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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	
IN RE:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO
GRANT APPROVALS AND CONSENTS IN CONNECTION
WITH SALE BY NON-DEBTOR SUBSIDIARY**

Arcapita Bank B.S.C.(c) (“*Arcapita Bank*”), Arcapita Investments Holdings Limited (“*AIHL*”), Arcapita LT Holdings Limited (“*ALTHL*”) and certain of their subsidiaries, as debtors and debtors in possession (collectively, the “*Debtors*” and each, a “*Debtor*”), submit this motion (the “*Motion*”) for entry of an order substantially in the form attached hereto as *Exhibit A* pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) authorizing the Debtors to take such actions and provide such consents as are necessary or appropriate to authorize, approve and facilitate the sale (the “*Sale*”) by their indirect non-debtor subsidiary, Assisted Living First Euro Investments Ltd. (“*Assisted Living Investments*” or

“*Seller*”), of Assisted Living Investments’ 80% interest in (i) Sunrise First Euro Properties, LP (“*Sunrise LP*”) and (ii) Sunrise First Euro Properties GP Limited (“*Sunrise GP*,” together with Sunrise LP, “*Sunrise*” or the “*Joint Venture*”) to purchaser HCN UK Investments Limited or its assignee or designee (“*HCN UK*” or “*Purchaser*”) pursuant to a Purchase and Sale Agreement between Assisted Living Investments and HCN UK (the “*PSA*”) summarized in this Motion. The final form of PSA is currently under negotiation and a final form of PSA will be filed with the Court by not later than December 14, 2012.

THE ELEMENTS OF THE PROPOSED TRANSACTION

A. The Essence of the Proposed Transaction

Arcapita Bank’s non-debtor affiliate Assisted Living Investments holds an approximately 80% interest in a Joint Venture comprised of Sunrise LP and its general partner Sunrise GP, which own and operate five assisted living facilities in the United Kingdom known as Sunrise at Froggnal House, Sunrise of Virginia Water, Sunrise of Elstree, Sunrise of Banstead and Sunrise of Purley. The other party to the Joint Venture, which holds the remaining approximately 20% is Sunrise Senior Living International Limited Partnership, a Jersey limited partnership (“*Senior Living*”), which is otherwise unrelated to the Debtors or their affiliates and is not a party to this proposed Sale.¹ Additionally, Sunrise is obligated to Lloyd’s TSB Bank plc and/or its affiliates or assignees for approximately £82,100,000 (the “*Lloyd’s Debt*”) based on an existing facility. The Lloyd’s Debt will either be refinanced with a loan from the Purchaser after or contemporaneous with the closing of the Sale, or remain in place post-closing. Also, the Lloyd’s

¹ Pursuant to a separate transaction, certain affiliates of HCN UK plan to acquire indirectly the remaining 20% interest in Sunrise held by Senior Living.

Debt is not guaranteed by the Seller or other parties related to the Debtors, and the Seller will not be responsible for any portion of the Lloyd's Debt or any other obligations of Sunrise.

At Closing, Assisted Living Investments proposes to sell its entire interest in Sunrise (the "***Seller Interests***") pursuant to the terms and conditions set forth in the PSA (summarized below). Upon receipt of the purchase price of £65,000,000.00 (the "***Purchase Price***"), the Seller has agreed to withdraw from the Joint Venture pursuant to the terms and conditions set forth in the PSA. The Purchase Price will be paid in full at closing, in cash and without holdback and not subject to any other pre or post-closing adjustment. The Seller seeks to close on the Sale no later than December 20, 2012 because the holder of the Lloyd's Debt has agreed to waive prepayment fees if the Lloyd's Debt is repaid by December 21, 2012, and the Purchaser has agreed to pursue a closing on that timetable. One of the conditions to closing is that the Bankruptcy Court enter an order that, *inter alia*, authorizes the Debtors to cause their affiliates to execute the necessary documents, to provide consents and to take all other actions necessary or appropriate so that Assisted Living Investments can enter into and consummate the sale of its interest in Sunrise.

B. The Debtors' Indirect Ownership Interest in Seller Assisted Living Investments

The Debtors' indirect interest in Assisted Living Investments is depicted in the chart attached hereto as ***Exhibit D***. In summary, Assisted Living Investments is wholly owned by Assisted Living First Euro Funding Limited ("***Assisted Living Funding***"). The ownership interest in Assisted Living Funding is divided between Astute Capital Limited ("***Astute Capital***"), Acumen Capital Limited ("***Acumen Capital***"), Perceptive Capital Limited ("***Perceptive Capital***") and Eternal Holdings Limited ("***Eternal Holdings***"). Debtor AIHL holds an ownership interest in Astute Capital, Acumen Capital and Perceptive Capital. Debtor ALTHL holds an ownership interest in Eternal Holdings. Astute Capital, Acumen Capital, Perceptive Capital, Eternal Holdings, Assisted Living Investments and Assisted Living Funding were each

formed for the purpose of holding the interests of the Debtors and third-party investors in Sunrise and they have no other operations. Through the above entities, the Debtors collectively hold a beneficial interest of approximately 30.4% in Assisted Living Investments and, hence, will receive 30.4% of the net proceeds of the Sale.

BACKGROUND

1. On March 19, 2012 (the “*Petition Date*”), Arcapita and five of its affiliates, AIHL, ALTHL, WindTurbine Holdings Limited, AEID II Holdings Limited, RailInvest Holdings Limited (collectively, the “*Initial Debtors*”), commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 (collectively, with the chapter 11 cases of the Initial Debtors, the “*Chapter 11 Cases*”) of the Bankruptcy Code.

2. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in the Chapter 11 Cases. On April 5, 2012, the Office of the United States Trustee appointed an official committee of unsecured creditors in these Chapter 11 Cases (the “*Committee*”). The Committee has retained legal counsel and financial advisors.

3. Arcapita Bank, through its Debtor and non-Debtor subsidiaries (collectively the “*Arcapita Group*”) historically employed 268 people with offices in Atlanta, London, Hong Kong and Singapore in addition to its Bahrain headquarters. The Arcapita Group’s primary activity is the purchase, management and sale of investment opportunities for its own account and the account of third parties. The underlying investments made by the Arcapita Group are generally medium to long-term projects that have limited value in the short term and often require significant on-going capital funding to complete in order to realize the value of the

investment. The Arcapita Group also derives revenue from managing assets under investment. As of the Petition Date, the Arcapita Group had approximately \$7 billion in assets under management.

JURISDICTION AND VENUE

4. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

5. The Debtors request the Court to enter an order substantially in the form attached hereto as Exhibit A, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, authorizing the Debtors to take such actions, to cause their affiliates to take such actions and to provide such consents as are necessary or appropriate to authorize, approve and facilitate the Sale by their indirect non-debtor subsidiary, Assisted Living Investments of all of its interest in Sunrise to HCN UK. The terms of the proposed sale are described below.

SALE OF THE SELLER INTERESTS IN SUNRISE

6. The sale of Assisted Living Investments' ownership interest in Sunrise LP and Sunrise GP is based on the terms contained in the following summary of terms:

SELLER:

The Seller owns an 80% non-managing interest in the Joint Venture and an 80% interest in the Sunrise GP. The Seller will transfer the Seller Interest to the Purchaser free and clear of any liens.

PROPERTIES:

The Joint Venture is the indirect owner of the assisted living facilities known as Sunrise at Frogmal House, Sunrise of Virginia Water, Sunrise of Elstree, Sunrise of Banstead, and Sunrise of Purley all located in the United Kingdom.

PURCHASE PRICE: £65,000,000.00. The Purchase Price shall be paid in cash or other immediately available funds by the Purchaser to the Seller for the Seller Interests.

CLOSING: The Seller and the Purchaser anticipate that the closing will occur on or about December 21, 2012, subject to any lender approvals.

CLOSING CONDITIONS: Closing conditions shall include the entry of an order of the Bankruptcy Court, in form and substance reasonably acceptable to the Purchaser, *inter alia*, authorizing the debtors, as party to the *In re Arcapita Bank B.S.C.(c) et al.*, Case No. 12-11076, to execute such documents, provide such consents and take all other and further actions as are necessary or appropriate in order for such debtors to authorize, approve, cause or direct the Seller to enter into and consummate the transactions contemplated hereby.

BASIS FOR RELIEF REQUESTED

7. Assisted Living Investments is a non-debtor entity, and its ownership interest in Sunrise is not property of the Debtors' estates. The ordinary course of the Debtors' business is to acquire businesses, syndicate interests to third party investors, maintain a minority ownership interest and then manage and operate those businesses until an eventual exit for the benefit of both the Debtors and the investors. Nevertheless, out of an abundance of caution, because the proposed Sale will ultimately affect the net recovery for creditors, because of the complexity of the Debtors' organization and because the Purchaser has conditioned its purchase of the Seller Interests on Court approval, the Debtors request that the Court enter an order, substantially in the form attached as Exhibit A hereto, *inter alia*, authorizing the Debtors to grant approvals and consents in connection with the sale of Assisted Living Investments' interest in Sunrise. Recognizing the potential for dispute, to resolve any issues at the outset and in the interest of finality, courts in this district have approved similar motions pursuant to section 105(a). *See, e.g., In re Lehman Bros. Holdings Inc.*, No. 08-13555 (Bankr. S.D.N.Y. Sep. 20, 2008) (JMP)

[Docket No. 258]; *In re Enron Corp.*, No. 01-16034 (AJG) (Bankr. S.D.N.Y. Dec. 28, 2001)
[Docket No. 543].

8. Uncertainty almost always has an impact on the price that may be obtained for the sale of an asset and a buyer such as the Purchaser here will usually pay more where it can be assured that a proposed distressed transaction is approved by the Bankruptcy Court. Here, the Purchaser has expressly conditioned its purchase of the Seller Interests on the entry of an order by this Court authorizing the Debtors to approve and consent to the Sale. Hence, authorizing the Debtors to approve or consent to the Sale is in the best interests of the Debtors' estates. ("The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a)).

9. Although the "bankruptcy statutes do not give a bankruptcy court jurisdiction over property belonging to an entity owned in whole or in part by the bankrupt without first finding that the property also constitutes a part of the bankrupt's property," given the complex structure of the Debtors' business, both the Debtors' and the Purchaser believe it is better to bring the matter before the Court and all parties in interest and allow any potential issues to be raised now rather than after a sale. *Center Ltd. P'ship v. Smith (In re Holywell Corp.)*, 118 B.R. 876, 879 (S.D. Fla. 1990) (citing *Matter of Pentell*, 777 F.2d 1281 (7th Cir. 1985)). Indeed, "property of the estate" generally does not include a non-debtor subsidiary's assets. *In re Stein & Day, Inc.*, 113 B.R. 157, 161 (Bankr. S.D.N.Y. 1990) (citing *Feldman v. Trustees of Beck Indus., Inc. (In re Beck Industries)*, 479 F.2d 410, 416 (2d Cir. 1973), *cert. denied*, 414 U.S. 858 (1973)); *see also Equity Broadcasting Corp. v. Shubert (In re Winstar Communications, Inc.)*, 284 B.R. 40, 51 (Bankr. D. Del. 2002) (the ownership of all the outstanding stock of a non-

debtor subsidiary by the debtor does not confer jurisdiction on the bankruptcy court to decide disputes involving the non-debtor subsidiary's assets).

10. Section 363 of the Bankruptcy Code states that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, *property of the estate*." 11 U.S.C. § 363(b)(1) (emphasis added). Bankruptcy Rule 6004 provides that "all sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

[T]he notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

11. To approve the use, sale, or lease of property out of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, the Court need only find "a good business reason" supports the sale. *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d. Cir 1997) ("A sale of a substantial part of a [c]hapter 11 estate other than in the ordinary course of business may be conducted if a good business reason exists to support it."); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

12. Generally, courts have applied four factors in determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed

transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See, e.g., In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Lionel Corp.*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification test and adding the “good faith” requirement).

A. **Sound Business Reason Exists to Approve the Sale of Assisted Living Investments’ Interest in Sunrise to HCN**

13. The Debtors’ consent to the Sale is based upon their sound business judgment. Both prepetition and postpetition, one of the Debtors’ primary goals has been to maximize the return on their investments such that their estates may benefit, and the net proceeds from the Sale represent a positive return to the Debtors. The Debtors and their affiliates are in the business of acquiring diversified businesses, syndicating a majority interest in the business to third party investors, maintaining a minority ownership interest and then managing, supporting and operating those businesses until an eventual exit for the benefit of both the Debtors and the investors. The businesses acquired by the Debtors are closely monitored by “deal teams” intimately familiar with the business and the market in which they operate. Based on their expertise and sound business judgment, the deal team responsible for monitoring the Debtors’ indirect interest in the Sunrise Business has determined that the proposed Sale at this time is supported by sound business reasons. *See Declaration of Michael K. Casey in Support of the Debtors’ Motion for an Order Authorizing the Debtors to Grant Approvals and Consents in Connection with Sale by Non-Debtor Subsidiary* (the “**Casey Declaration**”) at ¶¶ 14-15.

14. The Debtors’ professionals have conferred extensively with the professionals for the Committee and the Joint Provisional Liquidators of Debtor Arcapita Investment Holdings

Limited (the “*JPLs*”) and have provided them with the basis of the judgment of the Sunrise deal team as well as all information requested regarding the Seller Interests to be sold and the proposed Sale. The Debtors have been advised by the Committee and the JPLs that they will support the Sale.

B. The Sales Price is Fair and Reasonable

15. Based on their knowledge of the business of Sunrise, the Sunrise deal team and the Debtors believe that the Purchase Price is a fair and reasonable price. The Purchase Price under the PSA was the result of extensive and arm’s-length negotiations between Assisted Living Investments and HCN UK. *See* Casey Declaration at ¶¶ 13-14. Furthermore, the Purchase Price is consistent with the KPMG valuation of Assisted Living Investments’ equity interest in Sunrise.

C. The Proposed Sale is the Product of Good Faith

16. Both the Seller and the Purchaser have acted in good faith in negotiating the Sale. There is no evidence of fraud or collusion in the terms of the PSA. To the contrary, as discussed throughout this Motion, the Sale will be the culmination of a negotiation process in which all parties are represented by sophisticated advisors. The Purchaser is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code, and all negotiations have been conducted on an arm’s-length, good faith basis. *See* Casey Declaration at ¶¶ 6, 12-14.

D. The Notice of the Sale Will be Adequate and Reasonable Under the Circumstances

17. The Debtors intend to provide adequate notice of the proposed Sale to all parties in interest, as required by the applicable procedural rules. *See* Fed. R. Bankr. P. 2002(c)(1) (notice must contain “the terms and conditions of any private sale and the time fixed for filing objections.”). The essential terms of the Sale are summarized above. However, final form of the

PSA is still under negotiation and a final form of PSA will be filed with the Court by no later than December 14, 2012.

E. HCN UK is Entitled to Good Faith Purchaser Status Pursuant to Section 363(m) of the Bankruptcy Code

18. The Debtors additionally request that the Court find that HCN UK be entitled to the protections described in section 363(m) of the Bankruptcy Code in connection with the Sale.

Section 363(m) of the Bankruptcy Code provides:

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

11 U.S.C. § 363(m).

19. Section 363(m) thus protects the purchaser of assets sold pursuant to 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.

20. Section 363(m) “affords ‘finality to judgment by protecting good faith purchasers, the innocent third parties who rely on the finality of bankruptcy judgments in making their offers and bids.’” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.)*, 1993 WL 159969, at *3 (Bankr. S.D.N.Y. May 10, 1993) (quoting *In re Stadium Mgmt. Corp.*, 895 F.2d 845, 847 (1st Cir. 1990)); *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“[P]ursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal.”)

21. Courts have generally defined “good faith” for purposes of section 363(m) to mean “one who purchases the assets for value, in good faith and without notice of adverse claims.” *See, e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 390 (2d Cir. 1997) (“Good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . .”).

22. The protection described in section 363(m) is appropriate in this case because HCN UK is purchasing the assets subject to the Sale for value and without notice of any adverse claims to such assets, the proposed Sale is the product of arm’s-length, good faith negotiations between the Assisted Living Investments, on the one hand, and the HCN UK, on the other, and the proposed Sale has been thoroughly analyzed by the Debtors.

23. The Debtors are not aware of any circumstances that would suggest that the negotiation process was tainted by fraud, collusion or bad faith. As such, the Debtors submit that HCN UK is entitled to a finding that it is a good faith purchaser and entitled to the protections described in section 363(m).

24. The proposed sale is not the result of bidding between multiple prospective purchasers and, hence, there is no possibility that the Sale is based on a price controlled by an agreement or collusion among potential bidders. Accordingly, there is no basis for the Sale to be set aside under Section 363(n).

F. Relief Under Bankruptcy Rule 6004(h) Is Appropriate

25. 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.” The Debtors request that any order approving the Sale be deemed effective immediately by providing that the 14-day stay under said rule is waived.

26. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, commentators suggest that the 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.” 10 *Collier on Bankruptcy* ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Given that HCN UK’s offer is conditioned on a final order being entered by December 21, 2012 and the fact that the Debtors will provide notice of the Motion in a manner that is reasonable under the circumstances, the Debtors submit that good cause exists for the Court to waive the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

27. The Debtors have provided notice of filing of the Motion by electronic mail, facsimile and/or overnight mail to: (i) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Richard Morrissey, Esq.); (ii) the Committee, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005 (Attn: Dennis F. Dunne, Esq. and Evan R. Fleck, Esq.); (iii) counsel to HCN UK, attention: Evan C. Hollander, Esq., Arnold & Porter LLP, 399 Park Avenue, New York, New York 10022 and Charles A. Malloy, Esq., Arnold & Porter LLP, 555 Twelfth Street, N.W., Washington, D.C. 20004; and (iv) all parties listed on the Master Service List established in these Chapter 11 Cases. A copy of the Motion is also available on the website of the Debtors’ notice and claims agent, GCG, Inc., at www.gcginc.com/cases/arcapita.

NO PRIOR REQUEST

28. No prior motion for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 4, 2012

Respectfully submitted,

/s/ Craig H. Millet

Michael A. Rosenthal (MR-7006)

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

PROPOSED ORDER

granted herein; (d) the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and (e) notice of the Motion was sufficient, and no other or further notice need be provided;

Based upon the above findings and conclusions, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:

1. The Motion is hereby granted to the extent set forth herein.
2. Any objections, responses or requests for continuance concerning the Motion are overruled and denied to the extent that they have not been withdrawn, waived or settled.
3. To the extent that any of the findings of fact in this Order constitute conclusions of law, they are adopted as such. To the extent that any of the conclusions of law in this Order constitute findings of fact, they are adopted as such.
4. Debtors Arcapita Bank, AIHL and ALTHL indirectly own Assisted Living Investments. Neither Assisted Living Investments nor Sunrise are debtors in these chapter 11 cases, and the Court does not have jurisdiction over Assisted Living Investments, Sunrise or their property.
5. Notwithstanding that Assisted Living Investments is not a debtor and is not subject to the Court's jurisdiction, to the extent that any authorization, approval, consent or other action by any of the Debtors is necessary or desirable in connection with the Sale, including, without limitation, any authorization pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized to execute such documents, provide such consents and take any and all other actions as are necessary or appropriate to authorize, cause, direct, approve or otherwise facilitate Assisted Living Investments' execution of and performance under the PSA and any

agreements, documents and instruments provided for therein or contemplated thereby, including Assisted Living Investments' sale of its interest in Sunrise to HCN UK.

6. The Debtors have demonstrated a sound basis for their decision to authorize and approve the Sale, and such actions and approvals are an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates and creditors.

7. The Debtors have full corporate authority to take such actions and grant such consents, if any, as may be necessary or appropriate to authorize, direct, cause, approve or otherwise facilitate the Sale.

8. Notwithstanding any other provision of the Motion or this Order, HCN UK's and Assisted Living Investments' obligations with respect to the Sale shall be governed solely by the terms of the PSA and such other documents, if any, as may be executed in connection therewith, and HCN UK and Assisted Living Investments shall have no obligation to proceed with closing the Sale until all conditions precedent to its obligations under the PSA have been met, satisfied or waived.

9. The terms of the PSA and the Sale may be modified, amended or supplemented by the agreement of Assisted Living Investments and HCN UK in accordance with the terms of the PSA and without further notice in the Debtors' chapter 11 cases or order of this Court.

10. The failure to reference or include any particular provision of the PSA in the Motion or this Order shall not diminish or impair the effectiveness of any provision of the PSA.

11. HCN UK is not an "insider" or "affiliate" of the Debtors or Assisted Living Investments as such terms are defined in the Bankruptcy Code, and the Sale is a good-faith, arms'- length transaction between Assisted Living Investments and HCN UK.

12. The consideration paid by HCN UK for the assets subject to the Sale constitutes

reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, fair consideration under the Uniform Fraudulent Conveyance Act and reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, and the Sale shall not be avoidable as a fraudulent transfer, fraudulent conveyance under sections 548 or 544(b) of the Bankruptcy Code or under any other state or federal law in this or any subsequent proceeding.

13. HCN UK has acted in good faith in all matters related to the Sale and as a result, unless the authorizations contained in this Order are stayed pending appeal, any reversal or modification on appeal of any such authorizations shall not under any circumstances affect the validity of the Sale to HCN UK.

14. HCN UK did not collude with any other potential purchasers in connection with the Sale and the sale price was not controlled by any agreement among potential purchasers. Accordingly, the Sale is not, and shall not be, avoidable under section 363(n) of the Bankruptcy Code in this or any subsequent proceeding, or under any other state or federal law, and no damages or other amounts shall be recoverable from HCN UK in any such proceeding under section 363(n) of the Bankruptcy Code or under any other state or federal law.

15. The relief granted herein shall be binding upon the Debtors' successors and assigns, including any chapter 11 trustee appointed in these chapter 11 cases and any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

16. To the extent that the stay set forth in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) applies to this Order, cause exists to abrogate such stay. Accordingly, notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry and its provisions shall be self-executing.

Dated: December __, 2012
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

SUNRISE ORGANIZATION CHART

SUNRISE UK OFF-SHORE HOLDING STRUCTURE
Sunrise First Euro Properties

