IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GULF COAST HEALTH CARE, LLC, *et al.*,[1]	Case No. 21-11336 (KBO)
Debtors.	Jointly Administered
	Proposed Obj. Deadline: 11/17/21 at 4:00 p.m. (ET) **Proposed Hrg. Date: 11/23/21 at 10:00 a.m. (ET)**

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING TRANSFER OF THE MANAGEMENT, OPERATIONS, AND RELATED ASSETS OF THE OMEGA FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) APPROVING PROCEDURES FOR THE DEBTORS' FUTURE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (III) APPROVING REJECTION AND TERMINATION OF THE MASTER LEASE, AND THE ALLOWANCE OF THE OMEGA REJECTION DAMAGES CLAIM IN CONNECTION THEREWITH; (IV) APPROVING FORM OF MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT; AND (V) GRANTING RELATED RELIEF

Gulf Coast Health Care, LLC ("**Gulf Coast**") and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), hereby move (the "**Motion**") for entry of an order substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**"), granting the relief requested below. In support thereof, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. The Debtors are leaders among skilled nursing facility operators in the Southeastern United States and provide short-term rehabilitation, comprehensive post-acute

[1] The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/GulfCoastHealthCare. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

skilled care, long-term care, assisted living, and therapy services in each of their 28 facilities (collectively, the "**Facilities**" and, each, a "**Facility**") and have earned a reputation for excellence in resident care. The Debtors do not own the underlying real property at the Facilities, but rather lease the Facilities from two primary landlords: (i) 24 Facilities (the "**Omega Facilities**") are leased from certain affiliates and subsidiaries of Omega Healthcare Investors, Inc. ("**Omega**" and, collectively, the "**Omega Landlords**");[2] and (ii) four Facilities (the "**Blue Mountain Facilities**") are leased from certain affiliates and subsidiaries of Eagle Arc Partners LLC (f/k/a Blue Mountain Holdings) ("**Blue Mountain**" and, collectively, the "**Blue Mountain Landlords)**.[3]

2. Over the last year and a half, the Debtors have faced significant fiscal challenges emanating from the unprecedented and still ongoing COVID-19 pandemic, as they grappled with caring for their residents and maintaining sufficient operational liquidity amidst constantly changing conditions. Among other things, the Debtors, as a result of COVID-19, have experienced decreased resident occupancy levels, crippling staffing and employee retention issues, and increased operating expenses associated with personal protective equipment, labor pressures, and other associated costs, all of which have impacted the healthcare sector generally and operators of skilled nursing facilities in particular. As a result, by June 2021, the Debtors were unable to continue payment of rent to the Omega Landlords.

3. Following months of financial and operational analysis with their restructuring advisors, as well as an accelerated period of intense, confidential restructuring negotiations in the

[2] In October 2018, one of the Omega Facilities, Panama City Health and Rehabilitation Center (the "**Panama City Facility**"), sustained significant damage from Hurricane Michael. Hurricane repairs are nearly complete on the Panama City Facility, which will allow it to reopen in 2022.

[3] Although the Debtors remain in ongoing dialogue with Blue Mountain regarding a consensual transition of the Blue Mountain Facilities, the Motion relates solely to the Omega Facilities.

weeks leading up to the Petition Date with certain of the Debtors' key stakeholders, including the Omega Landlords and the Debtors' senior secured lender, New Ark Capital, LLC ("**New Ark**"), the Debtors reached agreement on a Restructuring Support Agreement (the "**RSA**"), by and among the Debtors, OHI Asset Funding (DE), LLC (the "**DIP Lender**"), the Omega Landlords (together with the DIP Lender, the "**Omega Entities**"), New Ark, direct and indirect equity holders of the Debtors (the "**Equity Sponsors**"), and certain affiliated entities that provide services to the Debtors (the "**Service Providers**" and, collectively with the Debtors, the Omega Entities, New Ark, and the Equity Sponsors, the "**RSA Parties**").[4] In the Debtors' view, the restructuring transactions memorialized in the RSA represent not only the best but the only available and viable option to an effective restructuring, which can be implemented quickly to minimize administrative costs and which will safeguard the health and safety of the Debtors' residents. At the same time, these transactions also provide a means for a controlled and orderly winddown of the Debtors' operations and a mechanism to provide recoveries to unsecured creditors—stakeholders that would not be entitled to any recovery absent the agreements among the RSA Parties set forth in the RSA.

4. Because of the substantial operating shortfalls at the Debtors' Facilities and the need to prioritize resident care, the Debtors must transition the Omega Facilities as expeditiously as possible. In order to implement this transition quickly, in light of the various regulatory waiting periods for licensure, the Debtors and the Omega Landlords have identified NSPRMC II, LLC, to serve as an interim manager (the "**New Manager**") under certain Management and Operations Transfer Agreements (collectively, the "**MOTA**"), an agreed form of which is

[4] The Debtors previously filed a motion seeking the Court's approval of the Debtors' assumption of the RSA. *See Motion of Debtors for Entry of Order Approving Assumption of Restructuring Support Agreement* [Docket No. 107].

attached to the Proposed Order as Exhibit 2. New Manager will then either (i) elect to become the new operator for some or all of the Omega Facilities or (ii) select one or more new, licensed operators (collectively, "**New Operator**")[5] and subsequently assign the MOTA to New Operator on the date that New Operator has obtained all requisite approval and licenses to operate the applicable Facility (the "**License Transfer Date**").[6] Under the MOTA, the operating expenses of the Omega Facilities will no longer be borne by the Debtors as of December 1, 2021 (the anticipated "Management Transfer Date," as defined below) but rather by New Manager, which will allow the Debtors to focus their efforts on reaching a similar resolution with the Blue Mountain Landlords, and otherwise winding down their affairs through the Plan (as defined herein).

5. Over the past few weeks, the Debtors and their professionals have worked tirelessly to negotiate the terms of the MOTA with New Manager, which both offloads substantial operating shortfalls and liabilities and ensures ongoing funding for the Omega Facilities as well as continued care for the residents of each Omega Facility. Resolution of the financial issues plaguing the Debtors, in part through the transfer of operations through the MOTA, is in the best interests of the Debtors' stakeholders, including the elderly and frail residents who rely upon the care provided by the Debtors. As the only viable alternative available to the Debtors, entering into the MOTA, subject to Court approval, is the only way for the Debtors to ensure that the critical and life-sustaining care that the Debtors provide their

[5] For the avoidance of doubt, "New Operator" refers to (i) New Manager, with respect to Omega Facilities for which New Manager elects to serve as operator on a going-forward basis; and (ii) new licensed operators designated by New Manager, with respect to Omega Facilities for which New Manager does not elect to serve as operator on a going-forward basis.

[6] Because the Panama City Facility is not currently operational, New Manager will not be required to assume operations at such facility prior to the License Transfer Date. Rather, the Existing Operator for such facility may transfer the Assets and provider numbers and agreements associated with such facility to New Operator on the License Transfer Date.

residents continues without interruption. Without the MOTA, the Debtors will lose access to their DIP Financing (which is funding the vast majority of the Debtors' operational losses until the Management Transfer Date) and will be unable to provide the enhanced recoveries to general unsecured creditors provided for under the RSA. Accordingly, the Debtors request that the Court (i) authorize the Debtors to transfer the Omega Facilities and related assets through the transactions contemplated by the MOTA, (ii) authorize the Debtors to take all actions reasonably necessary or desirable to implement the transactions, including rejecting and terminating the Master Lease (as defined herein) and assuming and assigning the Assumed Contracts pursuant to procedures approved by the Court, and (iii) approve the MOTA substantially in the agreed form attached as Exhibit 2 to the Proposed Order.

6. The Debtors believe that the value of the Assets (as defined below) being transferred under the MOTA is *de minimis*, due to the fact that substantially all of the personal property utilized in the day-to-day operations of the Omega Facilities does not actually belong to the Debtors. The *de minimus* value pales in comparison to the value that the Debtors' estates will receive through the RSA, the DIP Financing, and the assumption of significant repayment obligations that the Debtors currently owe under the Medicare Accelerated and Advance Payment Program[7] (*i.e.*, the MAAP Liabilities, as discussed below), which will become an obligation of New Operator following the License Transfer Date. The Debtors' only valuable assets—accounts receivable generated prior to the Management Transfer Date—will be retained

[7] As reflected in that certain Stipulation by and among the United States of America and the Debtors dated November 1, 2021 (the "**CMS Stipulation**") attached to the *Certification of Counsel Regarding Order Approving Stipulation Between the Debtors and the United States of America* [Docket No. 151], certain of the Debtors owe approximately $9.3 million under the Medicare Accelerated and Advance Payment Program to the Centers for Medicare & Medicaid Services ("**CMS**").

as excluded assets under the MOTA and will be collected by the Debtors in the ordinary course of business.

JURISDICTION AND VENUE

7. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

8. The legal predicates for the relief requested herein are sections 105, 363, and 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

9. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

RELIEF REQUESTED

10. By the Motion, the Debtors seek entry of the Proposed Order (i) authorizing the transfer of the management, operations, and assets of the Omega Facilities identified on Exhibit 1 to the Proposed Order from certain Debtors (the "**Existing Operators**") to New Manager or New Operator, as applicable, pursuant to the MOTA, free and clear of all claims and encumbrances, except as specified in the MOTA (the "**Transfer Transaction**"); (ii) approving the Assumption and Assignment Procedures (as defined and detailed herein) related to the

Debtors' future assumption and assignment of certain executory contracts and unexpired leases (collectively, the "**Assumed Contracts**"); (iii) approving the Debtors' rejection and termination of the Master Lease (as defined herein) associated with the Omega Facilities on the License Transfer Date, effective *nunc pro tunc* to the Petition Date, and allowing a rejection damages claim by the Omega Landlords in the aggregate amount of $35,904,343 in connection therewith; (iv) approving the MOTA by and between the Existing Operators and New Manager, substantially in the agreed form attached as Exhibit 2 to the Proposed Order; and (v) granting related relief.

BACKGROUND

I. The Chapter 11 Cases

11. On October 14, 2021 (the "**Petition Date**"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Chapter 11 Cases are being jointly administered.

12. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

13. On October 25, 2021, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an Official Committee of Unsecured Creditors in the Chapter 11 Cases (the "**Committee**") pursuant to Bankruptcy Code section 1102(a) [Docket No. 111]. No trustee or examiner has been appointed in the Chapter 11 Cases.

14. Additional information regarding the Debtors and the Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of the Chapter 11 Cases, is set forth in the *Declaration of M. Benjamin Jones in*

Support of Chapter 11 Petitions and First Day Pleadings [Docket No. 16] (the "**First Day Declaration**").[8]

15. On October 28, 2021, the Debtors filed their *Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 124] (as subsequently amended, supplemented, or modified, the "**Plan**") and *Disclosure Statement with Respect to the Debtors' Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code* [Docket No. 129] (as subsequently amended, supplemented, or modified, the "**Disclosure Statement**"), along with the *Motion of Debtors for Entry of Order (A) Approving Disclosure Statement; (B) Scheduling Hearing on Confirmation of Plan; (C) Establishing Deadlines and Procedures for (I) Filing Objections to Confirmation of Plan, (II) Claim Objections, and (III) Temporary Allowance of Claims for Voting Purposes; (D) Determining Treatment of Certain Unliquidated, Contingent, or Disputed Claims for Notice, Voting, and Distribution Purposes; (E) Setting Record Date; (F) Approving (I) Solicitation Packages and Procedures for Distribution, (II) Form of Notice of Hearing on Confirmation and Related Matters, and (III) Forms of Ballots; (G) Establishing Voting Deadline and Procedures for Tabulation of Votes; and (H) Granting Related Relief* [Docket No. 144] (the "**Solicitation Procedures Motion**").

II. The Master Lease and RSA

16. On July 1, 2013, Debtor Gulf Coast Master Tenant I, LLC and the Omega Landlords entered into that certain Second Consolidated Amended and Restated Master Lease Agreement (as subsequently amended, modified, or supplemented, the "**Master Lease**"). As a result of various operational issues and liquidity constraints exacerbated by the ongoing COVID-

[8] Capitalized terms used but not otherwise defined in the Motion shall have the meanings ascribed to them in the First Day Declaration.

19 pandemic, the Existing Operators were unable to fulfill certain of their obligations arising under the Master Lease, including, among other things, payment of rent to the Omega Landlords.

17. As discussed more fully in the First Day Declaration, prior to the Petition Date, the Debtors provided various proposals to the Omega Landlords regarding restructuring options to ensure sufficient funding for the Debtors' Facilities during the pendency of the Chapter 11 Cases. To that end, the Debtors and the Omega Landlords agreed on a transition process and timeline, which would allow the financial burdens of the Omega Facilities to be assumed by an interim manager during the regulatory waiting periods, and would allow the Omega Facilities to be transitioned to new licensed operators. To that end, the Debtors and the Omega Landlords, along with New Ark, the Service Providers, and the Equity Sponsors executed the RSA, which reflects a global resolution of the claims of the Omega Landlords and New Ark and contemplates the transition of the Omega Facilities to be implemented through the MOTA. Pursuant to the RSA, the Omega Entities agreed to provide the Debtors with the DIP Financing, which will be unavailable to the Debtors if the Debtors are unable to effectuate a Court-approved MOTA by December 1, 2021.

A. The MOTA

18. As discussed above, over the past few weeks, the Debtors have negotiated extensively with New Manager to finalize the terms of the MOTA, and, as of the date hereof, New Manager has agreed to the form of the MOTA for each Facility, the effectiveness of which is subject to Court approval. Accordingly, the Debtors respectfully request that the Court approve the MOTA substantially in the agreed form attached to the Proposed Order as Exhibit 2.

19. The terms of the MOTA provide, among other things, as follows:

(a) on the Management Transfer Date, the Existing Operators will transfer certain assets, including all Accounts Receivable, Third-Party Payor

funds, and other amounts due solely with respect to the period after the Management Transfer Date and Inventory (as defined below) (collectively, the "**Manager Assets**"), to New Manager;

(b) on the License Transfer Date, the Existing Operators will transfer certain assets necessary for the operation of the Omega Facilities to New Operator (collectively, the "**Operator Assets**" and, together with the Manager Assets, the "**Assets**");

(c) the Existing Operators will permit New Operator to continue to use Existing Operators' provider numbers and agreements until the change of ownership process is complete and New Operator obtains its own provider numbers;

(d) the "**Management Transfer Date**" under the MOTA will occur on or prior to December 1, 2021, subject to Court approval, and the date that New Operator has received approval of each and every governmental authority needed to operate the Facility in its own name is the License Transfer Date;

(e) upon the License Transfer Date, New Operator will offer immediate employment at each of the Omega Facilities to such number of the Omega Facilities' employees at wages and benefits necessary to avoid the applicability of the WARN Act;

(f) any utility and similar service charges, real estate and/or ad valorem taxes, personal property taxes, assessments and fees attributable to the Omega Facilities, and any other items of revenue or expense attributable to the Omega Facilities will be prorated between the Existing Operators and New Operator as of the License Transfer Date;

(g) New Manager will manage the operations of the Omega Facilities from the Management Transfer Date until the License Transfer Date;

(h) the Existing Operators will receive all accounts receivable accrued prior to the Management Transfer Date (the "**Pre-Closing Accounts Receivable**"), New Manager will receive all accounts receivable accrued during the Management Period (the "**Management Period Accounts Receivable**"), and New Operator will receive all accounts receivable accrued on and after the License Transfer Date (the "**Post-Transfer Accounts Receivable**" and, collectively with the Pre-Closing Accounts Receivable and the Management Period Accounts Receivable, the "**Accounts Receivable**").

(i) on the License Transfer Date, subject to Court approval, the Debtors will assume and assign the Assumed Contracts related to operation of the Omega Facilities to New Operator;

(j) New Operator will expressly assume all of the Existing Operators' obligations under the Assumed Contracts with respect to events or periods on or after the License Transfer Date, including any and all liabilities, as the successor to Existing Operators, related to the funds that the Existing Operators previously received pursuant to the Medicare Accelerated and Advance Payment Program that remain unpaid as of the License Transfer Date, including without limitation, all outstanding repayments or recoupments owing to CMS under applicable law (collectively, the "**MAAP Liabilities**"); and

(k) upon the License Transfer Date, the Debtors will terminate and reject the Master Lease associated with the Omega Facilities, effective *nunc pro tunc* to the Petition Date, and will allow the Omega Landlords a rejection damages claim in the aggregate amount of $35,904,343, which is the claim amount as capped under Bankruptcy Code section 502(b)(6).

20. The Assets to be transferred under the MOTA specifically exclude, among other things and as reflected on Schedule 1(c) to the MOTA, (i) the Pre-Closing Accounts Receivable, which are critical to the Debtors' current operations and are needed to fund other creditor distributions under a proposed plan, and (ii) any and all causes of action, claims, or rights of avoidance or recovery of any transfers or liens under chapter 5 of the Bankruptcy Code or applicable state law. As discussed above, the Assets include the Manager Assets and Operator Assets, as follows:

Manager Assets

(a) all Accounts Receivable, reimbursements, Third-Party Payor funds, and other amounts due solely with respect to the period on and after the Management Transfer Date; and

(b) all of Existing Operators' rights, title, and interests in and to all supplies, consumables, medicines, and foodstuffs, excluding any of the foregoing items that is an excluded asset present at the Omega Facilities as of the Management Transfer Date (collectively, the "**Inventory**").

Operator Assets

(a) all Assumed Contracts (as defined in the MOTA);

(b) subject to applicable law, including, without limitation, HIPAA (as defined herein), all documents, charts, personnel records, property manuals, and resident records maintained at the Omega Facilities at any time during the five years prior to the Management Transfer Date;

(c) all transferable licenses, transferable permits, and other transferable governmental approvals;

(d) authorizations (including the certificates of need) which are used, or may be used, in connection with the Omega Facilities (including, without limitation, any authorizations to participate in any state or federal reimbursement program such as Medicaid or Medicare), whether issued or granted by any Governmental Authority or by any other Person, and all operating, license, and certification rights with respect to the Omega Facilities;

(e) all patient care contracts and admission agreements with patients and/or residents of the Omega Facilities;

(f) all Resident Trust Funds and Resident Deposits (as defined in the MOTA);

(g) any know how or intellectual property rights used or held for use in connection with the operation of the Omega Facilities and all goodwill associated with the Omega Facilities;

(h) all telephone, facsimile numbers, telephone listings, email addresses, domain names, and websites used by the Omega Facilities;

(i) all information technology and therapy equipment and related personal property that is used in the operation of the Omega Facilities that is owned by Existing Operator and not leased under an agreement that is able to be assigned to New Operator; and

(j) all transferable third-party warranties and claims for warranties relating to the Assets.

21. On the terms and subject to the conditions contained in the MOTA, on the Management Transfer Date, New Manager shall assume or otherwise be responsible for all liabilities and obligations under the Assets accruing or arising during the Management Period (as

defined in the MOTA), which will run for approximately 60-90 days, during which New Operator (which, as noted above, may be New Manager) will seek a "**Change in Ownership**" or "**CHOW**" process with the applicable regulatory bodies. On the License Transfer Date, in addition to the Assumed Liabilities, Existing Operators will transfer their Provider Agreements to New Operator and New Operator will assume liabilities associated with such agreements for any overpayments made or payments owing in connection with the MAAP Liabilities.

B. Benefit to the Debtors' Estates

22. The MOTA is in the best interest of the Debtors, as it represents the best and only viable transaction available for the transfer of the operations of the Omega Facilities, including the related Assets. The Transfer Transaction will allow the Debtors to (i) reach agreement with New Operator to assume substantial liabilities, including those associated with the applicable Provider Agreements and associated MAAP Liabilities, and (ii) avoid (a) the incurrence of significant administrative claims that would not be offset by revenue generated at the Omega Facilities, (b) significant future administrative rent obligations following the rejection and termination of the Master Lease as contemplated by the MOTA, (c) sizable potential claims from their residents if the Omega Facilities were shut down or entered into state receivership, and (d) significant unsecured claims of the Omega Landlords, including for rejection damages. Therefore, the Debtors seek approval of the MOTA for the benefit of their estates and their creditors, and, most importantly, to safeguard the health and safety of their residents.

BASIS FOR RELIEF AND APPLICABLE AUTHORITY

I. Entering Into the MOTA Represents the Exercise of Sound Business Judgment by the Debtors and Should be Approved.

23. Bankruptcy Code section 363 authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: "[t]he 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). The transfer of the Assets constitutes a "sale" within the meaning of Bankruptcy Code section 363 (including sections 363(b) and 363(f) and Bankruptcy Rule 6007). Accordingly, the Existing Operators' conveyance of their Assets to New Manager and New Operator, as applicable, in exchange for the consideration provided under the MOTA in the form of Assumed Liabilities should be deemed "free and clear" of all liens, claims, and other interests in such property as authorized under Bankruptcy Code section 363(f).

24. Courts approve proposed sales of property pursuant to Bankruptcy Code section 363 if the transaction represents the reasonable and sound business judgment of the debtor. *See, e.g., In re Dura Automotive Sys., Inc.*, Case No. 06-11202 (KJC), 2007 WL 7728109, at *92 (Bankr. D. Del. Aug. 15, 2007) ("[B]ankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor."); *In re Decora Indus., Inc.*, Case No. 00-4459 (JJF), 2002 WL 32332749, at * 2 (Bankr. D. Del. May 20, 2002) ("Generally, a debtor may sell assets outside the ordinary course of business if it has demonstrated that the sale of such assets represents the sound exercise of business judgment."); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith").

25. Similarly, bankruptcy courts have approved sales or transfers of skilled nursing facilities, like the Transfer Transaction contemplated here, following satisfaction of the same

business judgment standard. *See, e.g., In re Preferred Care Inc., et al.*, Case No. 17-4642 (MXM) (Bankr. N.D. Tex. Nov. 20, 2018) [Docket No. 1323] (approving transfer of skilled nursing facility operations in part because debtor demonstrated "sound business purpose and justification for the subject transaction"); *In re Wachusett Ventures, LLC, et al.*, Case No. 18-11053 (FJB) (Bankr. D. Mass. May 30, 2018) [Docket No. 405] (authorizing transfer of operations of skilled nursing facility in part because debtor demonstrated "good and sufficient business reasons" justifying the transaction); *In re Nexion Health at Lancaster, Inc.*, Case No. 17-34025 (HDH) (Bankr. N.D. Tex. Apr. 27, 2018) [Docket No. 219] (authorizing transfer of operators of skilled nursing facility in part because debtor exercised "sound business judgment" in evaluating the transfer transaction); *In re Bethel Healthcare, Inc.*, Case No. 1:13-BK-12220-GM, 2013 WL 2293519, at *2 (Bankr. C.D. Cal. Apr. 30, 2013) (finding sale of skilled nursing facility was "an appropriate exercise of the Debtor's business judgment" and was in the best interest of the debtor's estate).

26. If a valid business justification exists for a sale, as it does here, a debtor's 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 the Existing Operators' proposed transfer must make a showing of "bad faith, self-interest, or gross negligence." *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872–73 (Del. 1985)); *see also 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.").

27. In determining whether a proposed section 363(b)(1) sale satisfies the "business judgment standard," courts consider the following: (i) whether a sound business justification exists for the sale; (ii) whether adequate and reasonable notice of the sale was given to the interested parties; (iii) whether the price is fair and reasonable; and (iv) whether the parties have acted in good faith. *See, e.g.*, *In re Delaware & Hudson Ry. Co.*, 124 B.R. at 176; *In re Phoenix Steel Corp.*, 82 B.R. at 335–36. Here, all of the applicable factors are satisfied, as set forth below:

(a) *First*, the Debtors are entering into the MOTA after thorough consideration of all viable alternatives. In particular, the Debtors submit that the facts described above, and in the First Day Declaration, support an expeditious transfer of their Assets in order to preserve value for the estates, obtain adequate funding for the significant operational costs of the Omega Facilities, and ensure continued resident care, all of which provide a strong business justification for the transfer of the Assets to New Manager or New Operator, as applicable. The Debtors believe that the transfer of the Assets contemplated by the MOTA presents the best way to maximize value for their estates and creditors while protecting and prioritizing the health and safety of the residents of the Omega Facilities. Therefore, the Debtors believe that it is in the best interests of their estates to enter into and consummate the transactions provided for in the MOTA.

(b) *Second*, the Debtors will provide notice of the Motion as required by the Court, which constitutes adequate and reasonable notice to interested parties.[9] Additionally, the Debtors have been in contact with parties who expressed interest in the Assets and have informed these parties of the proposed Transfer Transaction. The Debtors believe that a more extended process would yield no higher or better offers for the management, operations, and Assets and would put the health and safety of their residents at risk.

(c) *Third*, the consideration to be received by the Debtors, both in the form of assumed liabilities under the MOTA, and as part of the larger transactions

[9] As detailed in the Assumption and Assignment Procedures discussed herein, the Debtors will provide notice to contract counterparties for contracts proposed to be assumed and assigned once such contracts have been identified by New Operator.

under the RSA—which includes providing recoveries for general unsecured creditors that would otherwise not be available—provides the highest possible value and provides significant benefit to the Debtors' estates.

(d) *Fourth*, the proposed transfers to New Manager and New Operator, as applicable, and terms of the MOTA were negotiated extensively between the parties. These parties acted in good faith and at arms' length.

28. For the foregoing reasons, the Debtors submit that the approval of the proposed MOTA and the transactions contemplated thereby are appropriate and warranted under Bankruptcy Code section 363.

II. The Transfer of the Assets Will Be Free and Clear of Liens, Claims, Encumbrances, and Interests.

29. Bankruptcy Code section 363(f) authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if:

(a) applicable nonbankruptcy 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). Because Bankruptcy Code section 363(f) is drafted "in the disjunctive," satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of liens and interests. *See, e.g.*, *In re Dura Automotive Sys., Inc.*, Case No. 06-11202 (KJC), 2007 WL 7728109, at *93 (Bankr. D. Del. Aug. 15, 2007); *In re Dundee Equity Corp.*, Case No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the

conditions of section 363(f) have been met."); *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (same).

30. The Court also may authorize the sale of a debtor's assets free and clear of any liens pursuant to Bankruptcy Code section 105, even if Bankruptcy Code section 363(f) did not apply. *See, e.g., In re Trans World Airlines, Inc.*, Case No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of section 363(f)."); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

31. Here, at least one of the Bankruptcy Code section 363(f) tests is satisfied with respect to the Transfer Transaction. First, and perhaps most critical, the Debtors' secured creditors, including the Omega Landlords and New Ark, already have consented to the transition of the Omega Facilities to New Manager pursuant to the RSA. The Motion, as required by the RSA, simply seeks to consummate the Transfer Transaction to which the Omega Landlords and New Ark previously consented. In addition, absent any objection to the Motion, any other secured creditors will be deemed to have consented to the relief requested herein. Accordingly, the Debtors request that the Assets be transferred to New Manager and New Operator, as applicable, free and clear of any liens, claims, encumbrances, or other interests, including, without limitation, any claims arising under doctrines of successor liability.

III. New Manager is Entitled to Protection as a Good-Faith Purchaser.

32. New Manager is acquiring the Assets in good faith and is therefore entitled to all of the protections afforded by Bankruptcy Code section 363(m). A sale to a good-faith purchaser

cannot be avoided under Bankruptcy Code section 363(m), unless the sale authorization was stayed pending appeal. *See* 11 U.S.C. § 363(m) ("The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale . . . does not affect the validity of [the] sale . . . to an entity that purchased . . . such property in good faith . . ."). However, "[t]he trustee may avoid a sale . . . if the sale price was controlled by an agreement among potential bidders . . ." *Id.* § 363(n).

33. The Debtors negotiated the MOTA at arm's-length and in good faith to achieve the best result for their estates. The Debtors submit that the MOTA will provide significant value to the bankruptcy estates because it will facilitate an efficient and orderly transfer of operations, offload substantial operating losses to New Manager, minimize any interruption in operations and displacement of residents, and avoid substantial potential claims of residents and the Omega Landlords. Moreover, New Manager is not an affiliate or insider of the Debtors or otherwise related to the Debtors, and no equity ownership or future compensation has been offered to the Debtors or any insider of the Debtors in connection with the proposed transactions. As such, New Manager is entitled to the protections of a good-faith purchaser under Bankruptcy Code section 363(m), and the MOTA does not constitute an avoidable transaction pursuant to Bankruptcy Code section 363(n).

IV. The Debtors May Enter into the MOTA or Any Other Agreements Related to or Associated with the Transfer Transaction.

34. In connection with a sale of substantially all of a debtor's assets, courts routinely approve entry into asset purchase agreements or similar agreements. *See, e.g.*, *In re Wardman Hotel Owner, LLC*, Case No. 21-10023 (JTD) (Bankr. D. Del. July 22, 2021) (approving asset purchase agreement and authorizing sale of debtor's assets outside ordinary course of business); *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) (Bankr. D. Del. Dec. 16, 2019)

(approving asset purchase agreement among debtors and buyer and approving sale of transferred assets); *In re Oklahoma ProCure Management, LLC*, Case No. 18-12622 (MFW) (Bankr. D. Del. Dec. 28, 2018) (approving asset purchase agreement between debtors and buyer and approving sale of substantially all of the debtors' assets). Such agreements are approved if they are an exercise of the debtor's sound business judgment. *See, e.g., In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) (Bankr. D. Del. Dec. 16, 2019) ("The Debtors have demonstrated good, sufficient and sound business purposes and justifications for approval of and entry into the Asset Purchase Agreement . . ."); *In re Questex Media Grp., Inc.*, Case No. 09-13423 (MFW), 2009 WL 7215690, at *9 (Bankr. D. Del. Oct. 24, 2009) ("[T]he transaction contemplated by the Asset Purchase Agreement constitutes a reasonable and sound exercise of the Debtors' business judgment, is in the best interests of the Debtors, their estates, their creditors, and other parties in interest and should be approved."); *In re Decora Indus., Inc.*, Case No. 00-4459, 2002 WL 32332377, at *5 (Bankr. D. Del. May 17, 2002) ("The Asset Purchase Agreement . . . reflects the exercise of the Debtors' sound business judgment.").

35. Indeed, operations transfer agreements and management transfer agreements are fairly customary in the skilled nursing context, and bankruptcy courts have routinely approved similar agreements. *See, e.g., In re Preferred Care Inc.*, Case No. 17-44642 (MXM) (Bankr. N.D. Tex. Nov. 20, 2018) [Docket No. 1323] (approving transfer of operations and related assets of facility free and clear of all liens, claims, encumbrances, and interests, and approving form of operations transfer agreement); *In re Senior Care Centers, LLC*, Case No. 18-33967 (BJH) (Bankr. N.D. Tex. Mar. 29, 2019) [Docket No. 777] (same); *In re 4 West Holdings, Inc.*, Case No. 18-30777 (HDH) (Bankr. N.D. Tex. May 14, 2018) [Docket No. 375] (same); *In re Wachusett Ventures, LLC, et al.*, Case No. 18-11053 (FJB) (Bankr. D. Mass. May 30, 2018)

[Docket No. 405] (same); *In re Nexion Health at Lancaster, Inc.*, Case No. 17-34025 (HDH) (Bankr. N.D. Tex. Apr. 27, 2018) [Docket No. 219] (same); *In re Bethel Healthcare, Inc.*, Case No. 1:13-BK-12220-GM, 2013 WL 2293519, at *2 (Bankr. C.D. Cal. Apr. 30, 2013) (authorizing sale of skilled nursing facility free and clear of all liens and claims pursuant to proposed asset purchase agreement).

36. In this case, the MOTA has been negotiated at arm's-length between represented and sophisticated parties. The negotiations and resolution reached reflect the Debtors' attempt to maximize the recovery and/or minimize claims against their estates. In particular, the MOTA constitutes an exercise of the Debtors' sound business judgment because it allows for the efficient transfer of the Assets of the Omega Facilities to New Manager and New Operator, as applicable, and, most importantly, the continued preservation of the health and safety of the Debtors' residents. Accordingly, the Debtors request that the Court approve the MOTA and related agreements as well as all transactions contemplated therein in order to allow the proposed transfer of the Assets to New Manager and New Operator, as applicable, to be efficiently consummated.

V. The Assumption and Assignment Procedures are Appropriate Pursuant to Bankruptcy Code Section 365.

37. Bankruptcy Code sections 365(a) and (b) authorize a debtor-in-possession, subject to court approval, to assume executory contracts or unexpired leases of the debtor. *See* 11 U.S.C. §§ 365(a)-(b). In turn, Bankruptcy Code section 365(b)(1) codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee
>
> (A) cures or provides adequate assurance that the trustee will promptly cure, such default . . .;

> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

38. In analyzing whether the assumption or rejection of an executory contract or unexpired lease pursuant to Bankruptcy Code section 365(a) should be approved, courts apply the "business-judgment" test, which requires a determination that the requested assumption or rejection will benefit the debtor's estate. *See, e.g., Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *In re Extraction Oil & Gas*, 622 B.R. 608, 614 (Bankr. D. Del. 2020); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 120–21 (Bankr. D. Del. 2001). In making this determination, courts generally will not second-guess a debtor's business judgment concerning the rejection or assumption of an executory contract, unless it is the product of "bad faith, or whim, or caprice." *In re Trans World Airlines, Inc.*, 261 B.R. at 121; *see also In re Fed. Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) ("The business judgment test dictates that a court should approve a debtor's decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion.").

39. Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with the Bankruptcy Code section 365(a), and provides adequate assurance of future performance by the assignee, "whether or not there has been a default" under the agreement. 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g.*, *In re Filene's Basement, LLC*, Case No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del.

Apr. 29, 2014) (finding that adequate assurance of future performance is present when the prospective assignee has the financial ability to perform the lease obligations going forward); *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but it should be given "practical, pragmatic construction." *Cinicola v. Scharffenberger*, 248 F.3d 110, 120 n.10 (3d Cir. 2001) (quoting *In re Carlisle Homes, Inc.*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988)); *see also* Report of the Commission on Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, 93rd Cong., 1st Sess. Pt. II 156-57 (1973) ("What constitutes . . . 'adequate assurance of future performance' must be determined by consideration of the facts of the proposed assumption.").

40. Here, as discussed above, the proposed Transfer Transaction will provide significant benefit to the Debtors and their estates. Because New Operator cannot obtain the benefits of the Transfer Transaction without the assumption and assignment of the Assumed Contracts, the assumption of the Assumed Contracts is critical to the consummation of the Transfer Transaction. Because the Assumed Contracts have yet to be identified and will be identified by New Operator prior to the License Transfer Date, the Debtors propose to implement certain procedures regarding the assumption and assignment of the Assumed Contracts (the "**Assumption and Assignment Procedures**"), which the Debtors submit are an essential component of the MOTA. The proposed Assumption and Assignment Procedures are as follows:

(a) **Cure Notice**. Prior to the License Transfer Date and as soon as reasonably practicable following the identification of the Assumed Contracts by New Operator, which the Debtors anticipate will occur on a rolling basis, the Debtors shall file one or more cure notices (as each such

notice may be amended, supplemented, or otherwise modified from time to time, a "**Cure Notice**") with the Court and serve such notice via first class mail or overnight delivery on the respective non-Debtor contract counterparty or counterparties (collectively, the "**Contract Counterparties**").

(b) **Content of Cure Notice**. The Cure Notice shall notify the applicable Contract Counterparties that the Assumed Contracts are subject to assumption and assignment in connection with the MOTA, and contain the following information: (i) a list of the applicable Assumed Contracts; (ii) the applicable Contract Counterparties; (iii) the Debtors' good faith estimate of the proposed amount necessary to cure all monetary defaults, if any, under each Assumed Contract (the "**Cure Costs**"); and (iv) the deadline by which any Contract Counterparty to an Assumed Contract must file an objection to the proposed assumption, assignment, Cure Costs, and/or adequate assurance and the procedures relating thereto (the "**Cure Objection**"); *provided* that service of a Cure Notice does not constitute an admission that such Assumed Contract is an executory contract or unexpired lease.

(c) **Cure Objections**. Cure Objections, if any, to a Cure Notice must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (iii) state with specificity the nature of the objection and, if the Cure Objection pertains to the proposed Cure Costs, state the cure amount alleged to be owed to the objecting Contract Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court no later than **14 days following the date of service of the Cure Notice**, by **4:00 p.m. (Eastern Time)** (the "**Cure Objection Deadline**"); *provided* that the Debtors may modify the Cure Objection Deadline applicable to any particular Contract Counterparty.

(d) **Effects of Filing a Cure Objection**. A properly filed Cure Objection will reserve such objecting party's rights against the Debtors only with respect to the assumption and assignment of the Assumed Contract at issue, and/or the accompanying Cure Costs, as set forth in the Cure Objection, but will not constitute an objection to the remaining relief requested in the Motion.

(e) **Dispute Resolution**. Parties may resolve any Cure Objection in the ordinary course. Any Cure Objection to the proposed assumption and assignment of an Assumed Contract or Cure Costs that remains unresolved may be heard at such later date as may be agreed upon by the parties or fixed by the Court. To the extent that any Cure Objection cannot be resolved by the parties, such Assumed Contract shall be assumed and assigned only upon satisfactory resolution of the Cure Objection. To the extent a Cure Objection remains unresolved, the Assumed Contract may be conditionally assumed and assigned with the consent of the Contract

Counterparty and New Operator, pending a resolution of the Cure Objection satisfactory to New Operator, after notice and a hearing.

(f) **No Cure Objections**. If a Contract Counterparty does not file and serve a Cure Objection in a manner that is consistent with the requirements set forth above, (i) the Cure Costs, if any, set forth in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Assumed Contract or any other document; (ii) the applicable Contract Counterparty will be deemed to have consented to the assumption and assignment of the Assumed Contract and the amount of the Cure Costs, if any, and will be forever barred from objecting to the assumption and assignment of such Assumed Contract, including the Cure Costs, if any, and from asserting any other claims related to such Assumed Contract against the Debtors or New Operator, or the property of either of them.

(g) **Order Memorializing Assignment**. The Debtors may submit a proposed order under certification of counsel seeking entry of an order (the "**Assumed Contract Order**") memorializing the assumption and assignment of the applicable Assumed Contracts and the amount of the related Cure Costs.

(h) **Removal of Contracts Designated for Assignment**. On or before the License Transfer Date, at the request of New Operator, the Debtors may remove any contract or lease from the list of Assumed Contracts by filing and serving on the respective Contract Counterparty an appropriate notice that such contract or lease will not be assumed and assigned pursuant to the MOTA.

41. Pursuant to the Assumption and Assignment Procedures, once the Assumed Contracts are identified, contract counterparties will receive notice and will have an opportunity to raise any issues including with respect to proposed cure costs and adequate assurance of performance, meaning their respective rights, remedies, and defenses are preserved. The Debtors submit that the Assumption and Assignment Procedures comply with the statutory requirements of Bankruptcy Code section 365(b)(1)(A) and submit that such requirements will be promptly satisfied because all defaults associated with the Assumed Contracts which must be cured under Bankruptcy Code section 365(b) will be cured by New Operator as part of the MOTA.

42. Additionally, pursuant to Bankruptcy Code section 365(b), all Cure Costs must be paid as a pre-condition to the assumption and assignment of the Assumed Contracts. As set forth

in the MOTA, the Cure Costs shall be paid by New Operator (or New Operator shall have delivered in escrow, on terms reasonably acceptable to the Existing Operator, amounts sufficient to pay any claim that remains disputed as of the License Transfer Date, as such amount shall have been determined by the Bankruptcy Court) on or prior to the License Transfer Date. Accordingly, because the Assumed Contracts are an integral part of the MOTA, the Debtors submit that the Assumption and Assignment Procedures for the Assumed Contracts should be approved to facilitate the assumption and assignment process contemplated as part of the Transfer Transaction.

VI. The Rejection and Termination of the Master Lease is Authorized by Bankruptcy Code Section 365.

43. As discussed above, Bankruptcy Code sections 365(a) and (b) authorize a debtor-in-possession, subject to court approval, to assume or reject executory contracts or unexpired leases of the debtor. *See* 11 U.S.C. §§ 365(a)-(b). Pursuant to the RSA and the MOTA, and as of the License Transfer Date, the Existing Operators are required to reject and terminate the Master Lease, effective *nunc pro tunc* to the Petition Date. The Debtors submit that such rejection reflects a sound exercise of their business judgment because it allows the Transfer Transaction to occur pursuant to the MOTA and request that the Court authorize the rejection of the Master Lease. In exchange for the rejection of the Master Lease, the Omega Landlords will receive an allowed rejection damages claim in the amount of $35,904,343 (the "**Omega Rejection Damages Claim**"). The Debtors have reviewed the calculations to support the Omega Rejection Damages Claim, and believe that it appropriately reflects the amount of the claim, as capped under Bankruptcy Code section 502(b)(6).

NOTICE

44. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) proposed counsel to the Committee; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; (e) the United States Attorney for the District of Delaware; (f) the Centers for Medicare & Medicaid Services; (g) counsel for the Omega Entities; (h) counsel for New Ark Capital, LLC; (i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); and (k) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

45. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
November 3, 2021

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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