

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

ANESTHESIA HEALTHCARE
PARTNERS, INC.,
AHP ASSOCIATES OF TEXAS, P.A.
AHP OF CENTRAL GEORGIA, P.C.
AHP OF ILLINOIS, INC.
APH OF NORTH CAROLINA, INC.
AHP OF NORTHWESTERN
LOUISIANA, LLC
AHPM OF GEORGIA, INC.
ANESTHESIA HEALTHCARE
PARTNERS OF FLORIDA, INC.
HBL ANESTHESIA SERVICE, LLC
MEDFINANCIAL, LLC
(Jointly Administered under Anesthesia
Healthcare Partners, case No. 14-59631)

Case No. 14-59631-wlh
Case No. 14-59632-wlh
Case No. 14-59633-wlh
Case No. 14-59634-wlh
Case No. 14-59635-wlh

Case No. 14-59636-wlh
Case No. 14-59637-wlh

Case No. 14-59639-wlh
Case No. 14-59640-wlh
Case No. 14-59641-wlh

**MOTION FOR ORDER APPROVING CERTAIN PROVISIONS OF
TERM SHEET FOR PROPOSED SALE TRANSACTION**

COMES NOW Anesthesia Healthcare Partners, Inc., AHPM of Georgia, Inc., AHP of Central Georgia, P.C., AHP of Northwestern Louisiana, LLC, AHP of North Carolina, Anesthesia Healthcare Partners of Florida, Inc., AHP Associates of Texas, P.A., MedFinancial, LLC, AHP of Illinois, Inc., and HBL Anesthesia Service, LLC (collectively, the “Debtors” and each individually, a “Debtor”) and moves this Court (the “Motion”) for the entry of an Order, pursuant to 11 U.S.C. §§ 105, 363(b) and (f) and Fed. R. Bankr. P. 2002(a)(2), 6004(a), 6004(c), and 6004(f) and 9014, approving certain provisions in the term sheet attached hereto as Exhibit A (the “Sale Term Sheet”), which embodies proposed terms for sale to Northstar

Anesthesia, PA or its designees (“Northstar”) of certain of the Debtors’ contracts and contractual rights’ associated with the provision of anesthesia management services by Debtors; and in support thereof, Debtors state as follows:

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 157(b)(2)(A), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2.

On May 15, 2014 (the “Petition Date”), Debtors commenced these bankruptcy cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et. seq. (the “Bankruptcy Code”). Debtors are operating as debtors in possession pursuant to 11 U.S.C. §§1107 and 1108.

BACKGROUND

3.

Each of the Debtors contracts with health care entities such as hospitals, private clinics and ambulatory service centers in their respective geographical areas to provide anesthesia management and/or support services.

4.

The Debtors’ sole principal is Mr. Sean M. Lynch. Mr. Lynch has over 40 years of experience operating anesthesia management or holding related health care positions. Mr. Lynch owns 100% of each Debtor and is the CEO or managing member of each of the Debtors.

5.

In total, the Debtors have approximately 38 independent contractor providers and provide services for approximately 14 healthcare facilities. The Sale Term Sheet references four (4) of

the Debtors' facilities presently contemplated to be part of a final purchase agreement with Northstar.

6.

Debtors' healthcare professionals are compensated as independent contractors under Physician Independent Contractor Professional Services Agreements and Certified Registered Nurse Anesthetists Professional Services Agreements (the "Provider Agreements")

7.

Debtors' contract with hospitals and other healthcare facilities to provide anesthesia management services pursuant to Agreements for Professional Anesthesia Services ("Site Agreements").

8.

The assets of the Debtor have been pledged to SunTrust Bank, in its capacity as administrative agent for the Lender. The Debtors estimate that the total outstanding principal loan balances as of the Petition Date owing to Lender on its Term Loans total \$4,500,000.00, and on its Revolving Loans total \$4,000,000.00 (hereinafter the "Lender Debt"), in addition to forced penalties and fees imposed by SunTrust in excess of \$100,000.00. Lender has asserted liens upon and security interests (hereinafter the "Lender Lien") against the assets of the Debtors, including accounts receivable owned by the Debtors, and the proceeds thereof, and against Debtors' inventory, equipment and fixtures (hereinafter the "Collateral").

9.

Debtors have identified a potential purchaser, Northstar (the "Purchaser"), who seeks to acquire certain rights under certain of the Provider Agreements and Site Agreements (the "Property"). No commission is sought in connection with the proposed sale. The Debtors'

secured lenders, who are expected to be the sole beneficiaries of the proceeds of any sale of the Property, support this Motion and the relief requested herein.

REQUEST FOR RELIEF

10.

To maximize the value of the estate for the benefit of its creditors, the Debtors seek to obtain the highest and best price for the Property through the asset sale procedures provided for under the Bankruptcy Code. Over the past several months, the Debtors and their retained professionals, including their financial advisor, have already explored potential sale options and approached possible buyers for the Property. To date, only one buyer, Northstar, has come forward with a credible interest in acquiring the Property for \$3,500,000. Northstar has substantiated its interest in the Property by providing the detailed Sale Term Sheet, which proposes terms whereby Northstar would be willing to conduct further diligence and potentially enter into a formal “stalking horse” asset purchase agreement (the “Stalking Horse APA”) to acquire the Property. Northstar is not willing, however, to invest the substantial time and money necessary to conduct further diligence or enter into the Stalking Horse APA unless it can be sure that certain provisions of the parties’ preliminary agreement embodied in the term sheet, as further described below, can be honored by the Debtors. Accordingly, the Debtors move this Court for and Order approving certain provisions of the Sale Term Sheet, attached hereto as **Exhibit A**.

11.

The Sale Term Sheet provides that the sale of the Property will be documented in the Stalking Horse APA and will be subject to sale procedures that comply with the Bankruptcy Code, including the solicitation of competing offers for the Debtors’ assets. To be clear, the Debtors are not at this time seeking this Court’s approval of all proposed sale terms included in

the Sale Term Sheet as potential terms of the Stalking Horse APA. The Debtors will return to this Court at a later date, as described in the Milestones in the Sale Term Sheet, to seek authority to enter into the Stalking Horse APA, including the break-up fee and sale procedures, once those terms are negotiated and drafted by the parties.¹

12.

At this time, the Debtors seek this Court's approval of five key provisions in the Sale Term Sheet, which can be summarized as follows: (i) the "Conduct of Business" provision, which states that the Debtors must continue to use commercially reasonable efforts to carry on the business of the Debtors in the ordinary course during the sale process; (ii) the "Reimbursement of Expenses" provision, which provides that the Debtors will reimburse Northstar's out-of-pocket expenses relating to the potential purchase of the Property of up to \$125,000, payable upon the earlier of (a) any breach of the Sale Term Sheet by Seller or termination of the Purchase Agreement due to a breach thereof by the Seller or (b) any bidder other than Northstar being declared the winning bidder at the auction, as described in the provision; (iii) the "No-Shop" provision, which provides Northstar with a 24-day window during which the Debtors will not solicit or negotiate offers with respect to the Property from other potential purchasers; (iv) the "Governing Law" provision, which provides that the Sale Term Sheet is governed by New York law; and (v) the "Confidentially" provision, which provides certain confidentiality protections for the benefit of Northstar.

APPLICABLE AUTHORITY

¹ For example, the Sale Term Sheet contemplates that the Stalking Horse APA will provide for an auction in the event any competing bidder qualifies by posting a cash deposit equal to 5% of the aggregate bid amount, and contemplates that initial over-bids must include break-up fees, expenses and exceed the purchase price by at least the amount of \$100,000.00 (i.e., such bids cannot be less than \$3,850,000.00). Finally, the Sale Term Sheet contemplates that, in the event a sale is closed of all or any part of the business to any bidder other than Northstar, Northstar shall be entitled to a break-up fee of \$125,000.00.

A. Section 363 (b) Authorizes the Sale Contemplated By The Sale Term Sheet

Section 363 (b)(1) of the Bankruptcy Code provides, in relevant part, that “the Debtors, after notice and hearing, may use, sell, or lease, other than the ordinary course of business, property of the estate.” 11 U.S.C. § 363 (b)(1). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a Debtors’s assets, in applying this section, courts have required that it be based upon the sound business judgment of the Debtors. *See In re Chateaugay Corp.*, 973 F.2d. 141 (2d. Cir. 1992)(holding that a judge determining a § 363(b) application must find from the evidence presented before him a good business reason to grant such application); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d. 1063, 1071 (2nd Cir. 1983); *Stephens Indus. v. McClung*, 789 F.2d. 386, 390 (6th Cir. 1986)(holding that “bankruptcy court can authorize a sale of all of a chapter 11 Debtors’s assets under section 363(b) when a sound business purpose dictates such action”). The Debtors submit that the proposed Sale Term Sheet reflects a sale within the parameters of the sound business judgment test articulated in the above referenced authorities.

B. The Proposed Reimbursement of Expenses and No-Shop Provision Are Reasonable Bid Protections

The Debtors have negotiated the attached Sale Term Sheet in good faith and with the goal of maximizing the value of the Property for the benefit of all creditors of their estates by incentivizing Northstar to make a valid “stalking horse” bid. Courts routinely approve bid protections offered to stalking horse bidders to set the bar for a successful auction process. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentives may “be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”); *In re Integrated*

Resources, Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (noting that “the business judgment of the Debtor is the standard applied under the law in this district” and applying the standard to a break-up fee).

The Third Circuit Court of Appeals has addressed the appropriate standard for determining whether proposed bidding incentives in the bankruptcy context are appropriate. In *Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999), the Court of Appeals held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Section 503(b) of the Bankruptcy Code govern bidding incentives in the bankruptcy context. Finding no “compelling justification” for treating an application for break-up fees and expenses under Section 503(b) any differently from other applications for administrative expenses, the Court concluded that “the determination whether break-up fees or expenses are allowable under § 503(b) must be made in reference to general administrative expense jurisprudence. In other words, the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *Id.* at 535.

In *O’Brien*, the Third Circuit identified at least two circumstances in which bidding incentives may provide actual benefit to the estate, justifying administrative expense status. First, there exists an actual benefit to the estate where bidding protections “promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, where the availability of bidding incentives induces a prospective buyer to research the value of the debtor and submit a bid that serves as a minimum bid on which other bidders can rely, the initial “bidder may have

provided a benefit to the estate by increasing the likelihood that the price at which the Debtors is sold will reflect its true worth.” *Id.* Both of those circumstances exist in this case, because the expense reimbursement and no-shop bidding protections are critical to persuade Northstar to expend the time and energy to continue its diligence and potentially enter into the Stalking Horse APA, which will serve as a “floor” for other bidders in connection with the sale process. *See In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (“Competitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is ‘to maximize the bidding, not to restrict it’”); *see also In re Sea Island Co.*, 10-21034, 2010 WL 4393269 (Bankr. S.D. Ga. Sept. 15, 2010) (considering multiple factors, such as whether the transaction is arms-length or whether the protection sought will create a “chilling effect” on bids, to assess whether bid protections were in “the best interest of the bankruptcy estate” and “further[ed] the diverse interests of the debtor, creditors and equity holders alike.”).

This Court has approved bid protections in previous chapter 11 reorganization cases. For example, in the case of *In re Lake Burton Development, LLC.*, case No. 09-22830 (PWB), Judge Bonapfel authorized the sale of the Debtors’ golf course and real estate development business at auction with an overbid equal to the cash purchase price plus the break-up fee of 4.75% plus \$250,000.00. In *In re Dan River, Inc.*, case No. 04-10990 (WHD), Judge Drake approved break-up fees of 5.3% of the cash purchase price, plus expenses and \$50,000.00.

NOTICE

Debtors are contemporaneously herewith filing a motion to expedite consideration of the Motion. Debtors intend to give notice of the present Motion and hearing on approval of the Sale Term Sheet, by mailing a copy of the Motion, to (i) the Internal Revenue Service; (ii) creditors listed on the List of Twenty Largest creditors in the case; (iii) counsel to Suntrust, the post-petition lender in these bankruptcy cases; (iv) all entities having requested notices pursuant to

Bankruptcy Rule 2002; and (v) the Office of United States Trustee (the persons listed in clauses (i) through (v) are referred to collectively as the “Notice Parties”). The Debtors submit that the foregoing is sufficient notice of the Motion for approval of the proposed Sale Term Sheet.

WHEREFORE Debtors respectfully request that this Court enter an Order approving the Sale Term Sheet and granting such other and further relief as is just and proper.

Respectfully submitted this 24th day of September, 2014.

THEODORE N. STAPLETON, P.C.
/s/ Theodore N. Stapleton
Theodore N. Stapleton
Georgia Bar No. 675850

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing pleading by facsimile, on the following:

United States Trustee
362 Richard Russell Building
75 Spring Street, S.W.
Atlanta, Georgia 30303

Jesse H. Austin, III, Esq.
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1211 Avenue of the Americas
New York, NY 10036-8704

This 24th day of September, 2014.

/s/ Theodore N. Stapleton
THEODORE N. STAPLETON
Georgia Bar No. 675850

Execution Version

**Anesthesia Healthcare Partners
(and its Subsidiaries)
SUMMARY OF PRINCIPAL TERMS OF PROPOSED SALE TRANSACTION
September 19, 2014**

This following Summary of Principal Terms (the “**Sale Term Sheet**”) describes certain material terms of a proposed sale of the assets and operations at the following facilities of Anesthesia Healthcare Partners, Inc. (“**Seller**”): Digestive Healthcare of Georgia, PC, Digestive Care Physicians LLC, Dekalb Gastroenterology Associates, and Brazosport Regional Health Systems Surgical Services (collectively, the “**Business**”), to be consummated pursuant to section 363 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and as more fully set forth below (the “**Sale Transaction**”). Except for the provisions entitled “**Conduct of Business**,” “**Reimbursement of Expenses**,” “**No-Shop**,” “**Governing Law**,” “**Confidentiality**” and “**Non-Binding Effect**” below, the parties do not intend to be, and no party shall be, bound to any of the terms contained herein unless and until they enter into definitive documentation regarding the subject matter of such items as summarized in this Sale Term Sheet and approved by a United States Bankruptcy Court (the “**Bankruptcy Court**”).

Seller	Anesthesia Healthcare Partners, Inc. and certain of its affiliates that are parties to the Designated Contracts (as defined below).
Buyer	A to be formed Delaware limited liability company (“ Buyer ”) to be owned, directly or indirectly, by Northstar Anesthesia PA (“ Parent ”).
Structure of Sale Transaction	<p>Seller has commenced a chapter 11 case (the “Chapter 11 Case”) and shall, within the Chapter 11 Case, implement the Sale Transaction pursuant to section 363 of the Bankruptcy Code.</p> <p>Buyer will purchase the Acquired Assets (as defined below) pursuant to the terms and conditions set forth in that certain asset purchase agreement (the “Stalking Horse Purchase Agreement”), which shall be in form and substance satisfactory to Buyer and Seller; <u>provided</u> that Buyer may assign its obligations under the Stalking Horse Purchase Agreement to one or more of its affiliates, including affiliated practices, so long as Buyer is not relieved of its obligations under the Stalking Horse Purchase Agreement unless and until such obligations have been performed by any such assignee.</p>
Purchase Price	The purchase price (the “ Purchase Price ”) shall be comprised of: (a) the assumption by Buyer of certain liabilities specifically designated in the Stalking Horse Purchase Agreement as assumed liabilities consistent with this Sale Term Sheet (the “ Assumed Liabilities ”); and (b) and cash in the amount of \$3,500,000.

<p>Milestones</p>	<p>This Sale Term Sheet and/or the Stalking Horse Purchase Agreement may be terminated by Buyer unless the following milestones are achieved:</p>
	<ul style="list-style-type: none"> (i) filing with the Bankruptcy Court one or more motions, each in form and substance acceptable to Buyer, seeking approval of the binding portions of this Sale Term Sheet, including, without limitation, those set forth under “Reimbursement of Expenses,” “No-Shop” (the “Sale Term Sheet Motion”) within 2 business days of the date hereof; (ii) obtaining entry of a Bankruptcy Court order, in form and substance satisfactory to Buyer, approving the Sale Term Sheet Motion (the “Term Sheet Approval Order”) within 14 days of the date hereof, and such Term Sheet Approval Order shall become final and non-appealable within 14 days of its entry; (iii) entry into the Stalking Horse Purchase Agreement no later than October 10, 2014 (the actual date that the parties execute the Stalking Horse Purchase Agreement, the “Entry Date”); (iv) filing with the Bankruptcy Court one or more motions, each in form and substance acceptable to Buyer, seeking approval of (a) the Stalking Horse Purchase Agreement, subject only to higher and/or otherwise better offers (the “Sale Motion”), and (b) bidding procedures, the Break-Up Fee and the Expense Reimbursement, in form and substance reasonably acceptable to Buyer, in connection with approval of the Sale Transaction (the “Bid Procedures Motion”) within 2 business days of the Entry Date; (v) obtaining entry of a Bankruptcy Court order, in form and substance satisfactory to Buyer, approving the Bid Procedures Motion (the “Sale Procedures Order”) within 14 days of the Entry Date, and such Sale Procedures Order becoming a final and non-appealable order within 28 days of the Entry Date; (vi) in accordance with the terms of the Sale Procedures Order, if (a) there are any “qualified bidders” (other than Buyer) holding an auction for the Sale Transaction (the “Auction”) within 24 days after the entry of the Sale Procedures Order or (b) if there are not any “qualified bidders” (other than Buyer), the Auction will not occur, Buyer will be deemed the winning bidder and the day of the bid deadline in the Sales Procedures Order will be deemed to be the Auction date;

	<p>(vii) obtaining entry of Bankruptcy Court order, in form and substance reasonably satisfactory to Buyer, approving the Sale Motion and the Stalking Horse Purchase Agreement pursuant to sections 363(f) and 363(m) of the Bankruptcy Code, free and clear of all liens, claims, interests and encumbrances and exposures to any liability, including successor liability, other than Assumed Liabilities (the “Sale Approval Order”) within 5 business days of the conclusion of the Auction, and such Sale Approval Order shall become final and non-appealable within 14 days of its entry, unless such requirement is waived by Buyer; and</p> <p>(viii) Closing Date with respect to the Sale Transaction to occur within 3 days from the date that Sale Approval Order becomes final, subject to the satisfaction of the conditions set forth in the Stalking Horse Purchase Agreement or winning bidder’s Court-approved asset purchase agreement, as applicable.</p>
<p>Acquired Assets</p>	<p>The “Acquired Assets” will consist of (a) the Designated Contracts (as defined below); and (b) to the extent related to the Designated Contracts, all real and personal, tangible and intangible property and assets of any kind or nature whatsoever, whether now owned or hereafter acquired by Seller, including, without limitation, accounts receivable and prepaid expenses, and shall include any and all claims and causes of action, all trade names, trademarks, copyrights, and other intellectual property and license rights owned by Seller related exclusively or primarily to the Business. The Acquired Assets will exclude all other assets of Seller that are not Acquired Assets.</p>
<p>Assumption and Assignment of Contracts and Leases</p>	<p>The facility contracts related to Digestive Healthcare of Georgia, PC, Digestive Care Physicians LLC, Dekalb Gastroenterology Associates, and Brasosport Regional Health Systems Surgical Services and all other contracts and leases of Seller related to the Business designated by Buyer in the Stalking Horse Purchase Agreement (the “Designated Contracts”) shall be assumed by Seller and assigned to Buyer, with cure costs, if any, to be paid by Seller.</p>
<p>Retained Employees</p>	<p>The Stalking Horse Purchase Agreement shall designate that all employees of Seller related to the Business shall be offered employment following the consummation of the Sale Transaction, with each employee being offered the same annual cash compensation (salary and bonus) currently in effect and with go-forward benefits under Parent’s benefit plans and consistent with Parent’s corporate policies for similarly situated employees (such offered employees that accept employment with Buyer, the “Transferred Employees”).</p>

<p>No Liabilities Assumed by Buyer, Except as Expressly Assumed</p>	<p>Buyer will assume no liabilities of Seller, except for accrued payroll, vacation and sick time expenses related to Transferred Employees incurred in the ordinary course of business.</p>
<p>Conduct of Business</p>	<p>From the date of execution of this Sale Term Sheet, Seller shall use its commercially reasonable efforts to carry on the Business in the ordinary course of business, including, but not limited to, maintaining its accounting methods, using its commercially reasonable efforts to preserve the business and assets and its business relationships, continuing to operate their billing and collection procedures, using its commercially reasonable efforts to retain key employees, and maintaining its business records in accordance with their past practices.</p>
<p>Deposit</p>	<p>On the Entry Date, pursuant to the terms of the Stalking Horse Purchase Agreement, Buyer shall provide an earnest money deposit of \$175,000 (the “Deposit”) to an escrow agent reasonably acceptable to Buyer and Seller. If Seller consummates the Sale Transaction with Buyer, the Deposit shall be credited against the cash portion of the Purchase Price that would otherwise be payable by Buyer, and released to Seller. If Buyer is not declared the winning bidder at the Auction, the Deposit shall be promptly, but in any event within 2 business days, thereafter, be released to Buyer. If Seller does not consummate the Sale Transaction with Buyer due to Buyer’s material breach of its obligations to Seller, which have not been cured within 10 days notice thereof, the Deposit shall be released to Seller with no obligation to return the Deposit to Buyer. In all other instances, the Deposit shall be promptly, but in any event within 2 business days, after the termination of the Stalking Horse Purchase Agreement (as such may later be modified or amended in connection with the Auction), be released to Buyer.</p>
<p>Break-up Fee</p>	<p>The Stalking Horse Purchase Agreement will have, and the Sale Procedures Order shall authorize, a break-up fee of \$125,000 (the “Break Up Fee”). The Break-Up Fee shall be payable to Buyer upon the closing of a sale of all or any part of the Business to any bidder, other than Buyer or another affiliate of Parent, that is declared the winning bidder at the Auction. In the Sale Procedures Order, such Break-Up Fee shall be designated as a super-priority administrative claim.</p>

Reimbursement of Expenses	As will be provided in the Term Sheet Approval Order and the Sales Procedures Order, Seller agrees to reimburse reasonable out-of-pocket expenses up to \$125,000 in the aggregate, incurred by Parent and/or Buyer in developing this Sale Term Sheet, negotiating and documenting the Stalking Horse Purchase Agreement (including counsel and financial advisor fees related thereto), and in participation in the sale process and the transactions contemplated hereby (the “ Expense Reimbursement ”). The Expense Reimbursement shall be payable to Parent upon the earlier of (i) any breach of this Sale Term Sheet by Seller or termination of the Stalking Horse Purchase Agreement due to a breach thereof by Seller and (ii) any bidder, other than Buyer or another affiliate of Parent, being declared the winning bidder at the Auction. In the Term Sheet Approval Order and the Sale Procedures Order, such Expense Reimbursement shall be designated as a super-priority administrative claim.
Overbid Protections	The Sales Procedures Order will provide that Seller may not accept any competing bid for the Acquired Assets unless such competing bid (a) is made in compliance with bid procedures included in the Sale Procedures Order (which must be acceptable to Buyer in form and substance at the time of its entry), (b) is an all cash bid (other than the additional assumption of any liabilities) in an amount of at least \$3,850,000, (c) includes a cash deposit equal to 5% of the aggregate bid amount, and (d) exceeds the amount of the Purchase Price by at least the amount of the Break-Up Fee and the Expense Reimbursement <u>plus</u> \$100,000.

<p>No-Shop:</p>	<p>From the date of execution by Seller of this Sale Term Sheet through the earlier of (a) entry of the Bid Procedures Order or (b) the date that is 24 days from the date of execution by Seller of this Sale Term Sheet, Seller shall not, nor shall Seller authorize or permit any of its affiliates, nor shall they authorize or permit any officer, director, manager, employee or equity owner of, or any investment banker, attorney or other advisor, agent or representative of Seller or any of its controlled affiliates to, directly or indirectly, solicit or negotiate with respect to other offers to purchase the Acquired Assets or propose any plan of reorganization or plan of liquidation to retain or dispose of all or any material portion of the Acquired Assets (an “Alternative Transaction”); <u>provided, however,</u> that if after the date hereof the Board of Directors of Seller receives a written offer to purchase the Acquired Assets made after the date hereof in circumstances not involving a breach of this section and the Board of Directors of Seller (a) believes in good faith that such Alternative Transaction is bona fide, (b) determines in good faith that such Alternative Transaction constitutes or would reasonably be expected to lead to a superior proposal; and (c) determines in good faith, after consulting with and receiving advice of its outside counsel, that the failure to take such action would reasonably be expected to result in a breach of its fiduciary duties to Seller’s stockholders under applicable law, then Seller may, at any time prior to executing the Stalking Horse Purchase Agreement and after providing Buyer not less than seventy-two (72) hours written notice of their intention to take such actions (i) furnish information with respect to Seller to the third party making such Alternatives Transaction; provided that Seller, concurrently with its delivery to such third party, deliver to Buyer all such information not previously provided to Buyer, and (ii) consider and participate in discussions and negotiations with such third party or its representative regarding such Alternative Transaction. In the event the Buyer is released from this Term Sheet for any reason all No Shop provisions herein shall be automatically terminated.</p>
<p>Conditions Precedent to Closing</p>	<p>Closing of the Sale Transaction shall be subject to the satisfaction of customary closing conditions, including, but not limited to, (a) the timely compliance with the Milestones set forth above; and entry of the Sale Procedures Order and Sale Approval Order, each in form and substance satisfactory to Buyer, which orders shall not have been reversed, modified, amended or stayed; (b) key employees, as determined in due diligence, shall have accepted employment with Buyer or one of its affiliated practices; (c) no Designated Contract having been terminated or being terminable due to the closing of the Sale Transaction; (d) Seller has not materially breached the provisions of this Sale Term Sheet; and (e) any other required regulatory approval identified during the diligence process.</p>

<p>Termination Date of Stalking Horse Purchase Agreement</p>	<p>The Stalking Horse Purchase Agreement shall contain provisions that allow for termination thereof at the earliest to occur of any of the following: (a) by either party (so long as such party did not breach the Stalking Horse Purchase Agreement in a manner to cause such delay) if the Closing shall not have occurred by December 15, 2014; (b) the occurrence and continuation of an event of default under the Stalking Horse Purchase Agreement, if elected by the non-breaching party, and such breach has not been cured within 10 days of notice thereof; and (c) automatically upon the acceptance by Seller or entry into an offer or asset purchase agreement with respect to, or the consummation by Seller of a sale of, all or any material portion of the Acquired Assets to any person or entity other than Buyer.</p>
<p>Definitive Documentation</p>	<p>Any final agreement with respect to the matters referenced in this Sale Term Sheet will be subject to the preparation and execution of definitive Agreements and other documents necessary to effectuate the Sale Transaction, including the Stalking Horse Purchase Agreement (collectively, the “Definitive Documents”), each consistent with the terms of this Sale Term Sheet and otherwise in form and substance acceptable to the parties, each in their sole discretion. The Definitive Documents will contain terms, conditions, covenants and limited representations and warranties, each customary for the as-is where-is Sale Transaction described herein.</p> <p>In addition, in connection with the entry into the Stalking Horse Purchase Agreement, Parent will enter into a customary binding commitment letter or other form of guaranty with respect to the obligations of Buyer under the Stalking Horse Purchase Agreement.</p>
<p>Diligence</p>	<p>Entry into the Stalking Horse Purchase Agreement shall be subject to the satisfactory completion of financial and legal due diligence by Buyer, as follows: (a) contract/facility reviews for all four facilities, including, without limitation, customer calls, provider calls for chief MDs/CRNAs, review of the employee rosters, detail of general and administrative support services provided by Seller and case billing information with case types and units; (b) review of payor contracts/terms and out-of-network status; (c) review of billing contract and expenses; (d) access to management for financial and operational diligence questions; (e) accounting review of facility-level financials; and (f) legal diligence of all contracts, contingent liabilities, litigation and regulatory status. Buyer anticipates that it can complete all diligence within 2 weeks, if Seller provides prompt access to the above-requested information.</p>
<p>Governing Law</p>	<p>This Sale Term Sheet shall be governed by the laws of the State of New York.</p>

Confidentiality	Seller agrees that it will not, without the prior written consent of Parent, disclose publicly or to any third party the terms and conditions of this offer or the subsequent negotiations between the parties, except as specifically set forth herein or to the extent required by law. Notwithstanding the forgoing, Seller shall be permitted to disclose the terms and conditions of this offer to its directors, officers, employees, advisors, agents, counsel and other representatives (collectively, its “ Representatives ”) as necessary in order to pursue the transaction, so long as Seller informs its Representatives of the confidentiality restrictions contained herein. Seller agrees to be responsible for the breach by its Representatives of the confidentiality restrictions contained herein.
Non-Binding Effect	<p>This Sale Term Sheet constitutes a preliminary statement of the intentions of Buyer and does not contain all matters upon which agreement must be reached for the proposed transaction to be effectuated. It is understood that this Sale Term Sheet does not constitute an obligation or commitment of any party to enter into the Stalking Horse Purchase Agreement, and any obligations or commitments to proceed with the proposed transaction will be contained only in the Stalking Horse Purchase Agreement, as duly executed. The parties expressly disclaim any duty to negotiate in good faith and Parent and Buyer reserve the right to withdraw this Sale Term Sheet at any time and to discontinue discussions with respect to a possible transaction, in their sole discretion, for any reason or for no reason. This Sale Term Sheet may not be amended, modified or supplemented, in any manner, except by an instrument in writing signed by each of the parties. This Sale Term Sheet may not be assigned by any of the parties hereto without the prior written consent of the other parties hereto and shall be binding on each party’s successors and permitted assigns.</p> <p>For the avoidance of doubt, notwithstanding the foregoing, the provisions entitled “Conduct of Business,” “Reimbursement of Expenses,” “No-Shop,” “Governing Law,” “Confidentiality” and “Non-Binding Effect” herein shall be binding on the parties pursuant to the terms hereof.</p>

The parties hereto agree to the terms set forth in this Sale Term Sheet, subject to the opening paragraph hereof, as of the date first above written.

Northstar Anesthesia PA, on behalf of itself and Buyer

By: _____

Name:

Title:

Anesthesia Healthcare Partners, Inc.

By: _____

Name:

Title: