on the part of the Buyer are necessary to authorize such execution, delivery, and performance. This Agreement and the Ancillary Agreements have been duly executed by the Buyer and constitute its valid and binding obligation, enforceable against it in accordance with the terms herein and therein (subject to the Exceptions).

**6.3** No Conflict. The execution, delivery and performance by the Buyer of this Agreement and the Ancillary Agreements does not, and the consummation by the Buyer of the transactions contemplated hereunder and thereunder will not, (a) conflict with or result in the breach of any provision of the organizational documents of the Buyer, (b) conflict with, violate or result in the breach by the Buyer of any applicable Law, (c) require the Buyer to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order, or (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Contract to which the Buyer is party; other than, in the case of the foregoing subclause (d), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, materially impair the Buyer's ability to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

**6.4** No Brokers or Finders. The Buyer shall not have incurred Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "Buyer Broker Fee"). Neither the Seller nor any Affiliate of the Seller will have any Liability in connection with any Buyer Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by the Buyer.

## Article VII

### **BANKRUPTCY COURT MATTERS**

#### **7.1** Competing Transaction.

(1) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids pursuant to the Bidding Procedures Order. In no event will Seller be deemed or considered to be in breach or default of this Agreement, or to have acted improperly or in bad faith, by reason of seeking, soliciting, considering, negotiating, or accepting any higher or better competing bid prior to the Sale Order being entered and becoming a Final Order.

(2) Subject to the terms and conditions of the Bidding Procedures Order, the Buyer shall have the right to bid against any alternative bids at the Auction.

#### **7.2** Bankruptcy Court Filings.

(1) Sale Order. Subject to the Buyer being designated as the successful purchaser of the Purchased Assets pursuant to the Bidding Procedures Order and following the Auction (if any), the Seller shall promptly use commercially reasonable efforts to obtain entry of the Sale Order. The Sale

Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by the Seller of this Agreement and the other Ancillary Agreements, (ii) the sale of the Purchased Assets to the Buyer on the terms set forth in this Agreement and the Ancillary Agreements free and clear of all Indebtedness and Liabilities of Seller, Claims against Seller and Encumbrances asserted against Seller or property of Seller, and (iii) the performance by the Seller of its obligations under this Agreement; (b) authorize and empower the Seller to assume and assign to the Buyer the Assigned Contracts; (c) find that the Buyer is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code and grant the Buyer the protections of Section 363(m) of the Bankruptcy Code; and (d) include a finding that all Assigned Contracts that are subject to the provisions of Section 365 of the Bankruptcy Code or otherwise pursuant to applicable Law, remain in full force and effect with all parties to the Assigned Contracts enjoined from asserting against the Buyer any Indebtedness or Liabilities of Seller, Claims against Seller, Encumbrances asserted against Seller or property of Seller, default, breach, acceleration, assignment fees, increases, or any other fees resulting from the Seller assumption and assignment of the Assigned Contracts to the Buyer. The Buyer agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining the Sale Order, including furnishing declarations or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (1) demonstrating that the Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, and (2) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court's entry of the Sale Order is appealed, the Seller and the Buyer shall use reasonable efforts to defend such appeal(s).

## Article VIII

### COVENANTS AND AGREEMENTS

#### **8.1**     Conduct of the Seller.

(1) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Section (a) of Schedule 8.1, or (4) with the prior written consent of the Buyer (such consent not to be unreasonably withheld, conditioned or delayed), the Seller shall:

(i) Operate and maintain the Purchased Assets in the ordinary course of business; and

(ii) Use commercially reasonable efforts to (x) preserve the goodwill of and relationships with Governmental Bodies, customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, employees and others with respect to the Purchased Assets; and (y) comply with all applicable Laws.

(2) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Section (b) of Schedule 8.1, or (4) with the prior written consent of the Buyer, the Seller shall not:

(i) Further mortgage, pledge or subject to any Encumbrance any of the Purchased Assets, unless necessary for securing consent to use cash collateral in the Bankruptcy Case, including granting replacement liens;

(ii) Sell, assign, license, transfer, convey, lease, surrender, relinquish, abandon, permit to lapse, waive any rights to or otherwise dispose of any of the Purchased Assets except to the extent permitted by this Agreement;

(iii) Cancel, terminate, amend, modify, supplement, rescind or breach any Assigned Contract; or

(iv) Enter into any Contract to do any of the foregoing or agree to do anything prohibited by this Section 8.1(b).

## 8.2 Access to Information.

(1) The Seller agrees that, between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Buyer shall be entitled, through its Representatives, to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, employees, accountants, auditors, counsel and operations of the Home Health Business as the Buyer's Representatives may reasonably request; provided, however, that the Seller shall not be obligated to provide information that it is not permitted to provide under applicable Law; provided, further, that Seller shall provide its consent, which shall not be unreasonably withheld or delayed, for the Buyer or its Representatives to have access to employees pursuant to this Section 8.2(a). Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, including Seller's right to have its Representatives accompany the Buyer and its Representatives upon the premises of the Seller at the time of any inspection or examination and shall be subject to restrictions under applicable Law. Pursuant to this Section 8.2, the Seller shall furnish to the Buyer and its Representatives such financial, operating and property related data and other information as such Persons reasonably request. The Seller shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with the Buyer and the Buyer's Representatives in connection with such investigations and examinations, and the Buyer shall, and use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with the Seller and its Representatives. The Buyer and its Representatives shall be permitted to contact, or engage in discussions or otherwise communicate with the Seller's suppliers and other Persons with which the Seller have commercial dealings.

(2) From and after the Closing Date, the Seller shall give the Buyer and the Buyer's Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, employees, Documents (including any Documents included in the Excluded Assets), personnel files and books and records of the Seller pertaining to the Purchased Assets. In connection with the foregoing, the Seller shall use commercially reasonable efforts to cause their respective Representatives to furnish to the Buyer, at the Buyer's expense, such financial, technical, operating and other information pertaining to the Purchased Assets as the Buyer's Representatives shall from time to time reasonably request and to discuss such information with such Representatives.

(3) No information received pursuant to an investigation made under this Section 8.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of the Seller set forth in this Agreement or any certificate or other

instrument delivered to the Buyer in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of either party to invoke or rely on the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement set forth in Article IX.

(4) In addition to any other confidentiality provisions set forth in this Agreement, at all times prior to the Closing and following any termination of this Agreement, Buyer shall keep and cause Buyer's Representatives to keep confidential all information made available to Buyer pursuant to this Section 8.2, and following the Closing, Buyer shall continue to keep, and continue cause Buyer's Representatives to keep, confidential all information required by law to be kept confidential.

(5) Except pursuant to court order, Buyer, its agents, principals or affiliates shall not be entitled to any information or documents relating to the Existing Claim notwithstanding any provision in this Section 8.2.

**8.3** Rejected Contracts. The Seller shall not seek an order approving the rejection or assumption of any Assigned Contract in any bankruptcy proceeding following the date hereof unless in accordance with this Agreement without the prior written consent of the Buyer.

**8.4** Tax Matters.

(1) All transfer, documentary, sales, use, registration, filing, recordation, ad valorem, value added, bulk sales, stamp duties, excise, license or similar fees or taxes (including penalties and interest) payable in connection with the transactions contemplated by this Agreement and not exempted under the Sale Order or by Section 1146(c) of the Bankruptcy Code (collectively, "Transfer Taxes") shall be borne by the Seller. The applicable parties shall cooperate in filing such forms and documents as may be necessary to permit any such Transfer Tax to be assessed and paid on or prior to Closing in accordance with any available pre-sale filing procedure, and to obtain any exemption or refund of any such Transfer Tax.

(2) The Buyer and the Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax.

(3) Between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Seller shall (i) provide appropriate notice of the Sale Motion and related matters to all Governmental Bodies that may seek to collect property Taxes or impose on the Seller, the Buyer or any Purchased Asset penalties for any property Taxes, and (ii) use all commercially reasonable efforts to obtain certificates, releases or other appropriate documentation from such Governmental Bodies to the extent such Governmental Bodies provide such certificates, releases or documentation in the ordinary course, providing that such property Taxes have been paid or are not owed.

(4) The Seller shall prepare a draft IRS Form 8594, allocating the Purchase Price, Assumed Liabilities and all other relevant items, as determined for federal income tax purposes, to the Purchased Assets in a manner consistent with Code Section 1060 and the Treasury Regulations

promulgated thereunder (and any similar provisions of state, local, or foreign law). The Seller shall deliver such draft IRS Form 8594 to the Buyer no later than ninety (90) days after the Closing. Each of the Buyer and the Seller shall timely file IRS Form 8594 in accordance with such draft IRS Form 8594 and shall file all other Tax Returns in a manner consistent with such draft IRS Form 8594. Neither the Buyer nor the Seller shall take any position for Tax purposes (whether in audits, Tax Returns, or otherwise) that is inconsistent with such final IRS Form 8594 unless otherwise required by applicable law, provided that the parties acknowledge that the Buyer and the Seller may use a different methodologies than each other for financial reporting purposes.

**8.5** Non-Compete; Non-Solicitation.

(1) During the five (5) year period immediately following the Closing Date (the “Restricted Period”), the Seller will not, directly or indirectly: (i) anywhere in the State of California, whether as owner, partner, equity holder, consultant, agent, co-venturer or otherwise, engage, participate, assist or invest or actively prepare to engage, participate, assist or invest in any Person that is engaged by Seller in connection with the Home Health Business but is not engaged by Seller in connection with the Home Health Business, as of the Closing Date; (ii) employ, recruit or hire any person, or attempt to employ, recruit or hire any person, that is employed or engaged by, or was employed or engaged by, the Seller in connection with the Home Health Business but not in connection with the Home Health Business, on the Closing Date or within twelve (12) months prior to the Closing Date, or otherwise solicit, induce or influence, or attempt to solicit, induce or influence, any such Person to leave employment with the Seller, the Buyer or any of their Affiliates; and (iii) solicit or encourage, or attempt to solicit or encourage, any referral source, customer, supplier or vendor to terminate or otherwise modify adversely its business relationship with the Seller, Buyer or any of their Affiliates. For purposes of clarity, nothing set forth in this clause (a), or elsewhere within this Section 8.5, is intended or will be deemed or construed to apply in any manner whatsoever with respect to any Person previously, presently or hereafter employed or engaged by the Seller in connection with the Home Health Business.

(2) The Seller understands that the restrictions set forth in this Section 8.5 are intended to protect the interests of the Buyer, its Affiliates and their Confidential Information (as defined below), for the avoidance of doubt including trade secrets, goodwill and established employee, customer, supplier, consultant and vendor relationships, and the Seller agrees that such restrictions are reasonable and appropriate for this purpose. The Seller further acknowledges and agrees that the time, scope, geographic area and other provisions of this Section 8.5 have been specifically negotiated by sophisticated parties and absent the Seller’s agreement to and compliance with the restrictions set forth in this Section 8.5, the Buyer would not have entered into the transactions contemplated by this Agreement. The Restricted Period shall be extended with respect to the Seller by each day that such Seller is in breach of Section 8.5. The existence of any claim or cause of action by the Seller against the Buyer, or the Buyer against the Seller, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the Buyer or the Seller of the restrictive covenants contained in this Section 8.5.

(3) The Seller understands that a breach of this Section 8.5 is likely to cause the Buyer and its Affiliates substantial and irrevocable damage and therefore, in the event of such breach, the Seller, the Buyer and its Affiliates, in addition to such other remedies which may be available, will be entitled to specific performance and other injunctive relief, without the posting of a bond. The Seller further acknowledges that a court may render an award extending the Restricted Period as one of the remedies in the event of the Seller’s violation of this Section 8.5. The Seller agrees that if it violates this Section 8.5, in addition to all other remedies available to the Buyer and its Affiliates at law, in



equity, and under contract, the Seller agrees that the Seller is obligated to pay all of the Buyer's and its Affiliates' costs of enforcement of this Agreement, including reasonable attorneys' fees and expenses

**8.6** Confidentiality. The Seller agrees to, and shall require its agents, representatives, affiliates, employees, officers and directors to, treat and hold as confidential all confidential documents and information relating to the Purchased Assets, including any trade secrets, processes, patent applications, product development, price, customer and supplier lists, pricing and marketing plans, policies and strategies, details of client and consultant contracts, operations methods, product development techniques, business acquisition plans, new personnel acquisition plans and all other notes, analyses, compilations, studies, forecasts, interpretations or other documents that are derived from, contain, reflect or are based upon any such information (the "Confidential Information") and refrain from using any Confidential Information except in connection with this Agreement, and deliver promptly to the Buyer, at the Buyer's request, all Confidential Information (and all copies thereof in whatever form or medium) in its possession or under its control. Notwithstanding the foregoing, Confidential Information shall not include information that relates to the Home Health Business or is or becomes available publicly and was not disclosed in breach of this Agreement. In the event that the Seller or any of its agents, representatives, affiliates, employees, officers or directors becomes legally compelled to disclose any Confidential Information, such person shall provide the Buyer with prompt written notice of such requirement so that the Buyer may seek a protective order or other remedy or waive compliance with these provisions. In the event that a protective order or other remedy is not obtained or if the Buyer waives compliance with these provisions, such person shall furnish only that portion of such Confidential Information that is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information.

**8.7** Mail. The Buyer authorizes and empowers the Seller from and after the Closing Date to receive and to open all mail received by the Seller relating to the Purchased Assets or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 8.7. The Seller shall (a) promptly deliver to the Buyer or its Affiliates any mail or other communication received by it after the Closing Date and relating to the Purchased Assets or the Assumed Liabilities, (b) promptly transfer in immediately available funds to the Buyer or its Affiliates any cash, electronic credit or deposit received by the Seller but solely to the extent that such cash, electronic credit or deposit are Purchased Assets and (c) promptly forward to the Buyer or its Affiliates any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Purchased Assets. From and after the Closing Date, the Seller shall refer all inquiries with respect to the Purchased Assets and the Assumed Liabilities to the Buyer.

**8.8** Further Assurances.

**(1)** Subject to the terms and conditions of this Agreement and applicable Law, the Seller and the Buyer shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other party reasonably informed with respect to the status of the matters contemplated by this Section 8.8 and supplying such reasonable assistance as may be reasonably requested by the other party in connection with the matters contemplated by this Section 8.8. Without limiting the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, the parties shall use their commercially reasonable efforts to take, and

shall coordinate and cooperate with each other with respect to, the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) Obtain any required consents, approvals, waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party and provide all such information concerning such party as may be necessary or reasonably requested in connection with the foregoing,

(ii) Avoid the entry of, or have vacated or terminated, any injunction, decree, Order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) Take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible;

(iv) Execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to the Buyer and its successors and assigns, all of the Purchased Assets, and for the Buyer and its successors and assigns, to assume the Assumed Liabilities as contemplated in this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby;

(v) Take any and all commercially reasonable actions necessary to effect the transfer of all of the Acquired Permits and include all such Acquired Permits in the Purchased Assets to the extent transferrable under applicable Law; and

(vi) Provide the Buyer with assistance in identifying and obtaining the permits necessary to use and operate the Purchased Assets.

(2) Following the Execution Date and until the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, the Seller, on the one hand, and the Buyer, on the other hand, shall keep each other reasonably informed as to the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by the Seller or the Buyer or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

**8.9** Preservation of Records. The Seller and the Buyer agree that each of them shall preserve and keep the Documents held by them or their Affiliates relating to the Purchased Assets and the Assumed Liabilities for a period of one (1) year from the Closing Date, in the case of the Buyer, and until the closing of the Chapter 11 Case or the liquidation and winding up of the estate of the Seller, in the case of the Seller, and shall make such Documents available to the other party as may be reasonably required by such other party in connection with, among other things, any insurance claims by, actions or Tax audits against or governmental investigations of the Seller or the Buyer or any of their respective Affiliates or in order to enable the Seller or the Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby.

**8.10** Notification of Certain Matters. Seller shall give prompt notice to the Buyer, and the Buyer shall give prompt notice to the Seller, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to Closing and (b) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court. To the extent permitted by applicable Law, the Seller shall give prompt notice to the Buyer of (w) any notice of any alleged violation of Law applicable to the Seller and (x) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Purchased Assets or that any such investigation, inquiry or review, to the Seller's Knowledge, is contemplated.

**8.11** Regulatory Affairs. Seller shall, to the fullest extent permitted by applicable Law, (i) promptly advise the Buyer of the receipt of any communication from any Governmental Body whether oral, written, electronic or otherwise, (ii) provide the Buyer with a reasonable opportunity to participate in the preparation of any response thereto and the preparation of any other substantive submission or communication to any such Governmental Body and to review any such response, submission or communication prior to the filing or delivery thereof, and (iii) provide the Buyer with the opportunity to participate in any meetings or substantive telephone conversations that the Seller or its representatives may have from time to time with any such Governmental Body.

## Article IX

### CONDITIONS TO CLOSING

**9.1** Conditions Precedent to the Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller (on behalf of the Seller) in whole or in part to the extent permitted by applicable Law):

(1) The representations and warranties of the Buyer set forth in Article VI hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date);

(2) The Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date;

(3) The Buyer shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3; and

(4) There shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

**9.2** Conditions Precedent to the Obligations of the Buyer. The obligations of the Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by the Buyer in whole or in part to the extent permitted by applicable Law):

(1) The Bankruptcy Court shall have entered the Sale Order in form and substance acceptable to Buyer, which Sale Order shall provide, among other things, that other than the Assumed Liabilities, Buyer (a) shall not be liable to any person or entity for any Liabilities of Seller (including any of Seller's monetary obligations to Medicare), and (b) is acquiring the Purchased Assets free and clear of all (i) Indebtedness and Liabilities of Seller, (ii) Claims of any person or entity against Seller (including claims based on successor liability), and (iii) Encumbrances asserted against Seller or property of Seller.

(2) The Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by the Seller on or prior to the Closing Date;

(3) Between the Execution Date and the Closing Date, there shall not have occurred any event, circumstance, occurrence or fact that has had, or would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect;

(4) The Seller shall have delivered, or caused to be delivered, to the Buyer all of the items set forth in Section 4.2; and

(5) There shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

**9.3** Failure Caused by Party's Failure to Comply. Neither the Seller nor the Buyer may rely on the failure of any condition set forth in Sections 9.1 or 9.2, as the case may be, if such failure was caused directly by such party's failure to comply with any provision of this Agreement.

## Article X

### MISCELLANEOUS

**10.1** Payment of Expenses. Whether or not the transactions contemplated hereby are consummated, the Seller shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby. Other than the Break-Up Fee to be paid to Buyer pursuant to the Bidding Procedures Order in connection with the closing of an alternative transaction for the Purchased Assets, whether or not the transactions contemplated hereby are consummated, the Buyer shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

**10.2** Survival of Representations and Warranties. The parties hereto agree that the representations and warranties, and the covenants and agreements to be performed prior to the Closing, contained in this Agreement shall not survive, and thus shall expire upon, the Closing. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant, until fully performed. All of the representations and warranties set forth in this Agreement or any certificate or schedule that are so qualified as to "material," "materiality," "material respects," "Material Adverse Effect" or words of similar import or effect shall be deemed to have been made without such qualification for purposes of determining: (a) whether a breach of

such representation or warranty has occurred and (b) the amount of losses resulting from, arising out of or relating to any such breach of such representation or warranty.

**10.3** Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

**10.4** Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

**10.5** Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF CALIFORNIA SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

**10.6** Jurisdiction, Waiver of Jury Trial.

(1) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER THE PARTIES HERETO AND ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CENTRAL DISTRICT OF CALIFORNIA WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(2) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**10.7** Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any party to the other parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) day after being sent by overnight courier or when sent by facsimile transmission or email PDF format (with a confirming copy sent by

overnight courier), and (iii) three (3) days after being sent by registered or certified mail, postage prepaid, as follows:

:

If to the Seller, to:

Force 10 Partners  
Attention: Adam Meislik  
20341 SW Birch Suite 220  
Newport Beach, CA 92660  
Telephone: (949) 357-2360  
Email: [ameislik@force10partners.com](mailto:ameislik@force10partners.com)

With a copy (which shall not constitute effective notice) to:

Weiland Golden Goodrich LLP  
Attention: David M. Goodrich  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626  
Telephone: (714) 966-1000  
Email: [dgoodrich@wglp.com](mailto:dgoodrich@wglp.com)

If to the Buyer, to:

Healthsure Management Services LLC  
Attention: Raj Walia  
1249 S. Diamond Bar Blvd., Suite 330  
Diamond Bar, CA 97765  
Telephone: 626 391 7620  
Email: [rwalia@vnahhs.com](mailto:rwalia@vnahhs.com)

With copies (which shall not constitute effective notice) to:

Stradling Yocca Carlson & Rauth  
A Professional Corporation  
Attention: Fred Neufeld  
10100 N Santa Monica Blvd, Suite 1400  
Los Angeles, CA 90067  
Telephone: (424) 214-7000  
Email:

or to such other Persons or addresses as may be designated in writing by the party to receive such notice.

**10.8 Binding Effect; Assignment.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, and any chapter 7 trustee, chapter 11 liquidating trustee, or similar person or entity with respect to the Seller's assets, and the Sale Order shall expressly so provide. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by the Seller or the Buyer (by operation of Law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment

without the required consent will be void; provided, however, that the Buyer may assign all of its rights and all of its obligations hereunder to an Affiliate prior to the Closing and assign its rights and interests hereunder as collateral to any of the Buyer's financing sources, but in no event will any such assignment relieve the Buyer of any obligation or liability under this Agreement. For the avoidance of doubt, no assignment of any obligations hereunder will relieve the parties hereto of any such obligations. Upon any permitted assignment, the references in this Agreement to the Buyer will also apply to any such assignee unless the context otherwise requires.

**10.9 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible; provided, however, that in no event shall any such modification change the Purchase Price, the "free and clear of Liabilities, Indebtedness, Claims and Encumbrances" provisions of the Agreement, reduce the Purchased Assets, or increase the Assumed Liabilities.

**10.10 Injunctive Relief; Limitations on Relief.** The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by the Seller, and, accordingly, the Buyer shall be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants, promises or agreements or an Order enjoining the Seller from the continuation of any threatened or actual breach of its covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 10.10 shall be in addition to any other rights which the Buyer may have at Law or in equity pursuant to this Agreement.

**10.11 Time of the Essence.** Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

**10.12 No Indemnity.** The Buyer and Seller are not providing any indemnities hereunder, and disclaim any implied indemnities. For the avoidance of doubt, the Existing Claim is not a Purchased Claim or Purchased Asset.

**10.14 Miscellaneous.**

**(1) Certain Interpretations.** Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

**(i)** All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

**(ii)** The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iii) The words “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation” (regardless of whether such words or similar words actually appear).

(iv) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(v) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(2) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

*[Remainder of page intentionally left blank]*



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

**BUYER:**

**Healthsure Management Services LLC  
a California limited liability company**

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(typed or printed name)

Its: \_\_\_\_\_  
(title or capacity)

**SELLER:**

**VISITING NURSE ASSOCIATION OF THE  
INLAND COUNTIES D/B/A VNA CALIFORNIA**

By: \_\_\_\_\_  
Adam Meislik

Its: Chief Restructuring Officer

### PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**650 Town Center Drive, Suite 600**  
**Costa Mesa, California 92626**

A true and correct copy of the foregoing document entitled (*specify*): Debtor's Motion for Order Approving Bidding Procedures, Stalking Horse Bidder Protections, Form of Asset Purchase Agreements, and Assignment Procedures, in Connection with Sale of Debtor's Hospice Assets and Home Health Assets; Declarations of Adam Meislik, Hyrum Kirton and Raj Walia in Support will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 5, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) May 5, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Mark D. Houle  
United States Bankruptcy Court  
3420 Twelfth Street, Suite 365 / Courtroom 303  
Riverside, CA 92501-3819

Visiting Nurse Association of the Inland Counties  
6235 River Crest Drive, Suite L  
Riverside, CA 92507-0758

Service information continued on attached page

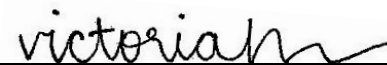
**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) May 5, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

5/5/2020  
Date

Victoria Rosales  
Printed Name

  
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Ryan W Beall rbeall@lwgllp.com, vrosales@wgllp.com;kadele@wgllp.com  
Stephen A Ellis sellis@rutan.com, dghani@rutan.com  
Lazaro E Fernandez lef17@pacbell.net, lef-sam@pacbell.net;lef-  
mari@pacbell.net;lefkarina@gmail.com;officelr74738@notify.bestcase.com  
Abram Feuerstein abram.s.feuerstein@usdoj.gov  
Marc C Forsythe kmurphy@goeforlaw.com, mforsythe@goeforlaw.com;goeforecf@gmail.com  
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David B Golubchik dbg@lnbyb.com, stephanie@lnbyb.com  
David M Goodrich dgoodrich@wgllp.com, vrosales@wgllp.com;kadele@wgllp.com  
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Christopher V Hawkins Hawkins@sullivanhill.com,  
bkstaff@sullivanhill.com;vidovich@ecf.inforuptcy.com;hawkins@ecf.inforuptcy.com;millerick@sullivanhill.com  
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Larry D Simons larry@lsimonslaw.com, simonsecf@gmail.com;simonslr44533@notify.bestcase.com  
Peter Susi psusi@hbsb.com, susan@hbsb.com;krnimmons@hbsb.com  
Jolene Tanner jolene.tanner@usdoj.gov, USACAC.criminal@usdoj.gov  
Todd L Turoci mail@theturocifirm.com  
United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov  
Jennifer Vicente jvicente@heritagelawllp.com, jsv@attorneyvicente.com  
David Wood dwood@marshackhays.com,  
dwood@ecf.courtdrive.com;lbuchananmh@ecf.courtdrive.com;kfrederick@ecf.courtdrive.com  
Arnold H. Wuhrman Arnold@WuhrmanLaw.com

**SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:  
VIA EMAIL**

Jolene Tanner – jolene.tanner@usdoj.gov  
Sean O'Keefe – sokeefe@okeefelc.com  
David Golubchik – dbg@lnbyb.com  
Richard Marshack – rmarshack@marshackhays.com  
David Wood – dwood@marshackhays.com  
Elan Levey – elan.levy@usdoj.gov  
Employment Development Department – CDBankruptcyGroup.Tax@edd.ca.gov  
Evan Segal – ESegal@goodwinlaw.com  
Gregory Fox – Fox@goodwinlaw.com  
Maya Fe Holzhauer – MHolzhauer@goodwinlaw.com>;  
Artem Skorostensky – ASkorostensky@goodwinlaw.com  
Fred Neufeld - FNeufeld@SYCR.com

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.