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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Cold Spring Acquisition, LLC,[1]

Debtor.

Chapter 11

Case No. 25-22002 (SHL)

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DEBTOR'S MOTION FOR AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE PRIVATE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTOR OUTSIDE THE ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS AND INTERESTS, AND (III) GRANTING RELATED RELIEF

Cold Spring Acquisition, LLC (the "Debtor") files this motion (the "Sale Motion"), seeking the entry of an order: (i) authorizing the Debtor to consummate that certain *Asset Purchase Agreement*, dated as of December 18, 2024 (as may be amended or otherwise modified from time to time and including all related instruments, documents, exhibits, schedules, and agreements thereto, collectively, the "Purchase Agreement"), substantially in the form attached hereto as **Exhibit A**, between the Debtor and 378SYWOOD LLC ("Sywood" or the "Buyer"), a New York limited liability company, for the private going concern sale (the "Sale") of the Debtor's operations

[1] The last four digits of the Debtor's federal tax identification number are 4415.

of the nursing facility (the "Facility") outside of the ordinary course of business pursuant to the terms of the Purchase Agreement, subject to approval of the New York State Department of Health ("DOH"); (ii) authorizing the Sale free and clear of all Liens and interests (collectively, the "Liens and Interests"); and (iii) granting related relief.[2]

In support of this Sale Motion, the Debtor relies on the *Declaration of Martin A. Cauz in Support of Debtor's Chapter 11 Petition and First Day Pleadings* (the "First Day Declaration") [ECF No. 2], the *Declarations of Martin A. Cauz (*the "Cauz Declaration") *and Judith Eisen* (the "Eisen Declaration") submitted in connection herewith and incorporated herein, and respectfully states as follows:

PRELIMINARY STATEMENT

1. In the year preceding this Chapter 11 case, confronted with overwhelming financial challenges arising from the COVID-19 pandemic and an investigation and complaint from the Attorney General's office, the Debtor, recognizing its inability to continue the safe and effective operation of the Facility and care for its residents, engaged in thorough and extensive marketing efforts to identify a buyer. The Debtor attempted to sell the Facility to avoid the looming threat of closure. Despite these concerted efforts, the Debtor has only been able to secure interest from one party, Sywood, who is willing to invest the substantial funds necessary to repair and operate the Facility; and in turn, rescue the Facility from its present difficulties.

2. By this Motion, the Debtor seeks approval to accept Sywood's offer to assume the significant operating costs of the Facility and the Debtor's operations. Sywood has the capability and willingness to step in and begin funding the Facility's operating and capital expenses. Approval of this Motion will allow the Debtor to maximize the value of its assets, minimize

[2] The parties have submitted an application to approve the Purchase Agreement to DOH. It is possible that the form of Purchase Agreement may change before DOH issues approval.

ongoing expenses, and potentially enhance recovery for creditors. With Sywood assuming these obligations, the Debtor will no longer be responsible for funding operating or capital expenses. However, the Debtor will retain the ability to continue collecting and utilizing its outstanding receivables accrued prior to the receivership to fund the wind down, this chapter 11 case, and a potential distribution to creditors.

3. As outlined in the Eisen Declaration, there is a limited number of parties that have any interest in purchasing a nursing home in the State of New York. The Debtor has contacted the potential buyers and offered them complete information and access to attract interest. However, none, other than Sywood, have expressed further interest in moving forward on any terms.

4. Any further efforts are unlikely to result in a higher or better offer and would not add value to the estate. Thus, it would not be beneficial to spend additional time and resources on further marketing efforts for the Facility. As explained in the Cauz Declaration, any delay would lead to significant losses. Therefore, appointing Sywood as temporary receiver and approving the private Sale to Sywood is the best option and the only option available, other than shutting down the Facility entirely, which would not benefit the interests of the residents or creditors. Accordingly, the Debtor requests that the Court grant the Motion.

JURISDICTION AND VENUE

5. This Court has jurisdiction to consider this Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

6. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested herein are sections 102, 105, 363, 365, 503 and 507 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), rules

2002, 6004, 6006, 9006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and rules 2002-1(C)(2) and 6004-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

BACKGROUND

8. On January 2, 2025 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code, and has continued in possession of its property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed herein.

9. The Debtor is the owner and operator of a skilled nursing and rehabilitation facility in Woodbury New York, with 588 beds. As of the Petition Date, the Debtor employs approximately 500 people. The Facility provides long-term care and rehabilitative services to many senior patients. In particular, the Facility provides skilled nursing, hospice services, dementia care, medical needs, as well as short- and long-term rehabilitation care.

10. For a detailed description of the Debtor, the circumstances leading to the commencement of this Chapter 11 case and information regarding the Debtor's business and capital structure, the Debtor respectfully refers the Court and parties-in-interest to the First Day Declaration.

THE PRE-PETITION MARKETING AND SALES EFFORTS LEADING TO THE PURCHASE AGREEMENT

11. As detailed in the Eisen Declaration, the Debtor has attempted to sell the Facility since April 2019, well before it became the subject of any governmental investigation. The number of parties interested in operating any nursing home in New York State is limited, even in the best of circumstances.

12. In light of the Facility's mounting losses, exacerbated by the Attorney General's investigation and complaint, it became clear that only an even more limited number of parties would be interested in considering a purchase of the Facility.

13. The marketing efforts of the Debtor are more fully set forth in detail in the Eisen Declaration. In summary, the Debtor has proactively solicited numerous prospective buyers. Indeed, the Debtor is confident that it contacted many, if not all, of the parties who would have any potential interest in purchasing the Facility. Many of the prospective buyers signed an NDA to access to a comprehensive data room detailing the financial history and necessary documentary information required to make a fully informed determination.

14. Despite having canvassed the potential buyer pool, very few parties were interested in even considering a purchase. Most of the prospective buyers terminated negotiations, without even making an offer. Some buyers cited the investigation and complaint filed by the Attorney General, but the majority simply chose to not move forward without providing a reason.

15. During this time, the Debtor's losses continued to mount, and the Debtor's principals had no choice but to continue putting money into the Facility to maintain continuity of service for its residents.

16. In September 2024 Sywood stepped forward as a potential buyer. An application was made to the DOH for Sywood to be appointed as a receiver pending approval of the sale.

THE PROPOSED SALE

17. As set forth in the Purchase agreement, the proposed Sale includes all assets necessary to operate the Facility, other than receivables created prior to date of appointment of the Receiver (the "Purchased Assets"). Below is a summary description of the terms of the Sale:

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
TERM	**SUMMARY DESCRIPTION**
Parties (APA, Preamble)	Seller: Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation, a New York limited liability company Buyer: 378Sywood LLC, a New York limited liability company
Sale to Insider	No.
Purchase Price	Assumption of Future Obligations
Purchased Assets (APA § 2.1)	As set forth in the Purchase Agreement and described herein, the proposed Sale includes substantially all of the assets of the Seller (*i.e.*, the Purchased Assets), except for the assets which are excluded from the Sale by the Purchase Agreement (*i.e.*, the Excluded Assets). Such purchased assets include, among others: (a) equipment; (b) the supplies and inventories of every kind and nature whatsoever; (c) any contracts, agreements, leases, purchase orders, insurance policies and other arrangements, whether oral or written, to the extent transferable, that Buyer desires to assume, including any union contracts (collectively "Contracts") excluding, however, rights, claims or responsibilities thereunder existing and relating to the period of time prior to the Receivership Date; (d) the Company's Medicare and Medicaid provider numbers to the fullest extent permitted by applicable law and subject to any necessary third-party or governmental consents or approvals; (e) all of Company's right, title and interest in licenses, certifications, permits, certificates of occupancy, and approvals relating to the Business and the Purchased Assets to the fullest extent permitted by applicable law and subject to any necessary third-party or governmental consents or approvals; (f) all right, title and interest of Company in and to any trade names and all variations thereof connected with the Business; (g) all rights, but not liabilities arising from the period prior to the Receivership Date, to lien waivers, surety agreements, bonds, warranties, guaranties, utility use agreements, covenants, and commitments owned by Company as

	of the date of the Agreement or hereafter acquired, which can be legally transferred or assigned and which relate directly to the ownership and operation of the Facility; (h) all administrative records, financial books and records, employee and payroll records; (i) custody of all Patient Medical Records, medical staff records and medical/administrative libraries; (j) copies of all other books and records of or relating to the Business; (k) all accounts receivable generated on and after the Receivership Date; and (l) any and all other items of personal property, tangible and intangible, owned or leased by Company on the Receivership Date and used in or that are necessary for the operation, leasing and maintenance of the Facility.
Excluded Assets (APA § 2.2)	The Purchase Agreement includes 13 separate categories of excluded assets, including: (a) all accounts receivable and other rights to payment from residents, customers and clients of the Company, including all accounts receivable representing amounts receivable in respect of material sold or services rendered to residents, customers or clients of the Business, for dates of service prior to the Receivership Date; (b) all the rights of the Company pursuant to the Transaction Documents; (c) the Company's corporate records; (d) the Company's rights, claims, causes of action, benefits and rights to reimbursement available under the Company's or any of its Affiliates' insurance policies that accrued or result from events occurring prior to the Receivership Date; (e) any personnel records and other records that the Company is required by Law to retain in its possession; provided, however, that, to the extent permitted by applicable privacy Laws, copies of such records relating to the Buyer Employees shall be provided to Buyer at the Closing; (f) any credits, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items of the Company prior to the Receivership Date; (g) the name "Cold Spring Hills Center for Nursing and Rehabilitation" and any and all rights to the Intellectual Property of the Company; (h) all assets of the Employee Plans; (i) any Permits of the Company issued by a Governmental Entity that are not related solely to the Business; (j) all Tax credits, refunds, recoveries, and similar benefits of the Company or in

	respect of any Taxes paid by the Company for periods prior to the Receivership Date; (k) any right to receive or expectancy of the Company in any charitable gift, grant, bequest or legacy (including any income or remainder interest in or under any trust or estate); (l) the assets, properties and rights that are not Purchased Assets; and (m) all cash, cash equivalents, bank accounts, certificates of deposit, interest bearing accounts and other cash items and investment accounts of the Company prior to the Receivership Date.
Assumed Contracts	None at this time.
Assumed Liabilities (APA § 2.3)	Buyer is assuming the obligation to fund all operations going forward.
Excluded Liabilities (APA § 2.4)	Buyer shall not assume, take subject to or be or become liable for, any liability or obligation of the Company other than the Assumed Liabilities.
Sale Free and Clear of Liens and Interests (APA, Ex. B)	The Debtor does not believe any liens exist on any of its assets. Title to all such Personalty shall pass to the Buyer upon delivery of this Bill of Sale free and clear of all claims, liens or encumbrances of any kind (except as such as may be permitted by the terms of the APA, if any). Any sales tax, if any, payable in respect of the Personalty shall be the sole responsibility of the Buyer.
Health Care Matters	Buyer is assuming the obligation to fund all operations and capital expenses going forward immediately upon appointment of the Buyer as receiver.
Closing (APA § 4.1)	The consummation of the transactions contemplated hereby (the "Closing") shall take place at the New York office of Buyer's lender's counsel, if any, and otherwise at the office of Garfunkel Wild, P.C. (or at such other place as the parties may designate) on the first (1st) business day of the calendar month that is not less than thirty (30) days immediately following the date each of the conditions specified in Article X has been satisfied (or waived by the Party entitled to waive such condition), but the Closing Date shall in no

	event be later than eighteen (18) months from the Receivership Date under the Receiver Agreement; provided, however, that if by the date of the expiration of the aforesaid eighteen (18) month period the conditions to close have not been satisfied, the Company and Buyer shall extend the closing date so that Closing occurs twenty-four (24) months from the Receivership Date (the "Outside Closing Date"). The date on which the Closing takes place is referred to in this Agreement as the "Closing Date." The Closing shall be effective at 12:01AM on the Closing Date.
Conditions Precedent to Closing to Obligations of the Seller and the Buyer	• Entry of a bankruptcy court order approving the Asset Purchase Agreement; • Approval by the DOH of the legally required Certificate of Need ("CON") Application and other regulatory approvals; • Closure by the fixed dates
Termination Events (APA § 4.1)	Under certain circumstances, the Purchase Agreement may be terminated by: • Mutual Consent • Default by Buyer • Default by the Company • Material Adverse Event • Buyer's failure to prosecute the Certificate of Need ("CON") Application in good faith or upon failure of a Buyer's member to pass DOH's character and competence review (even after a substitution pursuant to the attached CHOW application); or • Either party sending written notice arising from the DOH informing either party in writing of a final, noncontingent, unconditional and unappealable determination that CON Approval will not or cannot be granted • Failure to close by the fixed dates; • Termination of the Real Estate Contract or Receiver Agreement.
Releases	None
Relief from Bankruptcy Rules 6004(h) and 6006(d)	Yes, sought in this Motion.

RELIEF REQUESTED

18. By this Sale Motion, the Debtor seeks the entry of an order (i) authorizing the Debtor to enter into and consummate the Purchase Agreement, upon receipt of approval of the DOH; (ii) authorizing the private Sale outside the ordinary course of business; (iii) authorizing the Sale free and clear of all Liens and Interests; and (iv) granting other related relief.

THE REQUESTED RELIEF SHOULD BE GRANTED

A. The Sale of the Purchased Assets is Appropriate Under Section 363(b)(1) of the Bankruptcy Code.

19. Section 363(b)(1) of the Bankruptcy Code authorizes a trustee to sell property of the estate "outside of the ordinary course of business" so long as the trustee can demonstrate a sound business justification for the transaction. *See, e.g.*, *In re GSC, Inc.*, 453 B.R. 132, 155-56 (Bankr. S.D.N.Y. 2011) ("The Trustee must establish a good business reason for going forward with the Sale now rather than proceeding to the Plan."); *In re 160 Royal Palm, LLC*, 600 B.R. 119, 129 (S.D. Fla. 2019) (courts will approve a debtor's proposed sale under section 363 where the debtor has used reasonable business judgment). In the context of a proposed sale under § 363, a debtor's exercise of its own business judgment is entitled to "great judicial deference." *See 160 Royal Palm*, 600 B.R. at 126 (citation omitted); *GSC*, 453 B.R. at 155 ("The Trustee, not the Court, was in the best position to make a decision of the most advantageous way to proceed . . . The 'bankruptcy court has neither the role nor the expertise . . . to substitute its own views as to the optimum business decision for the views of the Debtors' Board of Directors.' . . . So long as a good business reason supporting the sale exists, a judge has considerable discretion in approving that sale.") (citations omitted). Pursuant to Bankruptcy Rule 6004(f)(1), sales of property may be by private sale or by public auction.

20. A debtor's showing of a sound business purpose need not be unduly exhaustive, rather a debtor is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a section 363 transaction also depends upon the facts and circumstances of each case. *In re Lionel Corp.*, 722 F.2d 1063, 1069-71 (2d Cir. 1983); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 155 (D. Del. 1999) (approving funding of employee incentive and severance program and holding that the business purpose requirement was fulfilled, because stabilizing turnover rate and increasing morale were necessary to successful reorganization).[3]

21. Once a debtor articulates a valid business justification, its decision to sell property out of the ordinary course of business enjoys a strong "presumption that in making a business decision[,] the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company." *In re Integrated Res. Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Therefore, any party objecting to a debtor's proposed asset sale must make a showing of "bad faith, self-interest, or gross negligence," as courts are loath to interfere with corporate decisions absent such a showing. *See id.* at 656.

22. It is well settled that the sale of assets outside of the ordinary course of business by means of a private sale can, and in appropriate cases should, be approved. *See, e.g.*, *In re Sound Shore Med. Ctr. of Westchester*, 13-22840 (RDD), 2009 WL 10798032, at *2 (Bankr. S.D.N.Y.

[3] Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether: (i) the debtor has provided adequate and reasonable notice to interested persons; (ii) the sale price is fair and reasonable; and (iii) the purchaser is proceeding in good faith. *See, e.g.*, *In re General Motors Corp.*, 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009); *In re Watertech Holdings LLC*, 619 B.R. 324, 335 (Bankr. D.S.C. 2020); *see also In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991).

July 30, 2009) (finding that a private sale of a debtor's assets was appropriate "in light of the facts and circumstances surrounding the Sale Transaction and the Debtors' chapter 11 cases because . . . the Debtors engaged in extensive prepetition marketing efforts which were fair, proper, complete, and reasonably calculated to result in the best value received for the Acquired Assets"); *160 Royal Palm*, 600 B.R. at 127 (affirming bankruptcy court order authorizing the debtor to proceed with a private sale of real property and finding no abuse of discretion in allowing the withdrawal of public auction procedures by the debtor in favor of a private sale); *In re TPOP, LLC*, 13-11831 (BLS), 2014 WL 1317559, at *2 (Bankr. D. Del. Mar. 20, 2014) (approving a private sale of a debtor's assets and finding that the debtor "articulated good and sufficient business reasons justifying the Sale, including . . . the fact that the Debtor's months-long prepetition marketing process to seek a buyer for the assets did not yield an alternative transaction other than the proposed Sale demonstrates that the Asset Purchase Agreement constitutes the highest and best offer for the Included Assets"); *In re Aberdeen Land II, LLC*, No. 3:13-bk-04103-JAF, 2012 WL 13341909 (Bankr. M.D. Fla. Nov. 29, 2012) (approving private sale of real property pursuant to settlement agreement); *In re Ocean Blue Leasehold Prop. LLC*, No. 07-17999-BKC-AJC (Bankr. S.D. Fla. July 3, 2008) [ECF No. 385 (authorizing private sale of substantially all of the debtors' real and personal property as contemplated by Chapter 11 plan)]; *Morris v. Puleo* (*In re Performance Materials, Inc.*), 309 B.R. 819 (Bankr. M.D. Fla. 2004) (court issued declaration of rights arising from private sale of cause of action, and specifically noted that sales by bankruptcy trustees must be authorized by the court and can by "private sale or an auction"); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. Partnership* (*In re Woodscape Ltd. Partnership*), 134 B.R. 165, 174 (Bankr. D. Md. 1991) (finding that "[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.").

23. Several recent cases where bankruptcy courts approved private sales are instructive. In *In re Sherman/Grayson Hospital, LLC*, Case No. 23-10810 (JKS) (Bankr. D. Del. Aug. 29, 2023) (D.E. 161), following a three-year pre-petition marketing effort by the debtor (a hospital), the debtor entered Chapter 11 and filed a motion to approve a private sale of substantially all of its assets to the only interested buyer identified in the pre-petition marketing effort. In light of the extensive pre-petition marketing process, no post-petition marketing or auction was required or scheduled, and the court approved the private sale free and clear of liens and interests without requiring a post-petition marketing period or an auction, free and clear of liens and interests.

24. Similarly, in *In re Boxed Inc., et al.,* Case No. 23-10397 (BLS) (Bankr. D. Del. May 1, 2023) (D.E. 189), following a four-month pre-petition marketing effort by the debtors which resulted in no offers to purchase the debtors' business, the debtors entered Chapter 11 and filed a motion to approve a private sale of its primary line of business to a designee of its first lien lenders via a credit bid. In light of the extensive pre-petition marketing process, no post-petition marketing was conducted and no auction was set, and the court approved the private sale on an accelerated time frame, entering a sale order just 30 days after the petition date and authorizing the private sale of the debtor's assets free and clear of liens and interests and approving the first lien lenders' credit bid.

25. Finally, in *In re MBMG Holding, LLC*, Case No. 24-20576 (CLC) (Bankr. S.D. Fla. D.E. 218), following a year-long extensive marketing campaign, structured as both a traditional marketing effort and as a distressed business sale, the debtors entered Chapter 11 and filed a motion to approve a private sale for substantially all of the debtors' assets subject to exclusions for cash and accounts receivable. Slightly over a month later, the Court approved the Debtors' motion, authorizing the sale – weighing heavily the debtors' extensive and fair marketing and sale process.

26. As described in the Eisen Declaration, the Debtor conducted an extensive multi years pre-petition marketing and sale process, before identifying a buyer willing to purchase the Facility. The Sale prevents hundreds of vulnerable patients from facing a disruption in its care, not to mention the loss of approximately 500 jobs that would ensue if the Facility were to close. As described in the Cauz Declaration, if the sale is delayed, the Debtor will lose hundreds of thousands of dollars per week. Accordingly, the Debtor submits that, similar to the debtors in *Sherman/Grayson Hospital*, *Boxed*, and *MBMG*, the extensive pre-petition marketing efforts by the Debtor, combined with the operational and financial needs to obtain approval of the sale and expeditiously transition the Debtor's business to the Buyer, justify approval of the private sale.

27. This Sale Motion is concurrently being filed with a motion asking the Court to take notice of the dire circumstances facing the Debtor and the hundreds of elderly residents in its care, requesting that the Court schedule a hearing to consider this Motion on shortened notice.

28. Furthermore, section 105(a) of the Bankruptcy Code provides a bankruptcy court with considerable discretion in the administration of bankruptcy cases. *See In re City of Detroit, Michigan*, 519 B.R. 673, 679 (Bank. E.D. Mich. 2014). Specifically, section 105(a) states that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." *See* 11 U.S.C. § 105(a). Based upon a careful review of its terms, the Debtor believes that the proposed Sale will maximize the value of the Purchased Assets for the benefit and is in the best interests of the Debtor, the Debtor's estate, its creditors and other parties in interest.

B. The Debtor has Demonstrated a Sound Business Justification for the Sale.

29. A sound business reason for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of

creditors and interest holders. *See, e.g., GSC*, 453 B.R. at 155 ("A debtor may sell substantially all of its assets as a going concern and later submit a plan of liquidation providing for the distribution of the proceeds of the sale. This strategy is employed, for example, when there is a need to preserve the going concern value") (quoting *In re Chrysler*, 405 B.R. 84, 96 (Bankr. S.D.N.Y. 2009)); *Watertech Holdings*, 619 B.R. at 336; *In re Rovig Minerals, Inc.*, Case No. 19-5133, 2020 WL 2770052 at *3 (Bankr. W.D. La. May 26, 2020); *In re Art and Architecture Books of the 21st Century*, 2:13-bk-14135-RK, 2015 WL 3492900, at *7 (Bankr. C.D. Cal. May 29, 2015); *In re THQ Inc.*, No. 12-13398 MFW, 2013 WL 428623, at *7 (Bankr. D. Del. Jan 24, 2013); *see also In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *Lionel Corp.,* 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that paramount goal of any proposed sale of property of estate is to maximize value); *In re Lykes Bros. Steamship Co., Inc.*, 207 B.R. 282, 284 (Bankr. M.D. Fla. 1997) (noting that one of the "fundamental principles" of Chapter 11 is the "desire to maximize the value of the estate for the benefit of all creditors.").

30. As described herein, as well as in the First Day Declaration, the Cauz Declaration and the Eisen Declaration, a strong business justification exists for the sale of the Purchased Assets. An orderly but expeditious private sale of the Purchased Assets is critical to ensure continuity of care to the Debtor's residents, and the Debtor also seeks to continue to provide employment to its employees and to provide an enterprise which will be a trading partner to many of its vendors, and of course to maximize the value of its enterprise for their creditors. Furthermore, the Sale prevents the Debtor's hundreds of vulnerable residents from facing a disruption in their care.

31. As described in detail in the Eisen Declaration, extensive pre-petition marketing and sale efforts were undertaken to achieve the Purchase Agreement with the Buyer. The proposed

Purchase Agreement represents the highest and best offer from a financial point of view available to the Debtor with respect to a sale of the Purchased Assets. Although the Buyer is not paying any cash to the Debtor (or any related party), as described in more detail in the Receiver Motion, the Buyer will immediately assume the obligation to fund all operating and capital expenses and the Debtor will retain all receivables created prior to the appointment of the Buyer as receiver.

32. In light of the Debtor's scant financial resources, entering into and performing the Purchase Agreement represents a reasonable exercise of the Debtor's business judgment and best advances the interests of all parties.

C. The Sale Represents a Fair and Reasonable Purchase Price for the Purchased Assets.

33. The consideration for the Purchased Assets under the Purchase Agreement is fair and reasonable. The purchase offer by the Buyer is an offer to purchase the Purchased Assets for a price that the Debtor, with the advice of its advisors, has determined to be the highest and best it will likely receive, in light of the extensive pre-petition marketing process it conducted, as described in the Eisen Declaration. In addition, the Purchase Agreement provides for the Buyer's assumption of the Assumed Liabilities, but allows the Debtor to retain its receivables accrued prior to the receivership date. Furthermore, the Purchase Agreement is the end product of extensive arm's-length negotiations between the parties.

D. The Sale Should be Approved Free and Clear of Liens, Interests, and Encumbrances.

34. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of Liens and Interests if any one of the following conditions is satisfied:

a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;

b. such entity consents;

c. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

d. such interest is in bona fide dispute; *or*

e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest

11 U.S.C. § 363(f)(l)-(5) (emphasis supplied); *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002) (noting that Bankruptcy Code section 363(f) is written in the disjunctive; therefore, a court may approve a sale "free and clear" provided at least one of the subsections is met).

35. Pursuant to the Purchase Agreement, the Purchased Assets are to be sold free and clear of any and all Liens and Interests in accordance with section 363(f) of the Bankruptcy Code, with any such Liens and Interests to attach to the proceeds of the applicable sale. Purchase Agreement, Ex. B (Bill of Sale). The Sale satisfies the criteria set forth in Bankruptcy Code section 363(f). The Debtor believes that, at a minimum, it satisfies the second prong of section 363(f) because the proposed Sale of the Purchased Assets free and clear of all Liens and Interests no pre-petition liens exist.

E. The Sale is Proposed in Good Faith.

36. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Bankruptcy Code section 363(m) provides, in pertinent part:

> The reversal or modification on appeal of an authorization under [section 363(b)] . . . does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ...were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) "fosters the policy of not only according finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." *In re Polaroid Corp.,* No. 01-10864 PJW, 2004 WL 253479, at *1 (D. Del. Feb 9, 2004). Thus, Bankruptcy Code section 363(m) protects the buyer of assets sold pursuant to Bankruptcy Code section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, Bankruptcy Code section 363(m) applies to sales of interests in assets such as the Purchased Assets.

37. The private Sale has been proposed in good faith. As set forth in the First Day Declaration and the Eisen Declaration, the Debtor and the Buyer have entered into the Purchase Agreement after extensive, arm's-length, negotiations undertaken in good faith, without collusion or fraud of any kind. The Debtor and the Buyer retained separate counsel and other professional advisors to represent their respective interests in the negotiation of the Purchase Agreement, as well as to represent them throughout the Sale. *Id.* Moreover, the Debtor undertook an extensive pre-petition marketing process and, in conjunction with its advisors, concluded that the consideration being provided was the highest and best return for the Purchased Assets. To the best of the Debtor's knowledge, information, and belief, no party has engaged in any conduct that would cause or permit the Purchase Agreement to be set aside under section 363(m) of the Bankruptcy Code.

38. The Debtor has presented the proposed Sale to the Buyer openly and in good faith. The Buyer's identity has been fully disclosed in this Sale Motion and other pleadings filed with the Bankruptcy Court and the buyer has no connection with the Debtor or any other related party. The Debtor has fully disclosed and requested the Bankruptcy Court's approval of all of the terms and conditions of the proposed Sale. Sufficient and adequate notice of this Sale Motion has been

provided to interested parties. Accordingly, the Debtor seeks a finding that the Buyer is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

39. The Debtor reserves the right to introduce evidence at the Sale Hearing regarding the arm's-length, good faith nature of the negotiation of the Purchase Agreement. Indeed, the Debtor will demonstrate at the Sale Hearing that the Purchase Agreement with the Buyer represents the highest or otherwise best bid available to the Debtor for the Purchased Assets following a robust pre-petition marketing process. Accordingly, the Sale to the Buyer has been proposed and fully disclosed in good faith and represents the sound business judgment of the Debtor, and, as such, the Debtor respectfully requests the Court to authorize the Debtor to consummate the Purchase Agreement.

F. The Debtor's Noticing Procedures Provide Adequate Notice of the Sale and the Objection Deadline.

40. Concurrently with the filing of this Motion, the Debtor is filing a separate motion seeking the entry of a proposed scheduling order with respect to the Sale (the "Scheduling Order"). The Debtor submits that the proposed Scheduling Order, and its service by the Debtor on interested parties will provide sufficient and adequate notice of the Sale, the Sale Hearing, and the deadline to file objections. As such, the Debtor submits that service of the Scheduling Order, as buttressed by the service of this Sale Motion (with the Purchase Agreement attached to it) meets the requirements of the Bankruptcy Rules and the Local Rules.

G. Request for Waiver Under Bankruptcy Rules 6004(h).

41. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[4]

42. To preserve the value of the Purchased Assets and limit the costs of administering and preserving such assets, it is critical that the Debtor closes the Sale as soon as possible after all closing conditions have been achieved or waived. Accordingly, the Debtor respectfully requests that the order granting this Motion be effective immediately and that the Court waive the fourteen (14) day stay period under Bankruptcy Rules 6004(h).

43. Based upon the foregoing, the Debtor submits that the relief requested herein is necessary and appropriate, is in the best interests of the Debtor and its estate, and should be granted in all respects.

[4] The primary purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2011) ("COLLIER"); *see also In re Fisherman's Pier, Inc.*, 460 F.Supp.3d 1345, 1354 (S.D. Fla. 2020); Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen-day stay period, COLLIER suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." *See* COLLIER at ¶ 6004.11. Furthermore, COLLIER provides that if an objection is filed and overruled, and the objecting party informs the Court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *See id.*

CONCLUSION

WHEREFORE, the Debtor respectfully requests the Court to: (a) grant this Sale Motion; (b) approve the Purchase Agreement and authorize the private Sale of the Purchased Assets outside the ordinary course of business; (c) authorize the sale of assets free and clear of all Liens and Interests, and (d) grant such other and further relief as the Court deems just and proper.

Dated: January 13, 2025
New York, New York

MANATT, PHELPS & PHILLIPS, LLP

/s/ Schuyler G. Carroll

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