

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
TO THE DEBTORS' MOTION FOR ENTRY OF AN ORDER DISMISSING THE  
CHAPTER 11 CASE OF PETERSEN MT4, LLC AND GRANTING RELATED RELIEF**

The official committee of unsecured creditors (the "Committee") of SC Healthcare Holding, LLC and its affiliated debtors and debtors in possession (the "Debtors") objects to the *Debtors' Motion for Entry of an Order Dismissing the Chapter 11 Case of Petersen MT4, LLC* ("MT4") and *Granting Related Relief* [Docket No. 118] (the "Motion").<sup>2</sup> In support of this Objection, the Committee states as follows:

**PRELIMINARY STATEMENT**

1. Like other Debtors in these cases, MT4 was named a defendant in a federal action filed by X-Caliber for purposes of instituting a receivership. The Debtors seek to voluntarily dismiss MT4's chapter 11 case on the basis that the receiver order entered in that action *may* invalidate MT4's chapter 11 petition. The Committee objects to the Motion for the reasons set forth herein.

2. A chapter 11 debtor does not have an automatic right to voluntarily dismiss its case. It must first establish cause by showing that dismissal is in the best interest of all creditors. The

<sup>1</sup> The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors' proposed claims and noticing agent at [www.kccllc.net/Petersen](http://www.kccllc.net/Petersen).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning attributed to them in the Motion.



Debtors cannot establish that here. Despite the Debtors' suggestions of ambiguity, MT4 was never placed into receivership because the relevant receiver appointment order does not name MT4 as a receivership entity. Although the receiver appointment order states that the receiver has sole authority to file chapter 11 petitions on behalf of the receivership entities, the order does not apply to MT4.

3. If the Motion is granted, the automatic stay will no longer be in place for MT4—permitting X-Caliber to attempt to add MT4 to the receivership. As detailed below and in the Committee's Omnibus Objection,<sup>3</sup> *all* creditors are afforded standing, protections and other rights in chapter 11 – rights that do not exist in receiverships. It is therefore in the best interest of creditors if MT4 remains in chapter 11. The Debtor's argument that dismissal will avoid costly litigation with X-Caliber misses the mark as extensive estate resources have *already* been expended in relation to litigation with X-Caliber. Dismissal at this juncture will not offer any significant savings to the estates. Accordingly, the Motion should be denied or withdrawn, and MT4 should remain in these cases.

## **BACKGROUND**

### **A. The Debtors' Chapter 11 Cases**

4. On March 20, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Case. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses as debtors in possession. No trustee or examiner has been appointed in these cases.

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<sup>3</sup> The "Committee's Omnibus Objection" means the *Omnibus Objection of the Official Committee of Unsecured Creditors to the: (A) Emergency Motion Of X-Caliber Funding LLC to Excuse Receiver's Compliance with 11 U.S.C. § 543(a) & (a) and (B) Emergency Motion of X-Caliber Funding LLC for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) for Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee* [Docket No. 172]. All arguments contained in the Committee's Omnibus Objection are incorporated herein by reference.

5. On April 9, 2024, the United States Trustee appointed the Committee, which consists of the following members: (i) Select Rehabilitation, LLC.; (ii) Martin Brothers Distributing Company, Inc.; (iii) Omnicare Inc.; (iv) McKesson Corporation; (v) Onestaff Medical, LLC; (vi) Lawrence Recruiting Specialists, Inc.; and (vii) Darlena Moore, as Independent Administrator of the Estate of Linda I. Johnson. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 131].

**B. MT4 and the Charleston Receiver Order**

6. On April 16, 2024, the Debtors filed the Motion seeking entry of an order that, among other things, dismisses the chapter 11 case of MT4, Case No. 24-10569, without prejudice.

7. In the Motion, the Debtors allege that MT4 is a borrower on two HUD-insured loans under which X-Caliber Capital LLC (“X-Caliber”) is the lender. Motion ¶ 7. The Debtors also allege that MT4 is the master tenant under two separate leases. One lease is for property owned by non-Debtor Charleston HCC, LLC, which MT4 subleases to Charleston HCO, LLC. *Id.* ¶ 9. The other lease is for property owned by Cumberland HCC, LLC, which MT4 subleases to Cumberland HCO, LLC. *Id.*<sup>4</sup>

8. On February 6, 2024, X-Caliber filed a complaint in the United States District Court for the Central District of Illinois, Urbana Division (the “District Court”) against MT4 and certain non-Debtor affiliates. *See X-Caliber Capital LLC v. Charleston HCC, LLC et al.* (Case No. 2:24-cv-2034) (N.D. Ill. 2024) [Docket No. 1]. Additionally, X-Caliber filed a motion (the “Receiver Motion”) seeking entry of an order appointing a receiver for all defendants except for MT4 (the “Receivership Defendants”). 2:23-cv-2034 [Docket No. 4, Exhibit 2].

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<sup>4</sup> Given the early stage of these cases, the Committee has not yet reviewed MT4’s relationship with the other Debtors, the non-Debtor affiliates, or X-Caliber. Nothing in this Objection is an admission or waiver of rights, all of which the Committee reserves.

9. On February 13, 2024, the District Court entered an order granting the Receiver Motion and appointing Michael Flanagan as receiver (the “Receiver”) for the Receivership Defendants. 2:23-cv-2034 [Docket No. 13] (the “Charleston Receiver Order”). A copy of the Charleston Receiver Order is attached hereto as **Exhibit A**.

10. While the Charleston Receiver Order grants the Receiver with sole authority to file chapter 11 petitions for the Receivership Defendants, *see* Paragraphs 4.c and 8, that exclusive authority does not apply to MT4.

### **OBJECTION**

**A. There is no “Cause” to Dismiss MT4 under Section 1112(b) of the Bankruptcy Code.**

11. Section 1112(b) of the Bankruptcy Code provides for dismissing a chapter 11 case “for cause” upon the “request of a party in interest” and enumerates a list of sixteen “causes” for dismissal. *See* 11 U.S.C. § 1112(b)(4)(A)-(P). The Court is afforded “wide latitude in determining whether cause exists” under this section and “is not limited to the statutory examples,” so “cause may be determined from the facts and circumstances of the case.” *Matter of NuGelt, Inc.*, 142 B.R. 661, 665 (Bankr. D. Del. 1992).

12. A chapter 11 debtor does not have a right to voluntarily dismiss its case. *In re Camden Ordnance Mfg. Co. of Arkansas, Inc.*, 245 B.R. 794, 804 (E.D. Pa. 2000); *see also In re Cont'l Holdings, Inc.*, 170 B.R. 919, 927 (Bankr. N.D. Ohio 1994). Rather, a chapter 11 debtor’s request to voluntarily dismiss its case turns on whether it is in the best interest of creditors. *In re G & G Transp., Inc.*, No. 98-30860DWS, 1998 WL 898835, at \*4 (Bankr. E.D. Pa. Dec. 22, 1998) (“Unlike Chapter 7 and 13, voluntary dismissal in Chapter 11 is not a debtor’s right but rather turns on whether the relief is in the best interest of creditors.”). Courts give “considerable weight” to what creditors want in the context of chapter 11 dismissals. *See In re Calrissian LP*, No. 17-10356(KG), 2018 WL 3854004, at \*2 (Bankr. D. Del. Aug. 10, 2018).

13. Cause does not exist to dismiss MT4's bankruptcy case. There is no ambiguity to the Charleston Receiver Order. The order identifies which Receivership Defendants are under the control of the Receiver, and MT4 is not one of those defendants. Moreover, X-Caliber's proposed order to the Receiver Motion did not include MT4 as a Receivership Defendant. To the extent that the omission of MT4 in the Charleston Receiver Order was unintentional, X-Caliber had over one month to correct the mistake through applicable Rules of Federal Civil Procedure. It failed to do so. Now, the automatic stay is in place, and X-Caliber is stayed from attempting to add MT4 to the Charleston Receiver Order. There is therefore no cause to dismiss MT4 from these cases.

14. Rather, it is in the best interest of the creditors that MT4 remain in these cases. As previously stated in the Committee's Omnibus Objection, there are numerous reasons why it is in the best interest of creditors that all Debtors, including MT4, remain in these cases which will be administered pursuant to the provisions of the Bankruptcy Code, legislation designed to maximize the value for all creditors. For one, chapter 11 protects all creditors by affording them with the ability to adjudicate their claims in a single forum, which is more efficient – here a single forum that currently has jurisdiction over approximately 140 affiliated Debtors. Additionally, by keeping MT4 in bankruptcy, it will be subject to stringent financial reporting requirements, benefit from the oversight of the Committee and the United States Trustee, allow creditors to exercise investigative rights built into the Bankruptcy Code, and provide creditors with a clear mechanism to ensure that any post-petition claims are afforded administrative claim status.

15. The Debtors concerns over costly litigation with X-Caliber are now moot. The bankruptcy estates have already expended considerable resources to address X-Caliber's attempts to dismiss other Debtors from these cases. Dismissal of MT4 will not offer any significant savings to the estate. In all, the Debtors cannot establish that dismissal is in the best interest of creditors, and the Motion should be denied.

**B. Dismissal under Section 305(a) of Bankruptcy Code is Unwarranted.**

16. Dismissals under section 305(a)(1) of the Bankruptcy Code are exceedingly rare. Courts interpreting this provision agree that abstention is an “extraordinary remedy” and dismissal under this provision is appropriate “only in the situation where the court finds that both ‘creditor and debtor’ would be ‘better served’ by the dismissal.” *In re AMC Invs., LLC*, 406 B.R. 478, 487-488 (Bankr. D. Del. 2009) (quoting *In re Eastman*, 188 B.R. 621, 624 (9th Cir. BAP 1995)); accord *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 203 (Bankr. D. Del. 2015); see also *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462 (Bankr. S.D.N.Y. 2008) (“Granting an abstention motion pursuant to § 305(a)(1) requires more than a simple balancing of harm to the debtor and creditors; rather, the interests of both the debtor and its creditors must be served by granting the requested relief.”). As Colliers has noted, “[b]ecause of this requirement, few fact patterns fall within section 305(a).” 2 COLLIER ON BANKRUPTCY P 305.02 (16th 2024).

17. Courts have considered several factors in assessing the “overall best interests of the creditors,” including: “(1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which the bankruptcy jurisdiction has been sought.” *In re AMC Invs.*, 406 B.R. at 488.

18. Under these factors, dismissal is not in the overall best interests of creditors, for many of the same reasons stated above. Ultimately, because chapter 11 focuses on the interests of

all creditors, the bankruptcy court's continued jurisdiction over MT4 is appropriate and abstention is unwarranted.

**RESERVATION OF RIGHTS**

19. The Committee reserves all rights with respect to the Motion and expressly reserves and preserves all rights to raise any additional objections to the relief requested by the Debtors before any final hearing.

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Dated: May 9, 2024  
Wilmington, Delaware

Respectfully submitted,

**GREENBERG TRAURIG, LLP**

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**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

In re:

X-CALIBER CAPITAL LLC, a Delaware limited liability company f/k/a X-CALIBER CAPITAL CORP., a Kentucky corporation,

Plaintiff,

v.

CHARLESTON HCC, LLC, *et al.*

Defendants.

Case No. 2:24-cv-02034

Honorable Colin S. Bruce

**ORDER APPOINTING RECEIVER**

This matter came before the court on the Motion (the “Motion”) of X-Caliber Capital LLC, a Delaware limited liability company f/k/a X-Caliber Capital Corp., a Kentucky corporation (“Plaintiff”), by and through its counsel, for Appointment of Receiver over Defendants Charleston HCC, LLC and Cumberland HCC LLC (together, “Owner Defendants” and each an “Owner Defendant”) and Defendants Charleston HCO LLC and Cumberland HCO LLC (together, “Operator Defendants” and each an “Operator Defendant” and collectively with Owner Defendants, “Defendants”) and all of the assets and operations of Defendants, the Court having considered the Motion, the Complaint and any oral argument thereon and any objections thereto, Now it is ORDERED that:

1. Michael F. Flanagan is hereby appointed receiver (“Receiver”) of and over Defendants and all of their respective assets (the “Receivership Assets”), with all of the powers and obligations set forth herein. The Receivership Assets include, without limitation, (a) the real property and operations located at: (i) 217 18th Street, Charleston, IL 61920; (ii) 300 North

Marietta Street, Greenup, IL 62428; (b) all contract rights of Defendants; (c) all legal and equitable claims of Defendants; (d) all accounts of Defendants; (e) all banking, brokerage and depository accounts of Defendants; (f) all electronic currency accounts of Defendants; (g) all Internet payment processor accounts of Defendants; (h) all accounts receivable of Defendants; and (i) all money, income, earnings and revenue of Defendants that have arisen or hereafter arise from operation or disposition of the Receivership Assets.

2. The Receivership Assets remain subject to Plaintiff's liens to the full extent of the amounts due and the appointment of Receiver by no way shall impair Plaintiff's rights or be deemed a waiver of Plaintiff's secured position.

3. Receiver shall take immediate possession and full control of the Receivership Assets and shall take such other actions as Receiver deems reasonable and appropriate to effect this order, to prevent waste, and to preserve, manage, secure, and safeguard the Receivership Assets in accordance with the powers granted herein including, without limitation, hiring Walnut Creek Management Company, L.L.C. (an affiliate of Tintera Senior Living & Healthcare, L.L.C.) as manager of the Facilities.

4. Receiver shall have the usual powers vested, conferred, enjoyed, and exercised by receivers including, without limitation, the following:

- a. to operate the business of Defendants and manage the Receivership Assets;
- b. to do all things which Defendants may do in the exercise of ordinary business judgment or in the ordinary course of the operation and use of the Receivership Assets;
- c. Receiver shall be vested with, and is authorized and empowered to exercise, all the powers of each Defendant, their officers, directors, shareholders, and general partners or

persons who exercise similar powers and perform similar duties, including without limitation the sole authority and power to file a voluntary petition under Title 11 of the United States Code;

d. to assert any rights, claims, or choses in action of Defendants, If and to the extent that rights, claims or choses in action are themselves property within the scope of the appointment or relate to any Receivership Assets, to maintain in the Receiver's name or in the name of Defendant(s) any action to enforce any right, claim or chose in action, and to intervene in actions in which Defendants are a party for the purpose of exercising the powers under this subsection;

e. to intervene in any action in which a Claim is asserted against any Defendant and that impacts the Receivership Assets, for the purpose of prosecuting or defending the claim and requesting transfer of venue of the action to this Court; and

f. to assert rights, claims or choses in action of Receiver arising out of transactions in which Receiver is a participant.

5. Subject to the Budget (defined below), Receiver shall have and may exercise the following powers, and such additional powers that are provided by law and that the court may from time to time direct or confer:

a. take and maintain possession of all documents, books, records, papers, and deposit accounts relating to the Receivership Assets;

b. change any locks, passcodes or passwords to the Receivership Assets, as appropriate and exclude Defendants and their respective agents, servants, and employees wholly from the Receivership Assets;

c. execute and deliver, in the name of Defendants or in Receiver's own name, such documents and instruments as are necessary or appropriate to consummate transactions authorized hereunder;

d. manage, operate, preserve and maintain the Receivership Assets as a prudent person would, including, without limitation, the power to enter into, terminate or negotiate contracts and make repairs or alterations to the Receivership Assets that Receiver in its business judgment reasonably believes necessary for the management, operation, preservation and maintenance of the Receivership Assets and to maximize their value;

e. enter into leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Receiver may deem appropriate or desirable to preserve the Receivership Assets and to maximize their value;

f. retain, hire, or discharge a manager for the Facilities (including, without, limitation, Walnut Creek Management Company, L.L.C.);

g. employ such consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors, or professionals as Receiver may in its discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted;

h. engage attorneys or other professionals, as appropriate, in order to advise and assist Receiver in carrying out its duties and appearing in court or other proceedings on its behalf;

i. collect the rents, accounts receivable, insurance claim proceeds, real estate tax refunds, utility deposits, security deposits, proceeds, earnest money deposits and profits from the Receivership Assets, if any, from any time period whether historical, current or prospective, and receive any such assets presently in the possession of Defendants and/or their agents;

j. repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements;

k. sue for unpaid receivables, income, or proceeds in the name of Defendants;

l. subject to Plaintiff's prior written consent, compromise or give acquittance for receivables, income, or proceeds that may become due;

m. deal with issues and other matters with vendors, municipalities, and other governmental entities, as necessary;

n. open any mail intended for and/or directed to Defendants;

o. hire, fire, select, and retain employees of Defendants as Receiver deems reasonable or necessary to preserve and maintain the value of the Receivership Assets, including as necessary or desirable to provide appropriate quality resident care;

p. upon prior written consent of Plaintiff, enter into an agreement for the operation of the Facilities;

q. with respect to taxes: (i) use all tax identification numbers of Defendants and cause to be filed all federal, state, and local income tax returns of Defendants for the period through termination of this receivership; (ii) communicate with, negotiate with, enter into agreements on behalf of Defendants with and serve as nonexclusive representative of Defendants to all taxing authorities; provided, however, that Receiver shall use reasonable efforts to keep all managers of Defendants apprised of all communications with taxing authorities by notice delivered to the address for such managers provided by Defendants; (iii) use reasonable efforts to issue all tax related forms on behalf of Defendants, including, without limitation, Internal Revenue Service Forms W-2, 1099, and K-1; and (iv) to the extent funds are available and authorized pursuant to the procedures set forth in this Order, pay taxes which may have been or may be levied against the Receivership Assets or which are otherwise due and payable with respect to the Receivership Assets, provided, however, that Receiver is authorized to and may pay taxes which are or become due and payable which relate to Receiver's custody, control or operation of the Receivership

Assets for the period from the date of the entry of this Order through the date the receivership is terminated and for which personal liability could be imposed;

r. take all actions necessary to maintain and/or transfer existing licenses, permits and authority from all relevant governmental agencies, managed care contracts, and third-party payor agreements, and to take all actions necessary to enroll or re-enroll the Facilities in any and all available state and federal subsidy and reimbursement programs, including but not limited to Medicare and Medicaid;

s. subject to the prior written consent of Plaintiff, conduct a marketing or leasing program with respect to all or a portion of the Receivership Assets, or employ a marketing or leasing agent or agents to do so, direct the leasing or sale of all or portions of the Receivership Assets under such terms and conditions as Plaintiff may in its sole discretion deem appropriate or desirable, provided, however, that Receiver shall seek court approval of any sale of the Receivership Assets outside the ordinary course of business;

t. communicate and share information with prospective purchasers and provide Plaintiff with copies of such information;

u. in accordance with Section 19 below, borrow monies from Plaintiff or use Plaintiff's cash collateral, both secured by a senior and paramount lien upon the Receivership Assets for the purposes of performing Receiver's obligations under this or other orders of this Court, and preserving or enhancing the value of the Receivership Assets, on terms and conditions agreed upon by Plaintiff;

v. take possession or control of all existing bank accounts, cash and funds belonging to or for the benefit of Defendants in bank accounts associated with and/or used for the operation of the Receivership Assets (regardless from what time period), whether in the name of

Defendants or their agents, and to open, transfer, and change all such bank accounts into the name of Receiver, if appropriate, or otherwise take such actions as necessary to ensure such bank accounts are under the control of Receiver and ensure Defendants do not have access to such accounts without consultation with Receiver, all in compliance with legal requirements;

w. institute, defend, or compromise actions or proceedings in state or federal courts now pending and hereafter instituted, as may in Receiver's discretion be advisable or proper for the protection and administration of the Receivership Assets;

x. retain, hire, or discharge on-site employees, if appropriate, provided, however, no such employee shall be deemed an employee of Plaintiff;

y. subject to the prior written consent of Plaintiff, obtain insurance covering the Receivership Assets if insurance already in place is deemed by Receiver to be inadequate and such insurance expense shall be deemed a normal, ordinary, and necessary operating expense of the Receivership Assets;

z. subject to the prior written consent of Plaintiff, obtain software license for billing and collections to the extent any such existing software license is deemed by Receiver to be inadequate; and

aa. take all such further actions and enter into all such other agreements as Receiver in its professional discretion deems appropriate or desirable to preserve, protect and maximize the value of the Receivership Assets.

6. Defendants shall have neither possession nor control of, nor any right to, the Receivership Assets or money or other proceeds derived from the Receivership Assets unless and until the receivership is terminated and the Receiver is discharged, except to continue in the management of the Receivership Assets as approved and authorized by the Receiver. Defendants



shall in all respects comply with this Order, and are hereby enjoined and restrained from impeding or interfering in any manner with the exercise by Receiver of its rights, powers, and duties hereunder.

7. Neither Defendants nor any of their partners, representatives, officers, managers, directors, members, shareholders, affiliates or agents (collectively, “Defendant Agents”) shall enter into any lease, contract, or agreement of any kind or character relating to the Receivership Assets outside the ordinary course of their management duties approved by Receiver, and shall not grant any lien upon or security interest in the Receivership Assets.

8. Receiver shall further have the sole authority to file petition(s) for protection under 11 U.S.C. 101, et seq. on behalf of Defendants and to take any and all actions Receiver deems necessary and appropriate with respect thereto and make any and all filings related thereto.

9. Except as authorized by Receiver, neither Defendants nor any of Defendant Agents shall enter or be present at any of the Property, communicate in any manner with the employees or residents of the facilities, or modify, terminate or cause to be modified or terminated any license, permit, lease, easement, contract or agreement, if any, relating to the Receivership Assets.

10. Defendants and Defendant Agents are hereby enjoined and restrained from collecting any revenues, receivables, proceeds, or other sums payable with respect to the Receivership Assets outside the ordinary course of their management duties authorized by Receiver. Should Defendants or any Defendant Agents come into possession of any such revenues, receivables, proceeds, or other sums subsequent to the date of entry of this Order, Defendants and Defendant Agents shall promptly remit the same to Receiver in the form received.

11. Neither Defendants, Defendant Agents nor anyone associated therewith or acting under Defendants’ authority or control shall: (a) remove or destroy any Receivership Assets from

the facilities whether constituting collateral of Plaintiff or otherwise; (b) make any disparaging statement to residents, employees, or third parties regarding Receiver or cause such persons or entities to resign, transfer to another property associated with Defendants or refuse to deal with Receiver; or (c) otherwise interfere with Receiver in carrying out its duties under this order and applicable law.

12. Until further order of this Court, all tenants, bailees, or other persons in possession of the Receivership Assets or any portion thereof shall turn over such Receivership Assets to Receiver, and until further order of this court (a) shall pay over to Receiver, or its duly designated agent, all rents, revenues, receivables, proceeds, or other sums payable with respect to the Receivership Assets which are now due and unpaid or hereafter become due; and (b) they are hereby enjoined and restrained from paying to Defendants or their agents, officers, directors, employees, or attorneys any such rents, receivables, revenues, proceeds, or other sums, except with the Receiver's consent.

13. Within five (5) calendar days from the entry of this Order, and thereafter, forthwith upon request of Receiver (but no later than five (5) calendar days following such request), Defendants and their agents and employees shall provide to Receiver, make available to Receiver, or cause their manager or employees to deliver or make available to Receiver the following, to the extent such items and things exist:

a. all Receivership Assets and all funds generated by or from the Receivership Assets, whether such funds are held in a collateral related account or not, including but not limited to: (i) all cash on hand; (ii) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (iii) all sums held in accounts in any financial institutions, including but not limited to (A) resident security deposits received by

Defendants, (B) deposits held in escrow by Defendants for any purpose, such as for payment of real estate taxes and insurance premiums, (C) proceeds of insurance maintained for, or pertaining to, the Receivership Assets, (D) rent or prepaid rent, (E) funds designated or intended for capital improvements, repairs, or renovations to, or in connection with, the Receivership Assets, and (F) all other sums of any kind relating to the use, enjoyment, possession, improvement, or occupancy of all or any portion of the Receivership Assets;

b. copies of any and all service contracts pertaining to the Receivership Assets and/or to which any Defendant is a party;

c. copies of any and all management contracts and/or agreements pertaining to the Receivership Assets and/or to which any Defendant is a party;

d. copies of any and all leases, lease abstracts, purchase agreements and the like pertaining to the Receivership Assets and/or to which any Defendant is a party;

e. resident and other tenant contact names, addresses, telephone numbers and email addresses;

f. all open invoices for services or goods relating to the Receivership Assets and/or to which any Defendant is a party;

g. all records evidencing Defendants' accounts receivable, and any and all agreements, documented and undocumented, with any creditor, respecting any payment plan or agreement, demand, or suit;

h. copies of existing 2020, 2021, 2022 and 2023 year-end and 2024 year-to-date, in both full and summary format, financial statements (and month by month detail) for Defendants, in both hard copy and electronic formats; balance sheets, income statements, accounts receivables (and receivables/arrearages aging), operating statements, current year budgets, sources

and uses of cash flows, detailed rent rolls, accounts payable, check registers, security deposit listings, trial balances, general ledgers, contractor statements, lien waivers, sworn owner statements, construction draws, bank reconciliations, and bank statements, including any passwords which may be associated with any financial documents or accounts;

i. a complete set of keys (including all masters) and all security and/or access codes and/or cards to the Facilities and a schedule (including full contact information) identifying each person or entity (including security companies, municipal/governmental agencies and utility companies), who currently has one or more keys and/or access cards to the Facilities or who has knowledge of any access codes thereto;

j. any and all records and information Defendants or their agents, affiliates or employees may have concerning the Receivership Assets, including without limitation all written and/or electronic books, records, correspondence, and other information (including any computer hardware or software login and password information) related to: (i) any agreements to which Defendants and/or the Receivership Assets are or may be subject; (ii) any amounts received from the residents or other tenants of the Facilities, including resident funds, including revenue by payor type for each of the prior two fiscal quarters; (iii) all liens or other encumbrances on the Receivership Assets or against Defendants; (iv) taxes, assessments and related appeals; (v) insurance of all types for Defendants (including, but not limited to, liability, property, excess liability, auto liability, boiler and machinery, business interruption, professional liability, employee dishonesty, builders risk, construction related insurance and worker's compensation) including information regarding insurance which may be issued to Defendants; (vi) all invoices for services at the facilities; (viii) all resident and other tenant files, including leases, lease abstracts, purchase agreements, and sample leases; (ix) all marketing information (in hard copy

and electronic format) including but not limited to brochures, photographs (including aerial), maps, and signage; (x) copies of all state and federal tax returns signed and filed by Defendants for calendar years 2022, 2021 and 2020; and (xi) all other records related to the Receivership Assets that are or may be necessary or pertinent to Receiver's management, maintenance, operation and/or sale of the Receivership Assets;

k. any and all insurance loss histories and/or claims related to the Receivership Assets, Defendants for the 5-year period prior to the date of this Order;

l. all property and all other things of value associated with use, operation and maintenance of the Receivership Assets;

m. all correspondence with regulators and/or licensing entities regarding the Receivership Assets; and

n. an accounting for any fund belonging to or for the benefit of Defendants that were (i) comingled with funds belonging to facilities other than the facilities operated and/or owned by Defendants and/or otherwise diverted to or for the benefit of facilities other than the facilities operated and/or owned by Defendants.

14. By this Order, Receiver shall be deemed a business associate of Defendants pursuant to the Health Information Portability and Accountability Act and its implementing regulations.

15. Defendants shall cause, and Receiver shall be authorized on Defendants' behalf to cause, Receiver and its agents to be named as an additional insured on any insurance policies covering the Receivership Assets.

16. Defendants shall at all times after the entry of this Order provide full cooperation to, and shall not in any way interfere with, Receiver in carrying out its duties hereunder, and shall

timely respond to all reasonable requests made by Receiver. Defendants' obligations pursuant to this Order shall be continuing. Neither Defendants nor anyone associated therewith or acting under their authority or control shall in any way directly or indirectly impair the value of the Receivership Assets or interfere with Receiver in the exercise of its duties pursuant to this Order.

17. Defendants' deposit accounts (collectively, the "Deposit Accounts") and current cash management system shall remain in place and Receiver shall deposit all proceeds of receivables, all other cash collections and all other proceeds of Receivership Assets into Defendants' operating, payroll or other accounts subject to account control agreements in favor of Plaintiff. Receiver is authorized to open and maintain appropriate business accounts for the Receivership Assets in institutions approved in writing by Plaintiff and subject to account control agreements in form and substance acceptable to Plaintiff. Receiver is authorized to utilize Defendants' cash management system in accordance with and subject to the terms of this Order. All deposit account agreements, blocked account agreements and similar bank account agreements that were in place prior to the entry of this Order shall remain in effect and are hereby ratified and reaffirmed. Receiver is authorized, and Defendants are directed, to take necessary or desirable actions to effectuate this arrangement. If Receiver obtains his own financing, Receiver is permitted to enter into an agreement, acceptable to Plaintiff for funding the operations of the facilities.

18. Subject to the Budget (as defined in Section 19 below) and the other provisions of this Order, Receiver shall pay, from the proceeds of the Receivership Assets, all such reasonable costs and expenses as shall be incurred by Receiver in the ordinary course of business in connection with the operation, maintenance, management, protection, and preservation of the Receivership Assets, including, without limitation, reasonable expenses required to put the Receivership Assets in a rentable and/or saleable market-ready condition or otherwise necessary to realize the value

thereof. Neither Receiver nor Plaintiff shall be liable for any expenses incurred with regard to the Receivership Assets prior to Receiver taking possession of the Receivership Assets, nor shall Receiver or Plaintiff be required to use the Receivership Assets for payment of any expenses incurred with regard to the Receivership Assets prior to the date of this Order. Notwithstanding the foregoing, Receiver may, in Receiver's sole discretion, pay those expenses which were incurred in the normal and ordinary course of business of the Receivership Assets prior to Receiver taking possession of the Receivership Assets if, and only if, (a) Receiver determines that payment of any such pre-existing expense is necessary and critical to the ongoing operation, maintenance, management, protection, and preservation of the Receivership Assets; and (b) Receiver has received Plaintiff's prior written consent. Except as provided in, and in all events in accordance with the immediately preceding sentence, no pre-existing expenses shall be paid by Receiver. Receiver shall not be required to perform under any contract or lease entered into prior to the date on which he assumes possession of the Receivership Assets. Notwithstanding the foregoing, Receiver may, in Receiver's sole discretion, perform under such contracts or leases.

19. Receiver shall perform its obligations hereunder and make disbursements in accordance with, and subject to, the terms of this Order and the Budgets (as defined in this Section 19). Prior to Receiver and Plaintiff's agreement on the Initial Budget, Receiver shall submit disbursement requests to Plaintiff and disbursements may be made in Plaintiff's sole and absolute discretion. Within twenty (20) calendar days of the entry of this Order, unless Receiver and Plaintiff agree otherwise, Receiver shall deliver to Plaintiff a cash flow forecast for Defendants for the upcoming 13-week period (commencing with the calendar week in which the cash flow forecast is delivered to Plaintiff), in form and detail acceptable to Plaintiff (the "Initial Budget"). On Thursday of each calendar week after delivery of the Initial Budget (or the next succeeding

business day if Thursday is not a business day), Receiver shall regularly deliver a 13-week cash flow forecast (together with the Initial Budget, the “Budgets” and, individually, a “Budget”) to Plaintiff. Each Budget shall (a) be prepared on a reasonable basis and in good faith, and based upon assumptions believed by Receiver to be reasonable at the time made and upon the best information then reasonably available to Receiver, and (b) be subject to review and written approval by Plaintiff. To the extent a proposed Budget is not approved, Receiver may submit a revised Budget for Plaintiff’s review and written approval, it being understood and agreed that Receiver may not make any disbursements and Plaintiff shall have no obligation to fund any disbursements pursuant to this Order, the Loan Agreement or otherwise, if a Budget has not been approved for the week in which such expenses are to be disbursed. Receiver shall not make disbursements in excess of those Budgeted Items (as defined in Section 21 below) listed in the Budget; provided that there shall be an allowed 15% negative variance to the cumulative aggregate amount of disbursements scheduled to be made during the period from the Initial Budget through and including the then-current calendar week (*e.g.*, on a cumulative aggregate weekly Budgeted Item basis). Without limiting the foregoing, notwithstanding any relief granted in any other order entered by the Court, Receiver shall not make any expenditures authorized by such orders unless, and to the extent that, such expenditures are encompassed and expressly included in this Order and the Budget. Receiver may submit disbursement requests to Plaintiff for items not covered by an Approved Budget, and such disbursements may be made in Plaintiff’s sole and absolute discretion. However, nothing herein shall be construed to be limiting the discretion of Receiver with respect to his compliance with this Order.

20. Defendants shall continue to comply with their reporting requirements under the Loan Agreement following entry of this Order. To the extent Defendants fail to provide the



reporting, Receiver, in consultation with Plaintiff, shall use his best efforts to timely provide the reporting required under the Loan Agreement. Defendants are authorized and directed to provide all information as and when required by Receiver to fulfill reporting obligations.

21. Receiver shall deliver to Plaintiff and its counsel (with a copy to Defendants) by 5:00 p.m. (Eastern time) on the first Wednesday of the calendar week after seven (7) days have passed after the approval of the first Budget, and on each Wednesday of each calendar week thereafter (in each case, for the immediately preceding calendar week) or at such time as otherwise agreed in writing by Plaintiff, in form and substance satisfactory to Plaintiff, a compliance report (the “Compliance Reports”) documenting and detailing: (a) all cash receipts of Defendants and their operations; (b) all payments and disbursements made by Receiver; (c) the updated weekly actual performance compared to the Budget on both an aggregate basis and a line-item by line-item basis (each particular line-item set forth on the Budget being referred to herein as a “Budgeted Item”), stating all variances and providing a narrative discussion and analysis by Receiver with respect to any and all negative variances; and (d) such other reports as Plaintiff may reasonably request from time to time.

22. Receiver shall have no obligation to expend funds in excess of the receipts actually collected or received by Receiver. Plaintiff shall have no obligation to provide funds to Receiver. Receiver is authorized to borrow funds from Plaintiff or use Plaintiff’s cash collateral, both at Plaintiff’s sole discretion. Any funds borrowed from Plaintiff by Receiver shall be secured by a first, valid and perfected lien and security interest in the Receivership Assets senior to all other liens and security interests in the Receivership Assets, which lien shall be valid and perfected without the necessity of recordation, filing, or any other act of Plaintiff, and Receiver is authorized, but not required, to issue receivership certificate(s) to evidence and secure any such protective

advances by Plaintiff. Receiver shall, from time to time as Receiver deems appropriate after forecasting potential needs, remit to Plaintiff any income generated by the operations of the Receivership Assets subject to Plaintiff's security interests and liens for application against the amounts which Defendants owe Plaintiff, in accordance with the terms of the Loan Agreement. Loans from Plaintiff to Receiver not paid during the receivership, shall be paid as a first priority payment from the proceeds of the sale of the Receivership Assets and taxed as an administrative expense of the receivership.

23. Except in instances of willful misconduct, the liability of Receiver and any person engaged by Receiver hereunder is and shall be limited to the Receivership Assets, and neither Receiver nor any person or entity engaged by Receiver hereunder shall be personally liable for any actions taken pursuant to this Order or carrying out Receiver's duties, excepting only claims which arise from the willful misconduct of such person as determined by a final order of this or another Court of competent jurisdiction. In carrying out Receiver's duties as set forth herein, Receiver is entitled to act in the exercise of Receiver's own sound business judgment as Receiver deems appropriate within Receiver's sole discretion subject only to the terms of this Order and applicable law. Receiver shall not be liable for any action taken or not taken by Receiver in good faith and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by willful misconduct or gross negligence. Receiver and all of his employees and agents shall be immune, each as an officer of this Court, for any personal liability of any kind arising from, caused by or in any way connected with exercising any rights or performing any duties in his capacity as Receiver. Defendants, to the extent of the value of the Receivership Assets, shall indemnify, hold harmless, and defend Receiver from and against any and all liabilities, costs, and expenses including, but not limited to, the cost of any bond required by this

Order and legal and other fees and expenses incurred by Receiver arising from or in any way connected to the performance of the Receiver's duties as Receiver.

24. Defendants shall pay the costs, fees and expenses of Receiver in connection with the performance of his duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by Receiver to assist him in carrying out his duties and obligations from the proceeds of the Receivership Assets. All applications for costs, fees and expenses for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other reasonable operating expenses, shall be made by application to the Court setting forth in reasonable detail the nature of the services, except however, that unless an objection is filed with the Court and served on Plaintiff's counsel and Receiver's counsel and Defendants within ten (10) days of filing the fee application, the application shall be deemed approved by all parties and this Court and Receiver is then authorized to pay such fees contained within the fee application. Receiver shall be compensated a monthly fixed fee of \$5,000.00 per month per Facility, plus reimbursement for all reasonable and necessary out of pocket costs and expenses, plus a one percent (1%) sale disposition fee for any Facility sold by Receiver during the receivership. Receiver's compensation shall be paid (a) in accordance with the Budget or as otherwise agreed upon in writing by Receiver and Plaintiff; (b) first from the Receivership Assets including all monies or other proceeds derived therefrom, and, next; (c) from secured advances, if any, that Plaintiff, in its sole discretion in accordance with this Order, make to Receiver to pay such fees and expenses, but only to the extent that the Receivership Assets are insufficient to pay Receiver's compensation.

25. On or before thirty (30) days from entry of this Order, Receiver shall file, with a copy to Plaintiff, an inventory (the "Inventory") of all the property and assets in Receiver's

possession, or in the possession of others who hold possession as Receiver's agent, and in a separate schedule an inventory of the property and assets of the estate not reduced to possession by Receiver but claimed and held by others.

26. Receiver shall make an initial report to this Court and to Plaintiff, with a copy to Defendants, on or before four (4) months from filing the Inventory regarding its initial findings. Receiver shall thereafter submit an updated status report on a quarterly basis or as otherwise ordered by the court. Copies of all such reports shall be served upon all parties appearing in this case by the court's electronic filing system.

27. Receiver may investigate any matters he deems appropriate in connection with discovering additional information as it relates to the management or administration of the Receivership Assets and/or Defendants. In connection with any such investigation, Receiver is authorized to (a) compel, including by subpoena, the appearance and testimony of all persons, including Defendants, and the production of the originals of any records and materials, of any sort whatsoever, within the possession, custody or control of any person, though Receiver's authority under this paragraph shall not be construed to require the waiver by any person of any validly asserted privilege.

28. Receiver may at any time request from the court that it be exonerated, discharged and released from its appointment as Receiver. Receiver shall, during the pendency of this action, have the right to apply to this court for further instructions or directions.

29. As of the date of this Order, all persons and entities, including but not limited to Defendants' creditors and their respective officers, agents, representative and all other persons or entities acting under or in concert with such creditors are hereby placed on notice that all Receivership Assets are in *custodia legis*, and, as such, under the protection of this court, immune

from attachment or other legal process, and subject entirely to control by Receiver as this Court's appointee. All persons are hereby enjoined from commencing or continuing to prosecute any action against the Receivership Assets outside of this action.

30. No legal actions, administrative proceedings, self-help remedies, or any other acts or proceedings under any federal, state or municipal statute, regulation or by-law shall be taken or continued against Receiver or the Receivership Assets, or any part thereof, without leave of this Court first having been obtained.

31. No utility or other vendor may terminate service or the provision of goods to the Receivership Assets as a result of the non-payment of pre-receivership obligations. Each utility company or entity providing service to the facilities shall forthwith transfer any deposits which it holds for the benefit of Defendants to the exclusive control of the Receiver and shall be prohibited from demanding that the Receiver deposit additional funds in advance to maintain or secure such service.

32. No insurance company shall be permitted to terminate coverage or refuse coverage for the Receivership Assets based on prior unpaid premiums, claims history or because of the appointment of the Receiver pursuant to this Order. In addition, no insurance company shall be allowed to put in place more stringent payment arrangements during the term of the receivership pursuant to this Order.

33. Subject to Section 15, Defendants shall not cancel any existing insurance policies on the Receivership Assets prior to the expiration of their terms.

34. The authority granted to Receiver herein is self-executing. Receiver is authorized to act in accordance with this Order on behalf of, and in Defendants (or Receiver's) name, as

Receiver deems appropriate without further order of this court and without personal recourse against Receiver (subject to any recourse described herein).

35. This Order may be modified by order of the court after notice to Receiver, Defendants and Plaintiff or if any party brings a request before the Court for any modification hereto, including without limitation for appointment of an alternate receiver.

36. Nothing in this Order shall impair Plaintiff of its rights and remedies against any guarantor, indemnitors or obligors of the Obligations at issue in this matter.

37. The Court shall retain jurisdiction and supervision of all matters concerning Receiver, the receivership created hereby and the Receivership Assets. Any and all actions which affect Receiver or the Receivership Assets shall be brought in this Court. Receiver may seek instructions and additional authority from this court upon written notice to Plaintiff.

38. Plaintiff does not anticipate the total monies recovered from the operation and sale of the Receivership Assets to exceed the sums due to Plaintiff. Thus, it does not appear there will be any proceeds for other creditors. Accordingly, Receiver shall not perform any claims administration tasks. However, if it should appear to Receiver that he reasonably expects to collect more than the sums due to Plaintiff, Receiver shall provide prompt written notice to the Court and to the parties. In such a circumstance, the Court reserves the right to amend this Order to provide for claims administration.

39. This Order shall be effective immediately upon its entry and for all purposes. Within two (2) days of the entry of this Order, Receiver shall serve a copy of this Order on Defendants and within twenty-one days, upon all known creditors of Defendants. Actual notice may be accomplished by delivery of a copy of this Order by hand, U.S. mail, courier service, facsimile, email, or any other reasonable means of delivery.

40. The terms of this Order shall continue in full force and effect unless and until further order of this Court.

41. **THIS IS A FINAL APPEALABLE ORDER AND THERE IS NO JUST REASON FOR DELAY.**

February 13, 2024

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Date

s/ ERIC I. LONG

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U.S. MAGISTRATE JUDGE