

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11336 (KBO)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related to Docket No. 166
	)	

**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**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”)

(i) authorizing the Debtors’ transfer of the Assets of the Omega Facilities identified on **Exhibit 1** hereto from the Existing Operators to New Manager or New Operator (as applicable) pursuant to the MOTA, free and clear of all claims, liens, encumbrances, and interests, except as specified in the MOTA, (ii) approving the Assumption and Assignment Procedures related to the Debtors’ future assumption and assignment of the Assumed Contracts, (iii) approving the Debtors’ rejection and termination of the Master Lease associated with the Omega Facilities upon the

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<sup>1</sup> 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 9511 Holsberry Lane, Suite B11, Pensacola, FL 32534.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the MOTA.

License Transfer Date, effective *nunc pro tunc* to the Petition Date, and allowing the Omega Rejection Damages Claim in connection therewith, (iv) approving the MOTA by and between the Existing Operators and New Manager, substantially in the form attached hereto as **Exhibit 2**, and (v) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter 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; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is granted as set forth herein.
2. All objections, if any, that have not been withdrawn, waived, or resolved are hereby overruled.
3. The MOTA, substantially in the form attached hereto as **Exhibit 2**, along with all exhibits and schedules attached thereto, and the terms and conditions thereof, is hereby approved.
4. Without the need for any additional order of this Court, the Existing Operators and their employees and agents are authorized to execute, deliver, consummate, and implement

the MOTA and all additional instruments and documents that may be reasonably necessary or desirable to implement the transfer transactions, and to take all further actions as may be reasonably requested by New Manager or otherwise required under the MOTA.

5. The Debtors are authorized to modify their existing cash management system, including opening and closing bank accounts, as necessary to effectuate and implement the provisions of section 5(b)(iii)-5(b)(vi) of the MOTA; *provided, however*, that the Debtors will provide notice to counsel to the U.S. Trustee, the United States Department of Justice on behalf of the Centers for Medicare & Medicaid, and the Official Committee of Unsecured Creditors of any changes to their cash management system made pursuant to this paragraph within five (5) days of such changes being made; *provided further*, that nothing in this Order or the MOTA Motion prejudices or otherwise affects the U.S. Trustee's rights with respect to whether disbursements from accounts used to implement the MOTA constitute "disbursements" under 28 U.S.C. § 1930(a)(6).

6. Pursuant to Bankruptcy Code sections 363 and 365, each Existing Operator is authorized to consummate the transfer of the Assets to New Manager and New Operator, as applicable, pursuant to and in accordance with the terms and conditions of the MOTA; *provided, however*, that Existing Operator is authorized to consummate the transfer of the Assets and provider numbers and agreements associated with the non-operating Panama City Facility to New Operator, without the need for a MOTA. Such transfer shall constitute a legal, valid, binding, and effective transfer of the Assets and shall vest New Manager and New Operator, as applicable, with good title and all right, title, and interest in the Assets in accordance with the MOTA. For the avoidance of doubt, the Assets exclude (i) 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 and (ii) the Existing Operators' Pre-Closing Accounts Receivable, among other "Excluded Assets" (as enumerated on Schedule 1(c) to the MOTA).

7. Pursuant to Bankruptcy Code sections 105(a) and 363(f), the transfer of the Assets to New Manager and New Operator, as applicable shall be, and hereby is, free and clear of any and all claims, liens, liabilities, rights, interests, and encumbrances (collectively, the "**Interests**"), except as may otherwise be set forth explicitly in the MOTA or this Order. Upon the Management Transfer Date or License Transfer Date, as applicable, such transactions shall constitute a legal, valid, and effective transfer of the Assets and shall vest New Manager and New Operator with all right, title, and interest of the Debtors in and to the Assets, free and clear of all Interests, except as expressly set forth herein.

8. Notwithstanding anything to the contrary in the MOTA, including but not limited to section 9(g), the Patient Care Ombudsman in the Chapter 11 Cases shall have access to the Existing Operators' operating procedure manuals with respect to each of the Facilities until the License Transfer Date, unless the Court has terminated the appointment of the Patient Care Ombudsman with respect to the Facility for which the operating procedure manual is sought.

9. Except as expressly permitted by the MOTA or this Order, all persons and entities holding or asserting any Interests arising under or out of, in connection with, or in any way relating to the Existing Operators, the Assets, or the operation of the Existing Operators' businesses prior to the Management Transfer Date, are hereby forever barred, estopped, and permanently enjoined from asserting such Interests against New Manager and New Operator, as applicable, or any of the Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the

Existing Operators to transfer the Assets to New Manager and New Operator, as applicable, in accordance with the terms of the MOTA and this Order.

10. This Order is and shall be effective as a determination that, upon transfer of the Assets to New Manager and New Operator, as applicable, pursuant to the MOTA, all Interests in, against, or relating to any of the Assets conveyed to New Manager and New Operator, as applicable, have been and hereby are terminated and declared to be unconditionally released, discharged, and terminated, except as specifically provided herein. This Order is and shall be binding upon and shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, insurance companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the MOTA, except as provided herein.

11. New Manager is entitled to protection as a good-faith purchaser under Bankruptcy Code section 363(m). The MOTA does not constitute an avoidable transaction pursuant to Bankruptcy Code section 363(n).

12. On the License Transfer Date, the Master Lease shall be deemed rejected and terminated, effective *nunc pro tunc* to the Petition Date. The Omega Landlords shall be entitled to request allowance of a rejection damages claim based on such rejection in the amount of

\$35,904,343, which represents the Omega Landlords' estimated damages capped under Bankruptcy Code section 502(b)(6) (the "**Requested Rejection Damages Claim**"). The Requested Rejection Damages Claim shall be subject to (i) the challenge rights of the Official Committee of Unsecured Creditors set forth in Paragraph 23 of the final DIP financing order and (ii) any objections to the Requested Rejection Damages Claim asserted by REIT Solutions II, LLC (f/k/a REIT Solutions, Inc.), SJB No. 2, LLC, JJT No. 1, LLC, Wet One, LLC, and DLF No. 3, LLC (collectively, the "**Noteholder Claimants**"). The Noteholder Claimants shall be deemed a party-in-interest under 11 U.S.C. § 1109(b) entitled to be heard on the amount of the Requested Rejection Damages Claim, shall receive notice of the request for allowance, and shall be entitled to participate in the contested matter resolving the amount of the Requested Rejection Damages Claim.

13. The following Assumption and Assignment Procedures are hereby approved:

- (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 shall 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 shall: (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 shall 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 shall 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 shall be deemed to have consented to the assumption and assignment of the Assumed Contract and the amount of the Cure Costs, if any, and shall 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 shall not be assumed and assigned pursuant to the MOTA.

14. Within two business days after receiving notice of New Manager’s proposed assignment of the MOTA to any New Operator pursuant to section 17 of the MOTA, the Debtors will file and serve a notice of proposed assignment of the MOTA to such New Operator (each, a “**Notice of Assignment**”) on all parties entitled to notice under Local Rule 2002-1(b). If an objection to such notice is not filed and served within five business days after the Debtors’ service of such a Notice of Assignment, New Manager shall be authorized to proceed with its proposed assignment of the MOTA to New Operator.

15. On the License Transfer Date, the Assumed Contracts will be assumed by the Debtors and assigned to New Operator, subject to the terms of the MOTA and compliance with the Assumption and Assignment Procedures, and will remain valid and binding and in full force and effect in accordance with their respective terms for the benefit of New Operator, notwithstanding any provision in such contracts or leases, or under applicable law (including those described in Bankruptcy Code section 365(b)(2), (f)(1), and (3)) that prohibits, restricts, requires consent, or conditions such assignment or transfer, or that terminates or modifies, or permits a party other than the Debtors to terminate or modify such contracts or leases on account of such assignment or transfer pursuant to Bankruptcy Code section 365(f).



16. Except as otherwise provided herein, pursuant to Bankruptcy Code section 365(k), upon the License Transfer Date and payment of the Cure Costs by the Debtors, the Debtors will be relieved of any liability for any claims of any kind arising from any of the Assumed Contracts assigned to New Operator on or after the License Transfer Date, and, to the extent any contract or lease counterparty fails to file a Cure Objection, any such counterparty will be forever barred and estopped from asserting any default existing prior to the date of the License Transfer Date against the Debtors, their estates, or New Operator, or any of their respective property, except as provided herein.

17. This Order shall be binding upon and govern the acts of all persons and entities, including but not limited to all creditors and stakeholders, any parties-in-interest, the Debtors, New Manager, and their respective successors and assigns, including New Operator, and may be relied upon by all filing agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law to accept, file, register, or otherwise record or release any documents or instruments.

18. Each of the New Manager, the Omega Landlords, and their respective affiliates, successors, or assigns, including New Operator, shall not be deemed, as a result of any action taken in connection with the transaction to: (i) be a successor to the Debtors; (ii) have, whether *de facto* or otherwise, merged with or into the Debtors; (iii) be a continuation or substantial continuation of the Debtors; (iv) be acquiring or assuming or liable for any Excluded Liabilities under the MOTA, including without limitation, any liability arising out of any Stimulus Payment received by any Prior Operator prior to the License Transfer Date and not otherwise waived or forgiven, other than the MAAP Liabilities.

19. To the extent that New Manager or New Operator, as applicable, has not received the necessary licenses, evidence of licenses, and/or other regulatory approvals to operate the Omega Facilities on or after the License Transfer Date, the Debtors and New Manager or New Operator, as applicable, are hereby authorized to enter into any management or other agreement necessary for continuity of resident care, and this shall not create or effectuate any liability for prior obligations of Debtors, whether successor liability or otherwise. Notwithstanding the foregoing, neither this Order nor any provision in the MOTA shall permit New Operator or New Manager to use any Medicare provider number or Medicare provider agreement of a Prior Operator, absent approval by the United States Department of Health and Human Services (“HHS”), acting through the Centers for Medicare and Medicaid Services (“CMS”), of a Change in Ownership (“CHOW”) application, nor shall this Order or the MOTA require CMS to issue Medicare reimbursements to any individual or entity other than the Prior Operator during the Management Period.

20. Notwithstanding any other provision of this Order or the MOTA, any transfer of a Medicare provider agreement authorized by this Order shall be subject to all liabilities associated with such provider agreement, as required pursuant to that certain Stipulation entered into by the Debtors and CMS as approved by this Court on November 2, 2021, the Medicare Act and Medicare regulations, including without limitation any pre-CHOW overpayments, MAAP Liabilities, civil penalties, or other enforcement remedies, liabilities arising from the Prior Operator’s compliance history, and all other obligations and liabilities associated with such provider agreement.

21. Except to the extent permitted by applicable non-bankruptcy law, neither this Order nor the MOTA shall be construed to authorize the transfer to, or use by, New Manager or

New Operator of any Stimulus Payment, including without limitation any distributions received by any Prior Operator or Debtor, either before or after the entry of this Order, from the Health Resources and Services Administration (“**HRSA**”) Provider Relief Fund (“**PRF**”), or to permit the use of any PRF distributions in a manner inconsistent with the associated statutory or regulatory requirements or the terms and conditions associated therewith. Notwithstanding the foregoing, if any transfer of PRF distributions to New Operator or New Manager occurs, such New Operator or New Manager shall be obligated to comply with all statutory and regulatory requirements as well as the Terms and Conditions associated with any such PRF.

22. This Order shall not modify, affect, or impair any rights or defenses (jurisdictional or otherwise), reductions, setoff, recoupment, or counterclaims of the United States permitted under applicable non-bankruptcy law.

23. The terms of the MOTA and any ancillary documents may be waived, modified, amended, or supplemented by the written and signed agreement of the Debtors and New Manager without further action of the Court; *provided, however*, that any such waiver, modification, amendment, or supplement must be shared with the affected parties prior to its entry or effectiveness, and the Debtors and New Manager are directed to engage in good faith with such affected parties to address any concerns they may have. To the extent the Debtors, New Manager, and the affected parties are unable to resolve any issues or differences as to the terms of any waiver, modification, amendment, or supplement to the MOTA and any ancillary documents, the Debtors shall seek appropriate supplemental relief or adjudication by this Court and/or the approval of any such revised terms; *provided that* no such waiver, modification, amendment, or supplement shall affect or impair the statutory or regulatory obligations of any

New Operator under a Medicare provider agreement, the Medicare Act, or Medicare regulations as set forth in this Order.

24. Notwithstanding any applicable Bankruptcy Rule or Local Rule to the contrary, this Order is effective and enforceable immediately upon entry, no stay applies, and the Debtors may complete the transactions contemplated hereby immediately. This Order is intended to be, and in all respects shall be, a final order regarding the relief granted herein, and shall not be an interim order. To the extent any provisions of this Order conflict with the terms and conditions set forth in the Motion or the MOTA, this Order shall govern and control. To the extent this Order does not include, or otherwise address, any provision contained in both the Motion and the MOTA and where such provision in the Motion and the MOTA is inconsistent, the MOTA shall govern.

25. Except as otherwise expressly provided for herein, the provisions of this Order shall not be affected by, and shall continue to be binding in, any subsequent chapter 7 proceeding, dismissal, appointment of a trustee or examiner, or chapter 11 plan, and the Debtors or their successors and assigns shall continue to carry out any further assurances and obligations under the MOTA and related documents. Further, any chapter 7 trustee or other fiduciary (including but not limited to any party appointed pursuant to any chapter 11 plan) shall not interfere with, and shall cooperate with New Manager, in effectuating the terms of the MOTA and related documents.

26. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

27. This Court retains exclusive jurisdiction to enforce the provisions of this Order and the MOTA, all amendments thereto, any waivers and consents thereunder, and each of the

agreements executed in connection therewith in all respects, and to resolve any dispute concerning this Order, the MOTA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the MOTA and any related agreements, *provided that* this Order confers upon the Court no jurisdiction reserved to HHS under section 405(h) of the Social Security Act, 42 U.S.C. § 405(h), as incorporated within section 1395ii of the Medicare Act, 42 U.S.C. § 1395ii, to resolve disputes concerning the Medicare provider agreements.

Dated: November 24th, 2021  
Wilmington, Delaware

  
KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE