

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Chapter 11
Case No. 13-22840 (RDD)

Debtors.
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**ORDER PURSUANT TO SECTIONS 105(A), 363 AND 365 OF THE
BANKRUPTCY CODE APPROVING SALE OF THE DEBTORS REAL
PROPERTY AND DESIGNATED PERSONAL PROPERTY ASSETS FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS**

Upon the Motion [Docket No. 17] (the “**Sale Motion**”),¹ dated May 29, 2013, of Sound Shore Medical Center and its debtor affiliates (each a “**Debtor**” and collectively, the “**Debtors**”) in the above-referenced Chapter 11 cases (the “**Chapter 11 Cases**”) for (i) an order pursuant to sections 105(a), 363(b), (d) and (f), 365 and 1146(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002(a)(2), 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) approving, *inter alia*, (i) the sale of the Acquired Assets (the “**Sale**”), free and clear of all liens, claims, encumbrances and other interests except as otherwise expressly provided in the Amended and Restated Purchase Agreement [Docket No. 123] (the “**Purchase Agreement**”), and (ii) the assumption and assignment of the Assigned Contracts pursuant to the Assignment Procedures (hereinafter defined), and (iii) for related relief, all as further set forth and defined in the Sale Motion and the Purchase Agreement; and this Court having reviewed the Sale Motion and the Purchase Agreement and upon this Court’s prior order, dated May 31, 2013, scheduling a hearing on the Bidding Procedures [Docket No. 36] (the “**Bidding Procedures Scheduling Order**”); and a Supplemental Statement

¹ Unless otherwise indicated, capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Sale Motion, the Supplemental Scheduling Order (hereinafter defined) or the Purchase Agreement (hereinafter defined). The definitions in the Purchase Agreement (hereinafter defined) shall govern any inconsistency with the definitions in the Motion and/or the Supplemental Scheduling Order (hereinafter defined) .

in Support of the Motion [Docket No. 103] (the “**Supplemental Statement**”) having been filed by the Debtors on June 21, 2013 seeking to modify the sale process and effectuate a private sale of the Acquired Assets to MMC; and an Order having been entered by the Court on June 25, 2013 Scheduling a Hearing on the Sale Motion [Docket No. 119] (the “**Supplemental Scheduling Order**”), as modified by the Supplemental Statement; and a sale hearing having been held on August 2, 2013 (the “**Sale Hearing**”); and the Declaration of David Ingber having been filed on behalf of the Buyer in support of the Sale [Docket No. 229] (the “**Ingber Declaration**”); and due notice of the Sale Motion, the Bidding Procedures Scheduling Order, the Supplemental Scheduling Order and Sale Hearing having been given to all parties entitled thereto; and upon all of the objections to the Motion;

NOW THEREFORE, upon the entire record of the hearings held on May 31, 2013, June 25, 2013 and August 2, 2013 and these cases, including, without limitation, all evidence admitted at the Sale Hearing, including the Ingber Declaration; and after due deliberation thereon and good cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Jurisdiction and Venue**. The Court has subject matter jurisdiction over the Sale Motion and the relief request therein pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(A) and (N). Venue of this case and the Sale Motion in this district is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Notice**. Proper, timely, adequate and sufficient notice of the Sale Motion and the relief requested therein, the Sale Hearing, the Sale, the Break-Up Fee, Expense

Reimbursement² and related transactions collectively described in the Purchase Agreement (all such transactions being collectively referred to as the “**Sale Transaction**”), has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9007 and in compliance with the Bidding Procedures Scheduling Order and the Supplemental Scheduling Order, to all Notice Parties and Scheduled and Filed Creditors being all of the interested persons and entities required to receive notice, as evidenced by the Affidavit of Service filed with the Court. Such notice was good and sufficient, and appropriate under the particular circumstances.

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

D. Private Sale is Appropriate. The private sale of the Acquired Assets pursuant to the Purchase Agreement is authorized pursuant to section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004(f). A private sale of the Acquired Assets represents the sound business judgment of the Debtors and is appropriate in light of the facts and circumstances surrounding the Sale Transaction and the Debtors’ chapter 11 cases because (1) 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, (2) the pool of potential acquirers was extremely limited, given the not-for-profit hospital structure in New York, DOH’s current preference that a strategic partner be licensed under Article 28 of the New York State Public Health Law as an “active parent” (*i.e.* having direct authority over management, financial and operational matters of an affiliated hospital), and the

² The Break-Up Fee and Expense Reimbursement have been redefined in the Purchase Agreement as a “Termination Fee”.

limited number of potential hospitals or health system partners with the financial ability to enter into a transaction like the contemplated Sale Transaction, and (3) the terms of the private sale, including \$4.75 million in additional consideration over the initial purchase price, were negotiated at arm's length with both the Buyer and the Creditors' Committee, which supports the private sale transaction.

E. Corporate Authority. The Debtors have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and to consummate the transactions contemplated in connection therewith.

F. Business Justification. The Debtors have articulated good, sufficient, and sound business reasons for consummating the Purchase Agreement, and the sale of the Acquired Assets outside a plan of reorganization, and it is a reasonable exercise of the Debtors' business judgment to consummate the transactions contemplated by the Purchase Agreement.

G. Best Interests. Approval of the Purchase Agreement and the consummation of the Sale Transaction is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

H. Highest or Otherwise Best. The Buyer's bid for the purchase of the Acquired Assets, as set forth in the Purchase Agreement, is (i) fair and reasonable, and (ii) the highest or otherwise best offer received for the Acquired Assets.

I. Arm's Length Transaction. The Purchase Agreement was negotiated, proposed and entered into by the Debtors and the Buyer without collusion, in good faith and from arm's-length bargaining positions. The Buyer is not an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Neither the Debtors, nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided

under Bankruptcy Code section 363(n). Specifically, the Buyer has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement with unrelated third parties.

J. Free and Clear. The Debtors have complied with 11 U.S.C. § 363(f) because one or more of the standards set forth in section 363(f)(1)-(5) has been satisfied with regard to each such lien, claim, interest, or other encumbrance. Those non-Debtor parties with liens, claims or other encumbrances in or with respect to the Acquired Assets who did not file a timely objection, or who withdrew such objections, are deemed to have consented to the sale of the Acquired Assets free and clear of those non-Debtor parties' interests in the Acquired Assets pursuant to section 363(f)(2) of the Bankruptcy Code. Except as provided in the Purchase Agreement, and with the exception of the Excluded Assets³, the transfer of the Acquired Assets will be a legal, valid, and effective transfer of the Acquired Assets, and will vest the Buyer with all right, title, and interest of the Debtors in and to the Acquired Assets, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, free and clear of all liens, claims, interests, obligations, rights and encumbrances, except as otherwise specifically provided in the Purchase Agreement. Buyer is not taking assignment of any contracts unless specifically identified in the Purchase Agreement, which contracts shall be designated by the Buyers no later than sixty (60) days prior to the Closing. Therefore, except as specifically provided in the Purchase Agreement, and consistent with section 363(f) of the Bankruptcy Code, the Buyer shall have no liability for any claims arising out of or related to the Sale or transfer of the Acquired Assets or arising from claims against the Debtors or their estates or any liabilities or obligations of the Debtors and/or

³ For avoidance of doubt, the Excluded Assets shall include that certain Da Vinci SI (single console) surgical system with skills simulator, including all software, accessories and attachments relating thereto, leased and/or financed by the Debtors from De Lage Landen Financial Services, Inc. (the "Da Vinci SI System"). Thus, the Buyer shall have no purchase rights with respect to the Da Vinci SI System.

their estates, under the laws of the United States, any state, territory, or possession thereof, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. Except as specifically provided in the Purchase Agreement, all persons and entities asserting or holding any claims or interests in or with respect to the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such claims or interests against the Buyer.⁴

K. Avoidance of Successor Liability. Except as otherwise set forth in the Purchase Agreement, the transfer of the Acquired Assets to the Buyer will not subject the Buyer to any liability for any claims against the Debtors or the Acquired Assets existing as of the closing of the Sale by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, ERISA, successor, transferee or vicarious liability; provided however, that nothing in this paragraph shall be construed as limiting any party's rights to assert a claim against the Debtors, the Debtors' estates or proceeds of the Sale unless the liability for such claim was assumed by Buyer. Notwithstanding the foregoing, nothing in this Order or the Purchase Agreement releases, nullifies or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery or injunctive relief) that any entity would be subject to as the owner, lessor, lessee or operator of the property after the date of entry of this Order. Nothing contained in this Order or in the Purchase

⁴ Nothing in this Order shall affect DASNY's rights and/or claims against Buyer under the Debtors' Final DIP Financing Order or any other agreements entered into between DASNY and Buyer relative to the Debtors' DIP Term Loan agreement.

Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. Nothing in this Order shall be construed as authorizing the sale or transfer of Debtors' Medicare provider numbers and related provider agreements, free and clear of any liability or continuing obligations to the United States. The Debtors, Buyer, the U.S. Department of Health and Human Services, and the U.S. Attorney's Office for the Southern District of New York will separately address the issue of the liability of the Buyer to the United States with respect to Debtors' Medicare provider numbers and related provider agreements in the event the Medicare provider agreements are among the Assigned Contracts identified in Schedule 2.1(d) of the Purchase Agreement. Notwithstanding anything to the contrary contained herein, nothing in this Order shall be interpreted to deem the Buyer as the successor to the Debtors under any state law or federal law successor liability doctrine with respect to any liabilities under environmental laws or regulations for penalties for days of violation prior to Closing or liable for liability or obligation of the Debtors. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

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

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

General Provisions

1. Findings of Fact; Conclusions of Law. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusion of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a

conclusion of law, it shall be so deemed and deemed so ordered, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed and deemed so ordered.

2. Objections. Subject to the provisions of Footnote 5 in Paragraph 3 hereof, all objections, if any, to the Sale Motion or the relief granted herein that have not been withdrawn, settled or waived, and all reservations of rights included in such objections, are hereby overruled on the merits with prejudice; provided however, that the rights of all counterparties to executory contracts and/or unexpired leases to object to any proposed assumption and assignment of such party's lease and/or contract shall be preserved pending the filing of the Assumption Schedule.

3. Sale Approval. The Sale, and all of the terms and conditions and transactions contemplated by the Purchase Agreement are hereby authorized and approved pursuant to, inter alia, sections 105(a), 363(b) and 365(a) of the Bankruptcy Code. The Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to consummate the Sale Transaction pursuant to and in accordance with the terms and conditions of the Purchase Agreement. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and effectuate the provisions of this Order and the transactions approved hereby. Nothing herein or in the Purchase Agreement shall affect obligations, if any, between MMC or its affiliates and the 1199 SEIU United Healthcare Workers, East or the New York State Nurses Association under the parties' respective collective bargaining agreements.⁵

⁵ 1199 SEIU United Healthcare Workers, East (“1199”) and the New York State Nurses Association (“NYSNA”) have raised issues regarding the interplay between their collective bargaining agreements and the private Sale. The

4. Surrender of Assets and Real Property. All entities who are presently, or who as of the Closing may be, in possession of some or all of the Acquired Assets hereby are directed to surrender possession of the Acquired Assets to the Buyer as of the Closing.

5. Assumption and Assignment of Assigned Contracts. Subject to: (i) the assignment procedures (the "Assignment Procedures") approved in the Supplemental Scheduling Order; and (ii) the rights of all counterparties to object to any proposed assumption and adjustment of such party's lease or contract consistent with such Assignment Procedures, pursuant to Bankruptcy Code sections 365(b), (c) and (f), the Debtors are authorized to assume and assign the Assigned Contracts designated for assignment to the Purchaser pursuant to the Purchase Agreement, provided, however, that there shall be no assumption of any such contract absent simultaneous assignment thereof to the Buyer. The Buyer shall be deemed to be substituted for the Debtors as a party to each of the Assigned Contracts, and pursuant to Bankruptcy Code section 365(k), the Debtors and their estate shall be relieved from any liability for any post-Closing breach of any such Assigned Contract after assignment of such Assigned Contract to the Buyer. In accordance with Bankruptcy Code sections 365(b)(2) and (f), upon transfer of the Assigned Contracts to the Buyer, (i) the Buyer shall have all of the rights of the Debtors thereunder, free and clear of all Liens, except as otherwise provided in the Purchase Agreement, and each provision of such Assigned Contracts shall remain in full force and effect for the benefit of the Buyer notwithstanding any provision in any such contract, lease, or in applicable law that prohibits, restricts or limits in any way such assignment or transfer, and (ii)

Debtors, Buyer, 1199 and NYSNA are engaged in ongoing discussions to resolve both 1199's and NYSNA's concerns in this regard. As a result, the Debtors have agreed to extend the time for NYSNA and 1199 to object to the Sale pursuant to a briefing schedule agreed to by and among the parties. In the event the parties are unable to reach a consensual resolution on the matter, a hearing will be held with respect to those objections on September 4, 2013 at 10:00 a.m. with all related pleadings to be filed with the court on or before August 28, 2013. It shall be a condition precedent to the effectiveness of this order that NYSNA's and 1199's concerns and/or objections are either consensually resolved, in which case counsel for the Debtors shall submit a certification of counsel regarding same, or are determined by further order of this Court.

none of the Assigned Contracts may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto as a result of the consummation of the transactions contemplated by the Purchase Agreement. Any non-Debtor party that fails to timely object to the proposed assumption and assignment of an Assigned Contract shall be deemed to have consented to its assumption and assignment as proposed, and the assumption and assignment of such Assigned Contract shall be deemed approved. Nothing contained in this Order however, shall be determinative of any issues raised by any counterparty to any contract or lease in a timely filed objection to assumption or assignment under the Assignment Procedures (an “**Assignment Objection**”).⁶

6. Subject to applicable provisions of section 365 of the Bankruptcy Code and the terms hereof with respect to Cure Amounts, including the Assignment Procedures, all defaults or other obligations of the Debtors under the Assigned Contracts arising or accruing prior to the Closing shall have been cured or shall be promptly cured in accordance with the terms hereof, and Buyer shall have no liability or obligations with respect to any default or obligations arising or accruing under any Assigned Contract prior to the Closing, except to the extent expressly provided in the Purchase Agreement.

7. There shall be no rent accelerations, assignment fees, increases or any other fees charged or chargeable to the Buyer as a result of the assumption, assignment and sale

⁶ All objections or responses filed with respect to the Sale Motion which raise issues relative to the assumption and assignment of any such parties' contract or lease rights shall be deemed, for purposes of this Sale Order, an Assignment Objection and shall be heard and determined under the Assignment Procedures, and all of the Debtors' rights and defenses with respect thereto are reserved. GE Healthcare's Reservation of Rights Regarding the Debtors' Motion to Approve the sale of Substantially all of the Debtors' Real Property and Designated Personal Property Acquired Assets" [Docket No. 209], shall also be deemed to be an objection to (i) any transfer to the Buyer, by assumption and assignment or otherwise, of GE Healthcare's property rights or ownership interests, if any, in or with respect to, any of the Acquired Assets purchased or leased from GE Healthcare (the "GE Assets"), including, but not limited to, non-exclusive licenses of software, embedded information technology and other intellectual property that are part of the GE Assets, and (ii) the waiver of any confidentiality provisions contained in the GE Agreements (as defined in the GE Reservation of Rights). The Debtors reserve all rights and defenses with respect to these and any other claims and objections as may be asserted by GE Healthcare.

of the Assigned Contracts. Any provision in any Assigned Contract that prohibits or conditions the assignment of such contract or lease, or allows the counterparty to such contract or lease to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such contract or lease, constitutes an unenforceable anti-assignment provision, and is void and of no force and effect. The validity of the assumption, assignment and sale of the Assigned Contracts to the Buyer shall not be affected by any existing dispute between the Debtors and any counterparty to an Assigned Contract. Any party that may have had the right to consent to the assignment of its Assigned Contract is deemed and determined to have consented to the assignment for the purposes of Bankruptcy Code section (e)(2)(A)(ii).

8. Adequate Assurance. The requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code of the Bankruptcy Code are satisfied with respect to the Assigned Contracts (subject to the Assignment Procedures approved in the Supplemental Scheduling Order and cure procedures set forth herein) based on Buyer's evidence of its financial condition and wherewithal presented at the Sale Hearing and without any other or further action by Buyer, including, but not limited to, any other or further deposit.

9. Payment of Undisputed Cure Amounts. On or as promptly after the Closing as practical, the Cure Amounts to which no objections have been filed, or to which the Debtors and applicable non-debtor contract counterparty have agreed as to the allowed Cure Amount(s), shall be paid, subject to the review and objection rights of the Creditors' Committee set forth in paragraph 11 of the Supplemental Scheduling Order and section 2.5 of the Purchase Agreement.

10. Disputed Cure Amounts. A further hearing shall be scheduled by the Court, if necessary, to consider any unresolved objections to the Cure Amounts set forth in the pursuant to Bankruptcy Code section 365 and the Assignment Procedures. With respect to Cure Amounts to which objections have been raised and not resolved, such Cure Amounts shall be paid by the Debtors within the later of (i) five business days after the Closing or (ii) five business days after entry of a final, non-appealable Order fixing the Cure Amounts.

11. Cure Payments. The Debtors' and/or Buyer's payment of the undisputed Cure Amounts or payment of allowed Cure Amounts following resolution by the parties or determination by the Court of any disputed Cure Amounts shall be deemed to discharge all obligations of the Debtors: (i) to cure any defaults under the Assigned Contracts; and (ii) compensate, or provide adequate assurance that the Buyer or the Debtors, as applicable, will promptly compensate, any non-debtor party to the Assigned Contracts for any actual pecuniary loss resulting from any default under the Assigned Contracts. Pursuant to Bankruptcy Code section 365(k), upon the assumption and assignment of each Assigned Contract, the Debtors shall have no liabilities for any claims arising or relating to or accruing post-Closing under any of the Assigned Contracts.

12. Rejection of Contracts and Leases. Pursuant to section 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing and each counterparty's right to object to such rejection for a period of fifteen (15) days following notice of the rejection, the contracts and leases (the "**Rejected Contracts**") set forth on a schedule to be filed with the Court, which may be filed, and subsequently amended, at any time prior to ten (10) days before the Closing, are rejected as of the Closing. The Debtors shall serve this Order and the schedule of Rejected Contracts on all counterparties to the Rejected Contracts simultaneously with the

filing of the schedule. To the extent any party objects and such objection is denied or overruled, the contract or lease at issue shall be deemed rejected as of Closing. The Debtors may amend the schedule of Rejected Contracts through the Closing.

13. Buyer shall provide reasonable access to the Debtors and any counterparty to a Rejected Contract for the purpose of returning to such counterparty any and all equipment or other items subject to a Rejected Contract.

14. Retention of Rights by Allscripts. This Order is without prejudice to the right of Allscripts Healthcare, LLC (“Allscripts”) to bring a motion, file an objection or initiate a proceeding to enforce its legal and equitable rights and remedies under its contract with Sound Shore Health System, Inc., the Bankruptcy Code or otherwise applicable law, and nothing contained in this Order shall be deemed to affect, impair, or otherwise limit any such rights or remedies. Allscripts expressly reserves the right to argue that with regard to Section 2.1(f) of the Purchase Agreement, that the Debtors shall bear sole responsibility for any determination regarding which medical records constitute Acquired Assets under the terms of the Purchase Agreement. The Debtors reserve all rights and defenses with respect to this and any other claims and objections as may be asserted by Allscripts. The parties agree that such issue will need to be resolved prior to any closing of the Sale, and Allscripts reserves the right to seek an expedited determination of such issue if necessary.

15. CON Approval. In the event DOH has disapproved or indicated that it will disapprove the CON Application after ninety (90) days following the entry of this Order by the Bankruptcy Court, then, upon twenty (20) Business Days’ notice to the other party, either the Debtors or Buyer may terminate the Purchase Agreement in accordance with Article 13.1(d)(iii)

of the Purchase Agreement; provided however, that in each case no such termination shall be permitted if within such twenty (20) Business Day period, DOH approves the CON Application.

16. Retention of Rights By the Government. Nothing in this Order or in the Purchase Agreement (i) releases, nullifies, precludes or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations (including but not limited to environmental laws or regulations), and any associated liabilities for penalties, damages, cost recovery, or injunctive relief that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order; or (ii) should be construed to give Buyer any more protection against any government unit than it is otherwise entitled to under section 363(f) of the Bankruptcy Code. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law. Nothing contained in this Order or Purchase Agreement shall in any way diminish the obligation of any entity, including the Debtors, to comply with environmental laws. Nothing in this Order or the Purchase Agreement authorizes the transfer to the Buyer of any licenses, permits, registrations, or governmental authorizations and approvals without the Buyer's compliance with all applicable legal requirements under non-bankruptcy law governing such transfers.

Additional Provisions

17. Additional Documents. Prior to or upon the Closing of the Sale Transaction, the Debtors' creditors are directed to execute such documents and take all other actions as may be necessary to release their interests, if any, in the Acquired Assets as such interests, liens, claims and/or other encumbrances may have been recorded or may otherwise exist.

18. Financing Statements. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing interests with respect to the Debtors and/or the Acquired Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors, the Acquired Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and (b) Buyer and/or the Debtors are hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all interests and liens in, against or with respect to the Debtors and/or the Acquired Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, and local governmental agency, department, or office.

19. Modifications. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment or supplement does not (i) materially change the terms of the Purchase Agreement, (ii) modify the express terms of this Order, and (iii) have a material adverse effect on the Debtors' estates, and Debtors shall provide reasonable advance notice of any such modification to counsel for the Creditors' Committee, counsel for the DIP Lender and the Office of the United States Trustee.

20. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court to allow the Buyer to (i) give the Debtors any notice provided for in the Purchase Agreement, and (ii) take any and all actions permitted by the Purchase Agreement and ancillary agreements in accordance with the terms and conditions thereof.

21. Recording. Each and every federal, state, and local governmental agency, recording office or department and all other parties, persons or entities is hereby directed to accept this Order and any and all documents and instruments necessary and appropriate for recordation as conclusive evidence of the free and clear and unencumbered transfer of title to the Acquired Assets conveyed to the Buyer.

22. Successors, Assigns. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, the Buyer, and any of such parties' respective affiliates, designees, successors, and assigns, and shall be binding in all respects upon all of the Debtors' creditors, all prospective and actual bidders for some or all of the Acquired Assets, and all persons and entities receiving notice of the Sale Motion, the Auction and/or the Sale Hearing notwithstanding any subsequent appointment of any trustee(s), examiner(s), or receiver(s) under any Chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, or any trustee(s), examiner(s), or receiver(s).

23. Non-Severability/Failure to Specify. The provisions of this Order are non-severable and mutually dependent. The failure specifically to include any particular provision of

the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

24. Challenge Rights with Respect to Assumed Secured Debts. To the extent the Debtors or the Creditors' Committee successfully challenge any of the secured debts to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, or any portions thereof, the Buyer shall not assume such successfully challenged secured debts and shall instead pay a corresponding amount of cash as part of the Purchase Price. In the event that there is a pending challenge (adversary proceeding or claim objection) as of the Closing Date to all or a part of a secured debt to be assumed by the Buyer pursuant to section 2.3(a)(ii) of the Purchase Agreement, the determination of whether the Buyer assumes such challenged secured debt or instead pays a corresponding amount of cash as part of the Purchase Price shall await the outcome of the challenge.

25. Order Immediately Effective. Subject to the provisions of Footnote 5 in Paragraph 3 hereof, as provided by Bankruptcy Rules 6004(h), 6006(d) and 7062, this Order shall be effective and enforceable immediately upon its entry, and the sale approved by this Order may close immediately upon entry of this Order, notwithstanding any otherwise applicable waiting periods.

26. Retention of Jurisdiction. This Court retains jurisdiction on all matters pertaining to the relief granted herein, including to interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all

respects.

Dated: August 8, 2013
White Plains, New York

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE