

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:	)	Case No. 16-53329
Evergreen Health Services, Inc., et al., ¹	)	Chapter 11
	)	Hon.
Debtors.	)	(Jointly Administered)

COVER SHEET FOR MOTION TO APPROVE SALE PROCEDURES

The Debtors have filed a motion for approval of procedures for the sale of assets, which is attached to this cover sheet. Pursuant to E.D. Mich. L.B.R. 6004-1, the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

PROVISION	Contained in proposed order	Location in proposed order
(1) Provisions concerning the qualifications of the bidding parties.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 2, ¶ 2
(2) Provisions concerning the criteria for a qualifying bid and any deadlines for (i) submitting such a bid, and (ii) notification of whether the bid made constitutes a qualifying bid.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 3, ¶ 4 and 5
(3) Provisions that require qualified bids to identify points of variation from the stalking horse bid (including price and other terms).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 3, ¶ 5.b

¹ The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc. (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330).

(4) Provisions pertaining to the conditions to the qualified bidders' obligation to consummate the purchase (including the time period within which the purchaser must close the transaction).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 5, ¶ 7
(5) Provisions pertaining to the amount required for a good faith deposit.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 3, ¶ 2.d
(6) Provisions that relate to a "Back-Up Buyer" should the first winning bidder fail to close the transaction within a specified period of time.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 5, ¶ 7
(7) No-shop or No-Solicitation provisions including the justification for such provision.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(8) Provisions relating to Break-Up fees, Topping fees, and/or Expense Reimbursement (including the waiver of such fees due to rebidding).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 6, ¶ 12
(9) Provisions specifying the bidding increments.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page _5_, ¶ 11.e.3__
(10) Provisions relating to auction procedures including manner in which auction is to be conducted and when the auction will be open and when it will close.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 4-5, ¶ 6
(11) Provisions relating to whether the auction will occur and the termination of the auction process and/or sale.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 4-5 ¶ 6.b and e
(12) Provision whether 14 day stay of F.R.Bankr.P. 6004(h) and 6006(d) is waived.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 6, ¶ Last
(13) Provisions regarding timing for notice, submission of bids, objections to sale and other key events.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 6, ¶ Second to Last Page 3, ¶ 4 Pages 4 – 5 ¶ 6

Date: Nov. 21, 2016

/s/ Lynn M. Brimer (P43291)

[Debtor's counsel]

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	
Evergreen Health Services, Inc., <u>et al.</u> , ¹	)	Case No. 16-53329
	)	Chapter 11
	)	Hon. Maria L. Oxholm
)	
Debtors.	)	(Jointly Administered)

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. § 363 AND FEDERAL RULES
OF BANKRUPTCY PROCEDURE 2002, 9006, 6004, AND L.B.R 6004-1
FOR ENTRY OF ORDER APPROVING PROCEDURES FOR THE SALE OF REAL
PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS,
TRANSFERRING CLAIMS AND OTHER INTERESTS TO
PROCEEDS OF SALE AND GRANTING OTHER RELIEF**

Evergreen Health Services, Inc., (“Health Services”) and Richard Kelterborn and Janis Meredith-Kelterborn (collectively, the “Kelterborns”) (Health Services and the Kelterborns shall collectively be referred to as the “Debtors”) as Debtors and Debtors-in-Possession, by and through their attorneys, Strobl & Sharp, P.C., bring this Motion for Entry of an Order Pursuant to 11 U.S.C. § 363 and Federal Rules of Bankruptcy Procedure 2002, 9006, 6004 and L.B.R. 6004-1 (1) Approving Procedures for the Sale of Real Property Outside of the Ordinary Course of Business, Transfer of Claims and Interests to Proceeds of Sale and (2) Approving Sale of Property Outside the Ordinary Course of Business and Transferring Claims to Proceeds (the “Motion”), and state:

¹The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc., (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330)

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 28, 2016, (the “Petition Date”), Health Services filed its voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Code”). Pursuant to §§1107 and 1108 of the Bankruptcy Code, Health Services is continuing to operate its business and manage its properties and assets as a debtor-in-possession.

3. Also on September 28, 2016, Janis Meredith-Kelterborn, Evergreen’s sole shareholder, officer and director, filed a joint voluntary petition with her husband, Richard Kelterborn, for relief under Chapter 11 of the Code styled *In re: Richard Kelterborn and Janis Meredith-Kelterborn*, Case No 16-53330. The Kelterborns continue to manage their assets as Debtors-in-Possession.

4. Due to the close and intertwined relationship between Evergreen and the Kelterborns, Evergreen and the Kelterborns filed an amended motion for joint administration of their respective cases. On October 31, 2016, the Court granted the motion for joint administration and on November 2, 2016, entered an order directing the joint administration of the Evergreen and Kelterborn cases.

5. An asset of the Debtors' estate is real property located at 4330 Port Austin Rd., Caseville, MI 48725 (the "Property") (a legal description of the Property is attached as **Exhibit B** hereto).

Relief Requested

6. The statutory basis for the relief requested is found in Section 363 (b) and (f) of the Code, as implemented by Bankruptcy Rules 2002 and 6004, and LBR 6004-1 (E.D.M.).

7. As described above, the Debtors desire to proceed with a sale process and request that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, implementing the following bidding procedures (the "Bidding Procedures") for the sale of the Property).

Sale Process

8. In October 2014, Debtors entered into a Residential Real Estate Listing Agreement with Osentoski Realty with Dale Ignash as the Broker, a reputable broker in the Caseville, Michigan area and listed the Property for sale with a listing price of \$325,000. The Property was continuously listed with Osentoski Realty through October 2015. On December 15, 2015, the Debtors entered into a marketing agreement with David L. Kraft Realty Co., LLC and the Property was again listed for sale with a listing price of \$299,900. The asking price was subsequently reduced to \$289,000.

9. The Broker the Debtors actively marketed and attempted to sell the Property during the listing periods to no avail. Because of market conditions and the unique nature of

the Property, the Debtors' Broker and Debtors' were unsuccessful in selling the Property. In fact, despite multiple showings there were no offers made during either of the listing periods.

10. The Property has substantial deferred maintenance and is in desperate need of a new furnace, new roof and the siding is covering asbestos and needs to either be removed and remediated or sealed. As a result of the deferred maintenance, the Property is difficult to market and undesirable.

11. Subsequent to the expiration of the listing period, the Debtor Richard Kelterborn received a proposed Purchase Agreement for the Property from the Debtors' son's wife Cynthia Hecht ("Hecht") in the amount of One Hundred and Twenty Five Thousand and no/100 Dollars (\$125,000.00) (the "Hecht Offer").

12. The Debtors intend for the Hecht Offer to serve as the Stalking Horse Bid throughout the proposed sale.

13. The Debtors believe and assert that the following Bidding Procedures are appropriate for this transaction, and requests entry of an order providing for the Bidding Procedures set forth herein:

a. Participation Requirements. Unless otherwise ordered by the Court, each person (a "Potential Bidder") interested in participating in the sale process must deliver by the second (2nd) Business Day before the Bid Deadline (unless previously delivered) to counsel for the Debtors, Lynn M. Brimer, Strobl & Sharp, PC, 300 E. Long Lake Rd., Ste. 200, Bloomfield Hills, MI 48304, such financial statements, financing commitments, or other documents as the Potential Bidder believes provide adequate assurance to the Debtors and their advisors of such Potential Bidder's ability to close a purchase of the Property ("Transaction"). As used herein, the term "Business Day" shall mean a day on which the Court is open.

b. Definition of Qualified Bidder. Unless otherwise ordered by the Bankruptcy Court for cause shown, a Potential Bidder, shall become a "Qualified Bidder" if the

Potential Bidder delivers to counsel for the Debtors on or prior to the Bid Deadline, as described below, the following:

1. Financial disclosures and other information acceptable to the Joint Debtors, to demonstrate such Potential Bidder's financial and other abilities to consummate a sale with respect to any expected bid;
2. A fully executed agreement for the Property (which must be in the form of the Hecht Offer) that any Qualified Bid (as defined below, and any bid made subsequently thereto) made by such Potential Bidder with respect to the Property shall be irrevocable until a sale of the Property is fully consummated by the Debtors regardless of whether the sale occurs to the Potential Bidder or another party (but in no event later than ten (10) days after the Auction Date without the consent of both parties);
3. A Qualified Bid (as defined below), in writing and signed by the Potential Bidder and any other persons against whom the Potential Bidder intends that the bid can be enforced, including but not limited to guarantors (an "Initial Qualified Bid"), must be delivered to counsel for the Debtors addressed to the person stated in the Notice at the address stated in the Notice, not later than the date and time of the Bid Deadline, and such other persons as appear on the Notice. The Debtors may waive the Bid Deadline with respect to particular Potential Bidders if, in their sole discretion, such waiver would be in the best interests of their estates; and
4. A certified check or wired funds an amount equal to Twenty Five Thousand and no/100 Dollars (\$25,000.00). The Deposit shall be subject to the jurisdiction of the Bankruptcy Court. (Any of the above possible deposits referred to herein as a "Good Faith Deposit".)

A Potential Bidder may also become a Qualified Bidder if the Debtors, through their counsel, determines in their sole and absolute discretion that it is reasonably likely (based on availability of funding, experience and other considerations) that the Potential Bidder would be fully able to consummate a purchase of the Property if selected as the successful bidder.

c. Due Diligence. The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by any Qualified Bidder in connection with the sale of the Property unless such Qualified Bidder becomes the Successful Bidder and such liability and responsibility is provided for in the agreement

evidencing the Transaction between the Debtors and the Successful Bidder and such agreement is approved by the Court.

d. Bid Deadline. A Qualified Bidder who desires to make a bid shall advise and deliver a bid to counsel for the Debtors, Lynn M. Brimer, Strobl & Sharp, PC, 300 E. Long Lake Rd., Ste. 200, Bloomfield Hills, MI 48304, no later than 5:00 p.m. (prevailing Eastern Time) on the day that is two (2) Business Days prior to the sale date (the "Bid Deadline").

e. Definition of Qualified Bid. Unless otherwise ordered by the Bankruptcy Court for cause shown, a bid shall become a "Qualified Bid" only if the following occurs:

1. The bid must be made by a Qualified Bidder.
2. The bid must be substantially in the form of the Kelterborn Offer attached as **Exhibit C** hereto, or as amended from time to time. The Debtors believe that the terms and conditions of the Hecht Offer are in the best interest of the estate. If a bid deviates from the Hecht Offer in any manner, the Qualified Bidder must also provide, at the time of submission of the bid, a black-lined copy of the Purchase Agreement to indicate the relevant changes.
3. The minimum aggregate consideration to be received by the Debtors in the bid shall equal or exceed One Hundred and Thirty Five Thousand and no/100 Dollars (\$135,000.00), which is the Hecht Offer amount plus Ten Thousand and no/100 Dollars (\$10,000.00). All subsequent bids must be in increments of at least Five Thousand and no/100 Dollars (\$5,000.00).
4. The bid must include written evidence of a commitment for financing or other evidence of the ability to consummate the Transaction satisfactory to the Debtors with appropriate contact information for such financing sources.
5. The bid shall contain no material additional contingencies or material requirements binding the Debtors, including but not limited to financing contingencies or contingencies relating to the outcome of due diligence. The Debtors will disregard bids that are conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder other than such due diligence as is contemplated in the Kelterborn Offer.

Provided that it otherwise meets the applicable requirements above, the Hecht Offer shall constitute a Qualified Bid.

f. Auction.

1. Prior to the Auction, the Debtors, through their counsel, shall evaluate any Qualified Bids submitted in accordance with these procedures and, through their

counsel, shall select the offer, if any, which they determine in their business judgment, is the higher and/or best offer for the respective Property (the "Initial Accepted Offer").

2. If there is at least one Qualified Bid other than the Initial Accepted Offer, the Debtors may conduct an auction (the "Auction") with respect to the Property. The Auction shall commence at 10:00 a.m. on January 6, 2017 (the "Auction Date") at the offices of Lynn M. Brimer, Strobl & Sharp, P.C., 300 East Long Lake Road, Suite 200, Bloomfield Hills, MI 48304. The Debtors shall notify all Qualified Bidders who have submitted Qualified Bids of the time and place of the Auction. Only a Qualified Bidder who has submitted a Qualified Bid is eligible to participate at the Auction. The Debtors reserve the right to adjourn the Auction from time to time by announcement at the Auction.

3. At the Auction, the Debtors shall receive Qualified Bids identical to the Initial Accepted Offer but reflecting an increase in the consideration, regardless of form, to be received by the Debtors, subject to any Bid Increment established in connection with these procedures. If, at the Auction, the Debtors determine in their business judgment that the Bid Increment does not facilitate bidding or does not reduce the administrative costs associated with the Auction process, the Debtors may establish a new Bid Increment or determine that a preexisting Bid Increment no longer applies. Qualified Bidders may submit as many Qualified Bids as they desire, but no Qualified Bids may be revoked once submitted, except as otherwise provided herein.

4. The Debtors may conduct the Auction without the assistance of a separately retained auctioneer. The Auction may be continued from day to day as determined by the Debtors. The Auction shall be conducted by the Debtors in a manner calculated by it in their sole discretion to achieve the higher and/or best offer for the Property.

5. Upon conclusion of the bidding, the Auction shall be closed. The Debtors shall immediately review each Qualified Bid(s) on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale. In the event the Debtors, through their counsel, determines that one of the Qualified Bids received represents (i) fair consideration, and (ii) the highest or otherwise best offer for the Property, the Debtors, through their counsel, shall present that Qualified Bid (the "Successful Bid") to the Bankruptcy Court for approval at the Sale Hearing, substituting (if necessary) the Qualified Bid for the Hecht Offer as an exhibit to the Sale Motion, and seeking authority to consummate a sale transaction with the party asserting such Successful Bid (the "Successful Bidder").

6. The acceptance of a Qualified Bid by the Debtors, through their counsel, or the acceptance of no Qualified Bids by the Debtors at the Auction, shall not constitute or be deemed a rejection of any other Qualified Bids, except insofar as such Qualified Bids are revocable in accordance with these procedures.

g. Closing. Unless otherwise ordered by the Court, closing on the Property shall occur in accordance with the terms of the Successful Bid. In the event closing does not occur in accordance with the material terms of the Successful Bid, then within five (5) days after the scheduled Closing Date, the Debtors, through their counsel, may notify the party that asserted the next highest or otherwise best offer for the Property other than the Successful Bid that its Qualified Bid is accepted and that its bid has become the Successful Bid. Closing on the new Successful Bid shall occur within fourteen (14) days after its receipt of the Debtors' notification.

h. Escrow of Good Faith Deposits. The Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) shall be held in the Strobl & Sharp, P.C. client trust account and shall be segregated until the Closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as liquidated damages resulting from the breach or failure to perform by the Successful Bidder. The Debtors shall return all good faith deposits immediately upon Closing.

j. Notwithstanding anything herein to the contrary the Debtors shall be permitted to effectuate a sale of the Property without employing the foregoing procedures, so long as such sale is approved by the Court in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of this Court.

k. All insider relationships between any Qualified Bidder and the Debtors shall be disclosed in the Qualified Bid and the Purchase Agreement and/or Successful Bid presented to the Court. In the event a Potential Bidder is, or is owned, controlled, or employed by, the Debtors or any insider thereof, said bidder (or its owner, controller or employer) shall have no input in the deliberative process in connection with the applicable Group or the qualification of any potential bidders with respect thereto.

l. In the event the Hecht Offer is not the successful bid, Hecht shall be entitled to a fee in the amount of \$2,500 as a break-up fee.

14. The Debtors shall send notice of the sale ("Notice") to those entities who have previously expressed an interest in purchasing the Property and shall provide notice to

Osentoski Realty and David L. Craft Realty Co., LLC. In addition, Debtors will actively market the Property to known parties who may have an interest in the Property and may advertise the Property for sale in the local newspaper.

15. Requirements for Auction Notice. Promptly after the filing of a Sale Motion, but in no event less than 15 calendar days before the Auction (unless otherwise ordered by the Court), the Debtors shall cause a notice of these Bidding Procedures, substantially in the form of **Exhibit D** hereto (the “Auction Notice”), to be sent to all parties on the Matrix, those persons who have contacted or have been contacted by the Debtors with respect to a potential purchase of the Property, as well as all other entities that the Debtors believes, in their judgment may have an interest in acquiring the Property. The Debtors may publish the material terms of the Auction Notice using any media source(s) to the extent that, in the exercise of their judgment, it believes that such publication would facilitate competitive bidding that would realize an increase in the net value of the Property.

Waiver of the Stay of Effectiveness of the Sale Order

Due to the need to transition the Debtors property as quickly as possible and in order to protect and preserve the Property, the stay as set forth in Fed. R. Bank. P. 6004 (h) should be waived.

Notice

Notice of this Motion has been served on all creditors and parties in interest entitled to notice.

Conclusion

WHEREFORE, the Debtors requests that this Court enter an Order in the form attached hereto as **Exhibit A** approving the bidding procedures set forth above and grant such other relief as the Court deems appropriate in this matter.

Respectfully Submitted,

By: /s/ Lynn M. Brimer _____

LYNN M. BRIMER (P43291)

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Dated: November 21, 2016

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

**RICHARD KELTERBORN
and JANIS MEREDITH-KELTERBORN,**

Case No. 16-53330
Chapter 11
Hon. Maria L. Oxholm

Debtors.

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO 11 U.S.C. § 363 AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002, 9006, 6004, AND L.B.R
6004-1 APPROVING PROCEDURES FOR THE AUCTION SALE OF REAL
PROPERTY OUTSIDE OF THE ORDINARY COURSE OF BUSINESS,
TRANSFERRING CLAIMS AND OTHER INTERESTS TO PROCEEDS OF SALE AND
GRANTING OTHER RELIEF**

This matter is presented on the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. § 363 and Federal Rules of Bankruptcy Procedure 2002, 9006, 6004 and L.B.R. 6004-1 (1) Approving Procedures for the Auction Sale of Real Property Outside of the Ordinary Course of Business, Transfer of Claims and Interests to Proceeds of Sale, (2) Approving Sale of Property Outside the Ordinary Course of Business and Transferring Claims to Proceeds, and (3) Other Relief, Including a Waiver of Federal Rule of Bankruptcy Procedure 6004(g) (the "Motion"). The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion, if any. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; notice of this Motion has been provided to those entitled to receive service; the relief sought in the Motion is in the best interests of the Debtors, its estate, and creditors; and good and sufficient cause exists for such relief.

NOW THEREFORE,

IT IS HEREBY ORDERED that Bidding Procedures are approved as follows:

1. **Participation Requirements.** Unless otherwise ordered by the Court, each person (a "Potential Bidder") interested in participating in the sale process must deliver by the second (2nd) Business Day before the Bid Deadline (unless previously delivered) to counsel for the Debtors, Lynn M. Brimer, Strobl & Sharp, PC, 300 E. Long Lake Rd., Ste. 200, Bloomfield Hills, MI 48304, such financial statements, financing commitments, or other documents as the Potential Bidder believes provide adequate assurance to the Debtors and their advisors of such Potential Bidder's ability to close a purchase of the Property ("Transaction"). As used herein, the term "Business Day" shall mean a day on which the Court is open.

2. **Definition of Qualified Bidder.** Unless otherwise ordered by the Bankruptcy Court for cause shown, a Potential Bidder, shall become a "Qualified Bidder" if the Potential Bidder delivers to counsel for the Debtors on or prior to the Bid Deadline, as described below, the following:
 - a. Financial disclosures and other information acceptable to the Joint Debtors, to demonstrate such Potential Bidder's financial and other abilities to consummate a sale with respect to any expected bid;

 - b. A fully executed agreement for the Property (which must be in the form of the Hecht Offer) that any Qualified Bid (as defined below, and any bid made subsequently thereto) made by such Potential Bidder with respect to the Property shall be irrevocable until a sale of the Property is fully consummated by the Debtors regardless of whether the sale occurs to the Potential Bidder or another party (but in no event later than ten (10) days after the Auction Date without the consent of both parties);

 - c. A Qualified Bid (as defined below), in writing and signed by the Potential Bidder and any other persons against whom the Potential Bidder intends that the bid can be enforced, including but not limited to guarantors (an "Initial Qualified Bid"), must be delivered to counsel for the Debtors addressed to the person stated in the Notice at the address stated in the Notice, not later than the date and time of the Bid Deadline, and such other persons as appear on the Notice. The Debtors may waive the Bid Deadline with respect to particular Potential Bidders if, in their sole discretion, such waiver would be in the best interests of their estates; and

- d. A certified check or wired funds an amount equal to Twenty Five Thousand and no/100 Dollars (\$25,000.00). The Deposit shall be subject to the jurisdiction of the Bankruptcy Court. (any of the above possible deposits referred to herein as a "Good Faith Deposit").
- e. A Potential Bidder may also become a Qualified Bidder if the Debtors, through their counsel, determines in their sole and absolute discretion that it is reasonably likely (based on availability of funding, experience and other considerations) that the Potential Bidder would be fully able to consummate a purchase of the Property if selected as the successful bidder.

3. **Due Diligence.** The Debtors are not responsible for, and will bear no liability with respect to, any information obtained by any Qualified Bidder in connection with the sale of the Property unless such Qualified Bidder becomes the Successful Bidder and such liability and responsibility is provided for in the agreement evidencing the Transaction between the Debtors and the Successful Bidder and such agreement is approved by the Court.

4. **Bid Deadline.** A Qualified Bidder who desires to make a bid shall advise and deliver a bid to counsel for the Debtors, Lynn M. Brimer, Strobl & Sharp, PC, 300 E. Long Lake Rd., Ste. 200, Bloomfield Hills, MI 48304, no later than 5:00 p.m. (prevailing Eastern Time) on the day that is two (2) Business Days prior to the sale date (the "Bid Deadline").

5. **Definition of Qualified Bid.** Unless otherwise ordered by the Bankruptcy Court for cause shown, a bid shall become a "Qualified Bid" only if the following occurs:

- a. The bid must be made by a Qualified Bidder.
- b. The bid must be substantially in the form of the Hecht Offer attached as **Exhibit C** to the Motion, or as amended from time to time. The Debtors believe that the terms and conditions of the Hecht Offer are in the best interest of the estate. If a bid deviates from the Hecht Offer in any manner, the Qualified Bidder must also provide, at the time of submission of the bid, a black-lined copy of the Purchase Agreement to indicate the relevant changes.
- c. The minimum aggregate consideration to be received by the Debtors in the bid shall equal or exceed One Hundred and Thirty Five Thousand and no/100 Dollars (\$135,000.00), which is the Hecht Offer amount plus Ten Thousand and no/100 Dollars (\$10,000.00). All subsequent bids must be in increments of at least Five Thousand and no/100 Dollars (\$5,000.00).
- d. The bid must include written evidence of a commitment for financing or other evidence of the ability to consummate the Transaction satisfactory to the

Debtors with appropriate contact information for such financing sources.

- e. The bid shall contain no material additional contingencies or material requirements binding the Debtors, including but not limited to financing contingencies or contingencies relating to the outcome of due diligence. The Debtors will disregard bids that are conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder other than such due diligence as is contemplated in the Hecht Offer

Provided that it otherwise meets the applicable requirements above, the Sale Agreement shall constitute a Qualified Bid.

6. Auction.

- a. Prior to the Auction, the Debtors, through their counsel, shall evaluate any Qualified Bids submitted in accordance with these procedures and, through their counsel, shall select the offer, if any, which they determine in their business judgment, is the higher and/or best offer for the respective Property (the "Initial Accepted Offer").
- b. If there is at least one Qualified Bid other than the Initial Accepted Offer, the Debtors may conduct an auction (the "Auction") with respect to the Property. The Auction shall commence at 10:00 a.m. on January 6, 2017 (the "Auction Date") at the offices of Lynn M. Brimer, Strobl & Sharp, P.C., 300 East Long Lake Road, Suite 200, Bloomfield Hills, MI 48304. The Debtors shall notify all Qualified Bidders who have submitted Qualified Bids of the time and place of the Auction. Only a Qualified Bidder who has submitted a Qualified Bid is eligible to participate at the Auction. The Debtors reserve the right to adjourn the Auction from time to time by announcement at the Auction.
- c. At the Auction, the Debtors shall receive Qualified Bids identical to the Initial Accepted Offer but reflecting an increase in the consideration, regardless of form, to be received by the Debtors, subject to any Bid Increment established in connection with these procedures. If, at the Auction, the Debtors determine in their business judgment that the Bid Increment does not facilitate bidding or does not reduce the administrative costs associated with the Auction process, the Debtors may establish a new Bid Increment or determine that a preexisting Bid Increment no longer applies. Qualified Bidders may submit as many Qualified Bids as they desire, but no Qualified Bids may be revoked once submitted, except as otherwise provided herein.
- d. The Debtors may conduct the Auction without the assistance of a separately retained auctioneer. The Auction may be continued from day to day as determined by the Debtors. The Auction shall be conducted by the Debtors in

a manner calculated by it in their sole discretion to achieve the higher and/or best offer for the Property.

- e. Upon conclusion of the bidding, the Auction shall be closed. The Debtors shall immediately review each Qualified Bid(s) on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale. In the event the Debtors, through their counsel, determines that one of the Qualified Bids received represents (i) fair consideration, and (ii) the highest or otherwise best offer for the Property, the Debtors, through their counsel, shall present that Qualified Bid (the "Successful Bid") to the Bankruptcy Court for approval at the Sale Hearing, substituting (if necessary) the Qualified Bid for the Hecht Offer as an exhibit to the Sale Motion, and seeking authority to consummate a sale transaction with the party asserting such Successful Bid (the "Successful Bidder").
- f. The acceptance of a Qualified Bid by the Debtors, through their counsel, or the acceptance of no Qualified Bids by the Debtors at the Auction, shall not constitute or be deemed a rejection of any other Qualified Bids, except insofar as such Qualified Bids are revocable in accordance with these procedures.

7. **Closing.** Unless otherwise ordered by the Court, closing on the Purchase shall occur in accordance with the terms of the Successful Bid. In the event closing does not occur in accordance with the material terms of the Successful Bid, then within five (5) days after the scheduled Closing Date, the Debtors, through their counsel, may notify the party that asserted the next highest or otherwise best offer for the Property other than the Successful Bid that its Qualified Bid is accepted and that its bid has become the Successful Bid. Closing on the new Successful Bid shall occur within fourteen (14) days after its receipt of the Debtors' notification

8. **Escrow of Good Faith Deposits.** The Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) shall be held in the Strobl & Sharp, P.C. client trust account and shall be segregated account until the Closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain the Good Faith Deposit as liquidated damages resulting for the breach or failure to perform by the Successful Bidder. The Debtors shall return all good faith deposits immediately upon Closing.

10. Notwithstanding anything herein to the contrary the Debtors shall be permitted to effectuate a sale of the Property without employing the foregoing procedures, so long as such sale is approved by the Court in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of this Court.

11. All insider relationships between any Qualified Bidder and the Debtors shall be disclosed in the Qualified Bid and the Purchase Agreement and/or Successful Bid presented to the Court. In the event a Potential Bidder is, or is owned, controlled, or employed by, the Debtors or any insider thereof, said bidder (or its owner, controller or employer) shall have no input in the deliberative process in connection with the applicable Group or the qualification of any potential bidders with respect thereto.

12. In the event Hecht is not the successful bidder, Hecht shall be entitled to a fee in the amount of \$2,500 as a break-up fee.

IT IS FURTHER ORDERED that the Debtors shall actively market the Property to known parties who may have an interest in the Property and advertise the Property for sale in the local newspaper prior to the Auction.

IT IS FURTHER ORDERED that in the event the Debtors receive any inquires or is aware of any parties that may have an interest in purchasing the Property, the Debtors shall immediately forward a copy of the Auction Notice to such party. The Debtors may publish the material terms of the Auction Notice using any media source(s) to the extent that, in the exercise of their business judgment, they believe that such publication would facilitate competitive bidding that would realize an increase in the net value of the Property.

IT IS FURTHER ORDERED that the 14-day stay provided for in Feb.R.Bank.P 6004(h) is hereby waived.

IT IS SO ORDERED.

EXHIBIT B

Land in the Township of Lake, County of Huron, State of Michigan

Commencing at the water's edge of Saginaw Bay and the East line of Government Lot 3, Fractional Section 15, Township 18 North, Range 11 East, thence South 3 degrees 54 minutes West 150 feet more or less, to the Northerly margin of State Highway M-25; thence South 71 degrees 36 minutes West 216.16 feet along the Northerly margin of said highway to the point of beginning of this description; thence South 71 degrees 36 minutes West 54.04 feet along the Northerly margin of said-highway; thence North 03 degrees 54 minutes East 137 feet more or less, (parallel with the East line of Block 2, of Smalley Quarry Shores Subdivision) to the water's edge of Saginaw Bay; thence Northeasterly along Saginaw Bay to the point that lies North 3 degrees 54 minutes East of the point of beginning of this description; thence Southerly to the point of beginning, being a part of Government Lot 3, in said Fractional Section 15.

Commonly known as: 4330 Port Austin Rd., Caseville MI 48725

Tax ID: 13-015-101-00

EXHIBIT C

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is entered into by and between Richard Kelterborn, (the "Seller" or the "Debtor") and Cynthia Hecht (the "Purchaser" or "Hecht"), as of November 18, 2016.

WITNESSETH:

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, property located at 4330 Port Austin Rd., Caseville, MI 48725 ("Property") subject to the terms and conditions set forth in this Agreement; and

WHEREAS, on September 28, 2016 Seller filed in the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court") a voluntary petition for relief under Chapter 11 of United States Bankruptcy Code, Case No. 16-53330 (the "Bankruptcy Case").

WHEREAS, the proceedings in the Debtor's case are being jointly administered with the matter of *In re: Evergreen Health Services, Inc.*, Case No. 15-53329, with *In re: Evergreen Health Services, Inc.* serving as the lead case.

WHEREAS, Seller is a Debtor-in-Possession and has retained his assets pursuant to §§ 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Seller will immediately file the necessary motions and use its best efforts to promptly obtain an order from the Bankruptcy Court approving sale and bidding procedures and approving the Agreement and the transactions contemplated in this Agreement in form and substance agreeable to Purchaser.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 SALE AND PURCHASE

1.1 Sale and Purchase of Assets. Upon the terms and subject to the conditions of this Agreement, Seller shall sell, convey and deliver to Purchaser, and Purchaser shall purchase from Seller, the Property as further described in Exhibit A attached hereto, free and clear of all liens, claims and encumbrances.

1.2 Closing Date. Subject to the satisfaction or waiver of all of the conditions to each party's obligation to close, the purchase and sale of the Property provided for in Section 1.1 (the "Closing") shall occur on or before December 30, 2016, or ten (10) days after the scheduled sale date, whichever occurs later, at the offices of Strobl & Sharp, PC, located at 300 E. Long Lake Rd., Suite 200, Bloomfield Hills, Michigan 48304, or such other place or time as shall be agreed

upon by Purchaser and Seller in writing (the date of the Closing being hereinafter referred to as the "Closing Date").

1.3 Earnest Money. Upon approval by Seller and delivery of an executed copy of this Agreement to Purchaser, Purchaser shall deliver to Fidelity Title Agency of Bloomfield the sum of Twelve Thousand Five Hundred and 00/100 (\$12,500.00) Dollars as an earnest money deposit to be applied at Closing towards the Purchase Price. In the event that there is no closing by the Closing Date as a result of Purchaser's breach of this Agreement, then the deposit shall be forfeited to Seller as liquidated damages in lieu of all other remedies available to Seller and Purchaser shall have no further liability hereunder, otherwise this earnest money deposit shall be returned to Purchaser. In the event Seller is unable to obtain Court approval of the transaction contemplated in this Agreement after undertaking reasonable efforts to do the same, the Purchaser may at her sole option demand, and be entitled to, an immediate return of the earnest money deposit, without further application to or order of the Court.

1.4 Purchase Price. The purchase price for the Assets (the "Purchase Price") shall be One Hundred and Twenty Five Thousand and 00/100 Dollars (\$125,000.00)

1.5 No Assumption of Liabilities. The parties agree that the transaction contemplated by this Agreement constitutes a purchase of certain Property and, accordingly Purchaser is not assuming any liabilities, debts, obligations, or contracts of or claims against Seller, Janis Meredith-Kelterborn and Richard Kelterborn.

1.6 Sale Free and Clear of Liens. The Property shall be conveyed to Purchaser free and clear of all liens, claims, and encumbrances including real estate taxes and assessments which are a lien at closing, pursuant to 11 USC 363, by payment by Seller on or prior to the Closing Date, or otherwise. Real and or personal property taxes, to the extent that they are a lien on the Property, shall be paid by Seller at or prior to Closing.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Seller. The Seller's representations and warranties will survive closing, are binding on the bankruptcy estate(s) in the Joint Cases, and Purchaser shall have a claim against the Seller's bankruptcy estate for any breach of Seller's representations and warranties. However, Purchaser acknowledges that the Property is conveyed "AS IS, " "WHERE IS" and "WITH ALL FAULTS" and that the warranties of merchantability, useage or suitability or fitness for a particular purpose are disclaimed. Without limiting the foregoing, Purchaser further acknowledges that no material information provided by or communications made by Seller or Sellers Representatives or Agents will create any representation or warranty of any kind, whether express or implied, with respect to the Property. Seller represents and warrants to Purchaser as follows:

2.1.1 Authorization. Subject to the approval of the Bankruptcy Court, Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform their obligations hereunder. The

execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all requisite action on the part of Seller.

2.1.2 Consents. Except for approval of the Bankruptcy Court, no consent, approval, authorization, permit, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by Seller in connection with the execution and delivery of this Agreement or the consummation by Seller of the transactions contemplated hereby in the manner contemplated hereby.

2.1.3 Title. Seller has good title to the Property and, upon issuance by the Bankruptcy Court of an Order approving the transaction contemplated in this Agreement (the "Sale Order"), will be able to transfer the Property to Purchaser free and clear of all mortgages, liens, claims, charges, encumbrances, interests or other title defects of any nature whatsoever. Within three (3) days of entering into this agreement, Seller shall provide to Purchaser a copy of its most recent title policy or update, to the extent such exists. However, Purchaser shall bear the cost of any preliminary title search or commitment for the Property.

2.1.4 Insurance. The Property of Seller is insured under the various policies of insurance. A copies of which has been made available to Purchaser. No notice of cancellation or non-renewal with respect to, or disallowance of any claim under, any such policy has been received by Seller. Seller will maintain all such insurance in effect through closing.

2.1.5 Brokers, Finders. Seller has not contracted with any broker or finder in conjunction with the transactions contemplated by this Agreement. Seller shall indemnify and hold the Purchaser harmless from all claims and liabilities which may be asserted by a broker, sales person, or other person claiming a fee, expenses or a commission due to any agreement or understanding alleged to have been entered into by Seller or its representative.

2.1.6 Disclosure. This Agreement, the Exhibits to this Agreement, and other documents furnished by Seller to Purchaser pursuant to this Agreement, taken as a whole, do not as of their respective dates and as of the date of this Agreement contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein and therein not misleading.

2.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as of the date hereof as follows:

2.2.1 Authorization. Purchaser has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform her obligations hereunder.

2.2.2 Consents. No consent, approval, authorization, permit, order, filing, registration or qualification of or with any court, governmental authority or third person is required to be obtained by Purchaser in connection with the execution and delivery by Purchaser of this Agreement or the consummation by Purchaser of the transactions contemplated hereby in the manner contemplated hereby.

2.2.3 Brokers, Finders. Purchaser has not contracted with any broker or finder in conjunction with the transactions contemplated by this Agreement.

ARTICLE 3 CERTAIN COVENANTS PENDING CLOSING

3.1 Cooperation. Seller shall cooperate with Purchaser, and shall take all other steps necessary to carry out and consummate the transactions contemplated by this Agreement at the earliest practicable time.

3.2 Approval of Bankruptcy Court. Seller shall have filed such motions and notified such parties as is required by the Bankruptcy Code, the Bankruptcy Rules, Local Rules and Orders of the Bankruptcy Court, to obtain from the Bankruptcy Court, the necessary orders approving this Agreement. Seller shall provide copies of all such motions and orders to Purchaser for Purchaser's review and comment, and Purchaser and Seller shall use their best efforts to agree as to the form and substance of all such motion and orders; provided, however, that the sale order shall be in form and substance acceptable to Purchaser in its reasonable discretion.

3.3 Bidding Protection. Seller's motion to the Bankruptcy Court to obtain the Sale Order and/or its motion to establish sale and bidding procedures shall set forth a bidding procedure which shall provide (i) that, except as to price, in no event shall any competing bid be accepted unless it is on the same terms and conditions or better as this Agreement; (ii) that in no event shall any competing bid be accepted unless it exceeds the sum total of (A) the Purchase Price, and (B) Ten Thousand and 00/100 (\$10,000.00) and provides evidence of the Bidder's ability to close as provided herein; (iii) that competing bids subsequent to the first competing bid shall be taken in minimum Five Thousand and 00/100 (\$5,000.00) increments, and (iv) that initial competing bids shall be submitted in writing no less than two (2) business days prior to the scheduled sale date and shall be accompanied by a deposit in the amount of Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars, (v) initial competing bids must be served electronically or via facsimile on counsel for the Debtor; (vi) in the event a bid is received higher than the Purchaser's bid, the Purchaser shall always have the opportunity to increase its bid; and (vii) that the sale shall be conducted by auction with open bidding, provided the open bidding shall not be suspended once started and shall conclude within 1 business day unless court approval for an extension is granted, and shall only be open to bids from the Purchaser and any other party who previously submitted a competing bid in conformance with the Bankruptcy Court's procedures and no less than two (2) business days prior to the sale date.

3.4 Break Up Fee. In the event Purchaser is not the successful bidder, Seller shall pay to Purchaser a “break up” fee at the closing equal to Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions to Obligations of Purchaser. The obligations of Purchaser under this Agreement are subject to the fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived by Purchaser in its sole discretion:

4.1.1 Representations, Performance. The representations and warranties of Seller shall be true and correct at and as of the Closing Date as though such representations and warranties were made on that date. Seller shall have duly performed and complied with all agreements, covenants and conditions that this Agreement requires it to perform or comply with prior to the Closing Date.

4.1.2 Approval of the Bankruptcy Court. On or before November 18, 2016 the Debtor shall file with the Bankruptcy Court a Motion for Order Approving Procedures for the Sale of Real Property Outside of the Ordinary Course of Business (the “Order”). The Order shall provide that upon the entry of an Order the Debtors will sell their Property pursuant to Section 363 of the Bankruptcy Code and that the offer submitted by Cynthia Hecht will serve as the Stalking Horse bid for the notice of sale. The notice of the sale shall be served within 5 business days of the entry of the Order and the sale will be conducted within fourteen (14) days of service of the notice of the sale pursuant to Section 363 or at such other time as ordered by the Bankruptcy Court. The notice of the sale shall provide that any competing bid must be submitted in writing no less than two (2) business days prior to the scheduled sale date and that any such competing bid must be served electronically or via facsimile on counsel for the Debtor.

4.1.3 Condition of the Property.. The Property shall be in substantially the same or better condition as of the Closing Date than when last inspected by Purchaser.

4.1.4 Certain Other Approvals. All other consents and approvals from governmental authorities and third parties required to be obtained by Seller to consummate the transactions contemplated hereby shall have been obtained, including but not limited to the consent of any secured party that may be required under 11 USC 363. Seller shall obtain the same prior to the sale.

4.1.5 No Injunction; Other Litigation. No injunction or other order issued by a court of competent jurisdiction restraining or prohibiting the consummation of the transactions contemplated by this Agreement shall be in effect.

4.2 Conditions to Obligations of Seller. The obligations of Seller under this Agreement are subject to the fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived by Seller in his sole discretion:

4.2.1 Representations, Performance. The representations and warranties of Purchaser shall be true and correct at and as of the Closing Date as though such representations and warranties were made on that date. Purchaser shall have duly performed and complied with all agreements, covenants and conditions that this Agreement requires it to perform or comply with prior to the Closing Date.

4.2.2 Approval of the Bankruptcy Court. The Order shall remain in full force and effect at the Closing Date, and no appeal from or challenge to the Order shall be pending, and if the same is pending, Seller shall use its best efforts to win such an appeal, and Purchaser may at its option extend the time frame set forth herein to accomplish the same. Purchaser shall have been found to be acting in good faith pursuant to 11 U.S.C. §363(m).

4.2.3 No Injunction. No injunction or other order issued by a court of competent jurisdiction restraining or prohibiting the consummation of the transaction contemplated by this Agreement shall be in effect.

ARTICLE 5 THE CLOSING

5.1 Deliveries by Seller at the Closing. At the Closing, Seller shall deliver the following to Purchaser, any of which may be waived by Purchaser, in its sole discretion:

- (a) A Bill of Sale and Deed for the Property sufficient to vest good and marketable title therein to Purchaser, free and clear of all liens and other encumbrances;
- (b) Possession of the Property;
- (c) All consents of third parties required in connection with transactions contemplated by this Agreement;
- (d) Certificate of an officer of each Debtor certifying to Purchaser that all representations and warranties of Seller in this Agreement and all Exhibits and Schedules hereto are true and accurate in all material respects as of the Closing to the best of their knowledge, information, and belief;
- (e) All Orders referred to in this Agreement or otherwise necessary to effect the transaction contemplated by this Agreement.
- (f) All other documents reasonably requested by Purchaser to effectuate the transactions contemplated by this Agreement.

5.2 Deliveries by Purchaser. At the Closing, Purchaser shall deliver the following to Seller, any of which may be waived by Seller, in his sole discretion:

(a) A sum equal to the Purchase Price, in immediately available funds, delivered by wire transfer to a bank account as designated by Seller in writing;

(b) All other documents reasonably requested by Seller to effectuate the transactions contemplated by this Agreement.

ARTICLE 6 TERMINATION

6.1 *Grounds for Termination.* This Agreement may be terminated at any time prior to the Closing Date:

- (a) by the mutual written consent of Seller and Purchaser;
- (b) by Purchaser (if Purchaser is not then in breach of any term of this Agreement) (i) if Seller shall fail to perform in any material respect their agreements and covenants contained in this Agreement, which failure is not cured to Purchaser's satisfaction within ten (10) days after Purchaser has notified Seller of its intent to terminate this Agreement; (ii) if Seller shall breach any of his representations or warranties contained herein, which failure or breach is not cured to Purchaser's satisfaction within ten days after Purchaser has notified Seller of its intent to terminate this Agreement; or (iii) if the Closing has not occurred by the Closing Date, provided either Purchaser is ready, willing and able to close on such date or conditions precedent to Purchaser's obligation to close have not been satisfied by this date.
- (c) by Seller (if Seller are not then in breach of any term of this Agreement) (i) if Purchaser shall fail to perform in any material respect its agreements or covenants contained in this Agreement, which failure is not cured to Seller's satisfaction within ten (10) days after Seller have notified Purchaser of its intent to terminate this Agreement; or (ii) if Purchaser shall materially breach any of its representations or warranties contained herein, which failure or breach is not cured within ten days after Seller have notified Purchaser of his intent to terminate this Agreement.

6.2 *Effect of Termination.* If this Agreement is terminated and neither party is in breach or violation of any provision of this Agreement, each party shall pay the costs and expenses incurred by it in connection with this Agreement, and no party (or any of its officers, directors or shareholders) shall be liable to any other party for any costs, expenses, damage or loss of anticipated profits. If this Agreement is terminated due to a breach or violation of any provision hereof, the terminating party shall have all rights and remedies provided under this Agreement, at law or in equity.

**ARTICLE 7
MISCELLANEOUS**

7.1 **Survival.** Only those agreements and covenants of Purchaser and Seller which by their express terms apply in whole or in part after the Closing, including but not limited to the rights of indemnification contained in Article 7, shall survive the Closing.

7.2 **Expenses.** Seller and Purchaser shall assume and bear their own expenses, costs and fees incurred in the preparation of and execution of and compliance with this Agreement, including attorneys' and accountants' fees, whether or not the purchase and sale provided for herein shall be consummated. Further, Seller and Purchaser shall assume and bear their own closing costs for the transaction.

7.3 **Assignment; Successors; Parties in Interest.** This Agreement shall not be assignable by any party hereto without the prior written consent of all of the other parties and any attempt to assign this Agreement without such consent shall be void and of no effect, except that Purchaser may assign its rights hereunder to an entity which assumes in writing all of Purchaser's obligations, provided that no such assignment shall relieve Purchaser of any of its obligations hereunder to Seller. This Agreement shall inure to the benefit of, and be binding on and enforceable against, each party hereto and such permitted successors and assigns of the respective parties hereto, and nothing in this Agreement, express or implied, is intended to confer upon any employee or affiliate of either party or any other person any rights or remedies of any nature whatsoever under this Agreement.

7.4 **Amendment, Waiver and Modification.** This Agreement may be changed, waived, discharged or terminated only by an agreement in writing signed by the party against whom such change, waiver, discharge or termination is sought to be enforced.

7.5 **Notices.** All notices, consents, requests, instructions, approvals and other communications provided for herein and all legal processes in regard hereto shall be validly given, made or served, if in writing and delivered personally or sent by registered or certified mail, postage prepaid or by commercial courier or by facsimile (promptly confirmed in writing) to the following addresses (or at such other addresses for such party as shall be specified by like notice):

To Seller:

Richard Kelterborn
5573 St. Andrews Drive
Clarkston, Michigan 48348

With a copy to Seller's Counsel (which shall not constitute notice):

Strobl & Sharp, PC
c/o Lynn M. Brimer
300 E. Long Lake Rd., Ste. 200
Bloomfield Hills, MI 48304

To Purchaser: Cynthia Hecht
9518 Westwood Cir.
Clarkston, MI 48348

7.6 Captions. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.7 Entire Agreement. This Agreement (including the Schedules and Exhibits) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

7.8 Severability Clause. The invalidity of any provision of this Agreement shall not affect the validity of any other provision, unless enforcement of this Agreement absent such provision would be unconscionable as to either Purchaser or Seller.

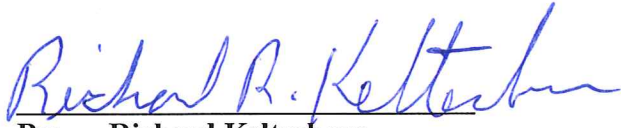
7.9 Counterparts and Facsimile Signatures. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument. Facsimile signatures are deemed equivalent to originals.

7.10 Governing Law. This Agreement shall be interpreted according to the laws of the State of Michigan.

[Remainder of Page Intentionally Blank. Signature Page to Immediately Follow.]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written. By signing this Agreement, the parties acknowledge that they have read and understand the Agreement and are signing the Agreement voluntarily.

SELLER:



By: **Richard Kelterborn**
Debtor-in-Possession

Dated: 18 Nov 2016

PURCHASER:

By: **Cynthia Hecht**

Dated: _____

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written. By signing this Agreement, the parties acknowledge that they have read and understand the Agreement and are signing the Agreement voluntarily.

SELLER:

By: Richard Kelterborn
Debtor-in-Possession

Dated: _____

PURCHASER:



By: Cynthia Hecht

Dated: 11-18-16

EXHIBIT A

Land in the Township of Lake, County of Huron, State of Michigan

Commencing at the water's edge of Saginaw Bay and the East line of Government Lot 3, Fractional Section 15, Township 18 North, Range 11 East, thence South 3 degrees 54 minutes West 150 feet more or less, to the Northerly margin of State Highway M-25; thence South 71 degrees 36 minutes West 216.16 feet along the Northerly margin of said highway to the point of beginning of this description; thence South 71 degrees 36 minutes West 54.04 feet along the Northerly margin of said-highway; thence North 03 degrees 54 minutes East 137 feet more or less,(parallel with the East line of Block 2, of Smalley Quarry Shores Subdivision) to the water's edge of Saginaw Bay; thence Northeasterly along Saginaw Bay to the point that lies North 3 degrees 54 minutes East of the point of beginning of this description; thence Southerly to the point of beginning, being a part of Government Lot 3, in said Fractional Section 15.

Commonly known as: 4330 Port Austin Rd., Caseville MI 48725

Tax ID: 13-015-101-00

EXHIBIT D

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:	)	Case No. 16-53329
Evergreen Health Services, Inc., <u>et al.</u> , ¹	)	Chapter 11
	)	Hon. Maria L. Oxholm
)	
)	
Debtors.	)	(Jointly Administered)

**NOTICE OF SALE OF ASSETS, SOLICITATION OF
COUNTEROFFERS, DEADLINE FOR SUBMITTING OBJECTIONS
AND HIGHER OFFERS AND HEARING DATE**

To the Creditors and Parties in Interest:

Notice is hereby given, pursuant to 11 U.S.C. §363, Fed. R. Bankr. P. 2002(a)(2) and 6004, and LBR 6004-1, that Richard Kelterborn (“Kelterborn”), one of the Debtors-in-Possession in the above captioned case (“Debtor”), intends to sell by auction all of the Debtor's right, title and interest in property located at 4330 Port Austin Rd., Caseville, MI 48725 (all as more specifically described below) (the “Property”) to Cynthia Hecht (“Hecht”).

The Debtor has received and accepted an offer to purchase via a Purchase Agreement from Hecht dated November 18, 2016 (the “Hecht Agreement”), a copy of which is attached to the Debtors’ Motion for Entry of an Order Pursuant to 11 U.S.C. § 363 and Federal Rules of Bankruptcy Procedure 2002, 9006, 6004 and LBR 6004-1 (1) Approving Procedures for the Auction Sale of Property Outside of the Ordinary Course of Business, Transfer of Claims and Interests to Proceeds of Sale and (2) Approving Sale of Property Outside the Ordinary Course of Business and Transferring Claims to Proceeds and Granting Other Relief.

¹The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc., (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330)

The Property will be sold free and clear of all liens, claims, encumbrances and interests of any kind or nature. Liens, claims, encumbrances and interests to the extent that they are valid, will attach to the net proceeds of the sale to the same extent and the same order of priority as such liens, claims and encumbrances attached to the Property under applicable law. The distribution of the sale proceeds shall be made pursuant to a Combined Plan and Disclosure Statement to be filed by the Debtor.

The terms of the proposed sale are more particularly described in the Hecht Agreement.

HIGHER OFFERS, if any, must be served upon counsel for the Debtor, Lynn M. Brimer, Esq., Strobl & Sharp, P.C., via overnight delivery at 300 East Long Lake Road, Suite 200, Bloomfield Hills, Michigan 48304, or facsimile 248-645-2690 or email at lbrimer@stroblpc.com for receipt no later than **January 4, 2017 at 5:00 p.m. (EST)** (the "Offer Deadline").

HIGHER OFFERS, if any, must

- (a) be in writing, and must be accompanied by a form of a Purchase Agreement black-lined off the Hecht Agreement to show changes to the Agreement, and signed by a duly-authorized representative of the entity or individual submitting such Higher Offer;
- (b) must contain terms substantially similar or better from the Debtor's and the Debtor's Estate perspective to those in the Hecht Agreement and provide consideration for the Property in an amount equal or exceed One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00) (the "First Incremental Overbid"), to be paid as the purchase price (the "Higher Base Purchase Price");
- (c) must be accompanied by a good-faith deposit in the amount of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) into the Strobl & Sharp, P.C., client trust account (instructions for such deposit shall be provided upon request); and
- (d) must be accompanied by satisfactory evidence that the bidder has the financial ability to immediately close the transaction contemplated in the bid within two (2) days of the Auction Date.

Any individual and/or entity that has submitted a higher offer on or before the Offer Deadline which complies with the requirements herein shall be deemed a Qualified Bidder.

In the event higher offers are submitted, the auction of the Property shall take place on **January 6, 2017 at 10:00 a.m.** (the "Auction Date") at the offices of Strobl & Sharp, P.C., 300 East Long Lake Road, Suite 200, Bloomfield Hills, Michigan 48304. Only Qualified Bidders shall be permitted to participate in the auction. Qualified Bidders may participate telephonically, provided however, arrangements for telephonic participation must be made no later than 24 hours prior to the Auction Date.

All incremental overbids after the First Incremental Overbid shall be in increments of Five Thousand and 00/100 (\$5,000.00) Dollars. In the event the successful bidder is unable to close within the time prescribed herein, such bidders' deposit shall be forfeited to the Debtor's Estate. If the successful bidder fails to complete the sale by the date set forth herein, the Debtor may, without any further auction or proceedings, sell the Property to the next highest bidder. Closing on the sale of Debtor's Property must take place on or before the close of business **January 9, 2017.**

Pursuant to LBR 6004-1, the deadline for filing an objection to the Debtor's Motion to sell its Property is twenty one (21) days from the date of this Notice.

Any questions concerning the intended sale shall be addressed to the undersigned.

Respectfully submitted,

STROBL & SHARP, P.C.

/s/ Lynn M. Brimer

LYNN M. BRIMER (P43291)

PAMELA S. RITTER (P47886)

Strobl & Sharp, P.C.

Attorneys for Debtor

300 East Long Lake Road, Suite 200

Bloomfield Hills, MI 48304-2376

Telephone: (248) 540-2300

Facsimile: (248) 645-2690

E-Mail: lbrimer@stroblpc.com

Dated: November 21, 2016