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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
LONG BEACH MEDICAL CENTER <u>et al.</u> ,	: :
Debtors.	: Case No. 14-70593(AST)
	: (Jointly Administered)
	: :
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JOINT MOTION TO APPROVE AMENDMENTS TO THE PURCHASE AND SALE AGREEMENT, ASSET PURCHASE AGREEMENT, AND RECEIVERSHIP AGREEMENT RELATING TO THE SALE OF THE ASSETS AND PROPERTIES OF LONG BEACH MEMORIAL NURSING HOME, INC.

Long Beach Medical Center ("**L BMC**") and Long Beach Memorial Nursing Home, Inc. *dba* The Komanoff Center for Geriatric and Rehabilitative Medicine ("**Nursing Home**" or "**Komanoff**"), as debtors-in-possession (each a "**Debtor**", and collectively sometimes referred to as the "**Debtors**") in these chapter 11 cases (the "**Chapter 11 Cases**"), together with the official committee of unsecured creditors appointed in these cases (the "**Committee**"), hereby file this motion seeking the entry of an Order (in the form of **Exhibit A** hereto) approving certain amendments (the "**Amendments**") to the Asset Purchase Agreement by and between Komanoff and MLAP Acquisition I, LLC, ("**MLAP I**"), dated as of May 8, 2014 (the "**APA**"), the Purchase and Sale Agreement by and between Komanoff and MLAP Acquisition II LLC ("**MLAP II**" and together with MLAP I, "**MLAP**"), dated as of May 8, 2014 (the "**PSA**"), and

the Form of Receivership Agreement (the “**Receivership Agreement**” and together with the APA and the PSA, the “**Sale Agreements**”) relating to the sale of the assets and properties of Komanoff (the “**Komanoff Sale**”). In summary, the amendments provide for, among other things, an increase in the aggregate cash portion of the Nursing Home purchase price from \$15.6 million to \$15.825 million (the “**Increased Purchase Price**”) if a certificate of need (“**CON**”) is approved by the New York State Department of Health (“**DOH**”) at a full 200 bed complement in exchange for an agreed per bed reduction of \$81,500 if DOH approves a CON for a reduced number of beds between 150 and 200 beds and, thereafter, an agreed per bed reduction of \$77,000 for any additional bed reduction under 150 beds (the “**Per-Bed Credit**”). In support thereof, the Debtors and the Committee state as follows:

I. **INTRODUCTION**

1. On May 22, 2014, this Court entered an order [Docket No. 185] (the “**MLAP Sale Order**”) approving, among other things, the Sale Agreements. Given Komanoff’s precarious financial position, at that time it was presumed by the parties that DOH would quickly appoint MLAP, or one or more of its members, as the Receiver for the Nursing Home. Accordingly, shortly after entry of the Sale Order, the Debtors formally requested that DOH appoint a receiver for the Nursing Home pending the closing of the sale to MLAP.

2. On or about July 2, 2014, citing New York Public Health Law Section 2810(1), DOH denied the Debtors’ request because, in its determination, the appointment of a receiver was not necessary. DOH explained that its policy is to deem the appointment of a receiver appropriate only in circumstances where proper resident care is compromised by the operator’s inability to effectively manage the facility’s operations. DOH further determined that

Komanoff's bankruptcy and continuing losses did not appear to be adversely impacting the care of the residents.

3. Since that time, representatives for the Debtors, the Committee and MLAP have been in regular contact with DOH and each other to address the need for a receiver, the Debtors' deteriorating financial condition, and the changing regulatory landscape in the State of New York. During the course of those negotiations, the Debtors demonstrated that, while they continue to hold patient safety of paramount importance, internal projections show a developing liquidity crisis with Komanoff unable to continue funding day-to-day operations for any extended period. While DOH has not stated that it believes there are any current patient safety issues, Komanoff's projections clearly demonstrate that absent the requested intervention, and despite Komanoff's best efforts, the potential for compromising patient safety would increase exponentially. Accordingly, DOH has agreed in principle to approve the receivership. The parties have submitted a signed Receivership Agreement to DOH for counter-signature, and it is anticipated that MLAP or one or more of its members will be appointed receiver within the coming days.

4. It also has become apparent that DOH is using the CON approval process as a means of reducing the aggregate number of nursing home beds to be made available in connection with nursing home transfers. DOH also has started to impose various construction requirements into the CON process, including, inter alia, that the transferred facility must become compliant with the 500 year flood plain rules, notwithstanding that it does not appear to be a statutory requirement. While MLAP assumed such risks in entering into the Sale Agreements, taken together, the changing regulatory landscape and DOH's changing requirements brought the financial viability of the project into question. As financial viability is

one of the necessary components in obtaining CON approval, all parties had a vested interest in restructuring the transaction in a way to best preserve as much value as possible for these estates.

5. Accordingly, by this Motion, the Debtors seek entry of an Order approving certain Amendments to the Sale Agreements, whereby, as set forth more fully below, the Debtors, the Committee and MLAP agreed to: (i) an Increased Purchase Price of \$15.825 million if a CON is approved by DOH for all 200 beds currently available in connection with the Komanoff Sale; (ii) a Per-Bed Credit of \$81,500 against the Increased Purchase Price if a CON is approved by DOH for less than 200 beds but more than 150 beds; (iii) an additional Per Bed Credit of \$77,000 for each bed under 150 beds that is not approved by DOH; (iv) the limited use by MLAP, as Receiver, of up to \$785,000 of pre-receivership accounts receivable, which receivables must be repaid to the Debtors on the earlier of termination of the Receivership Agreement, conditional CON approval, or 150 days from the Receivership Date¹; and (v) the repayment by the Debtors of up to \$1.5 million in Advances made by MLAP, as defined in the Receivership Agreement, if CON approval is not obtained and a sale with a third party is consummated on the same or better terms than those between the Debtors and MLAP.

6. The Debtors and the Committee believe that the proposed Amendments are reasonable under the circumstances presented herein, represent additional potential value to the estate and were negotiated in good faith in light of changed circumstances. Absent approval of the Amendments, neither the Debtors nor the Committee can be certain (a) that CON approval will be obtained (as financial feasibility may be brought into question), (b) that MLAP will make the necessary investments of both working capital to fund operations and other capital

¹ The parties have further agreed that, in the event of MLAP's default in repaying all or any portion of the pre-receivership receivables, the Debtors are authorized to set off any such unpaid amounts against the debtor-in-possession financing that MLAP or one of its affiliates has agreed to extend to Komanoff as part of its bid.

expenditures to make necessary repairs and improvements, and (c) that MLAP will ultimately close on a transaction that could present years of ongoing losses. Moreover, declaring a default under and terminating the Sale Agreements, re-marketing the Komanoff assets with hopes of procuring a new purchaser, especially given the Komanoff's current financial condition, undoubtedly would effect a tremendous hardship on the estate, the residents of Komanoff, and would be detrimental to the Debtors' efforts to successfully conclude these cases. Under such a scenario, not only would Komanoff lack the sufficient funds or resources to support continued operations, it is also questionable whether any renewed sale and marketing efforts, if undertaken, would result in a viable purchaser or otherwise generate equivalent funds for the estate.

7. Given the foregoing, the Debtors and the Committee submit that it is in the best interests of the Komanoff estate and creditors that Komanoff enter into the Amendments. Accordingly, it is respectfully requested that the proposed Amendments be approved.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The statutory predicates for the relief sought herein are sections 105(a) and 363(b)(d) and (f) and 365 of the Bankruptcy Code, and Rules 2002 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. PROCEDURAL BACKGROUND

11. On February 19, 2014 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their assets and continue to manage their business and/or affairs as debtors-in-possession

pursuant to Bankruptcy Code sections 1107 and 1108. By an Order of the Court, the Chapter 11 cases have been consolidated for procedural purposes only and are administered jointly [Docket No. 30]. On February 28, 2014, [Docket No. 50] the US Trustee appointed the Committee which has engaged both legal and financial advisors.

12. Prior to both the Petition Date and Superstorm Sandy, the Debtors operated the only acute care hospital on the island of Long Beach, a skilled nursing facility and various clinics. In the immediate wake of the storm, the Debtors temporarily ceased all normal operations, providing only emergency care with the assistance of other providers. In the months following the storm, through the extraordinary efforts of the Debtors' key personnel, the skilled nursing facility together with certain clinics reopened. However, the acute care hospital remained closed leaving Long Beach and its surrounding communities without immediate access to certain health care services such as a 911 receiving emergency department. In evaluating its options, the Debtors' management determined that the only viable course of action which takes into account both the Debtors' not-for-profit mission along with its obligations to creditors, many of whom stood by the Debtors in the aftermath of the storm, was a sale of substantially all of their assets.

13. On February 18, 2014, an asset purchase agreement was executed between South Nassau Communities Hospital ("**SNCH**") and the Debtors, providing for the sale of all of the Debtors' real property and substantially all operating assets and the assumption of certain liabilities by SNCH (the "**Stalking Horse Transaction**"). Simultaneously with the filing of these Chapter 11 cases, the Debtors filed a Motion to, *inter alia*, establish bid procedures and approve the Stalking Horse Transaction to SNCH or any other party or entity making a higher and better bid therefore (the "**Sale Motion**").

14. Thereafter the Debtors solicited bids for the sale of all, or any portion of, the Debtors' real and personal property assets based on the stalking horse bid the Debtors obtained from SNCH for the combined assets of the Debtors. As of the April 24, 2014 deadline to submit competing offers (the "**Bid Deadline**") the Debtors received five (5) bids for the real and personal property assets of Komanoff but did not receive any competing offers for the assets of LBMC or the combined assets of the Debtors. Thereafter the Debtors, together with the Committee, determined to adjourn the auction (the "**Auction**") from April 29, 2014 to May 6, 2014 in order to review the bids received for the assets of Komanoff.

15. The Debtors and the Committee ultimately designated four (4) of the five (5) bidders, plus SNCH, as Qualified Bidders and conducted the Auction on May 6, 2014. At the conclusion of the Auction, the Debtors, in consultation with the Committee, designated SNCH as the Successful Bidder for the assets of LBMC and MLAP as the Successful Bidder for the assets of Komanoff.

16. Shortly after the conclusion of the Auction the Debtors obtained two sale orders, one approving the transaction with SNCH and one approving the transaction with MLAP. Thereafter, on or about August 21, 2014, the Debtors obtained a separate order pursuant to Section 510 and 511 of the Not-for-Profit Corporation Law of the State of New York authorizing the Debtors to sell all, or substantially all, of LBMC's assets to SNCH. As SNCH was not purchasing a going concern hospital, the LBMC sale did not require CON approval by DOH. The sale of the LBMC assets closed and became effective as of 12:01 a.m. on October 17, 2014.

17. As noted above, it was not anticipated that the Komanoff Sale would close quickly as all parties understood that the CON approval process could take a considerable amount of time. Given Komanoff's precarious financial position the Sale Agreements included a

draft receivership agreement and the parties presumed that DOH would, as it had done in the past, quickly appoint MLAP, or one or more of its members, Receiver for the Nursing Home. Accordingly, shortly after entry of the Sale Order, the Debtors formally requested that DOH appoint a receiver for the Nursing Home pending the closing of the sale to MLAP.

18. On or about July 2, 2014, citing New York Public Health Law Section 2810(1), DOH denied the Debtors' request because, in its determination, the appointment of a receiver was not necessary. DOH explained that its policy is to deem the appointment of a receiver to be appropriate only in circumstances where proper resident care is compromised by the operator's inability to effectively manage the facility's operations. DOH further determined that Komanoff's bankruptcy and continuing losses did not appear to be adversely impacting the care of the residents.

19. Since that time, representatives for the Debtors, the Committee and MLAP have been in regular contact with DOH and each other to address the need for a receiver, the Debtors' deteriorating financial condition, and the changing regulatory landscape in the State of New York. During the course of those negotiations, the Debtors demonstrated that, while they continue to hold patient safety of paramount importance, internal projections show a developing liquidity crisis with the Debtors unable to continue funding day-to-day operations for any extended period. While DOH has not stated that it believes there are any current patient safety issues, Komanoff's projections clearly demonstrate that absent the requested intervention, and despite Komanoff's best efforts, the potential for compromising patient safety would increase exponentially. Accordingly, DOH has agreed in principle to approve the receivership. The parties have submitted a signed Receivership Agreement to DOH for counter-signature and it is

anticipated that MLAP or one or more of its members will be appointed receiver within the coming days.

20. It also has become apparent that DOH is intermittently using the CON approval process as a means of reducing the aggregate number of nursing home beds to be made available in connection with nursing home transfers. DOH also has started to impose various construction requirements into the CON process, including, inter alia, that the transferred facility must become compliant with the 500 year flood plain rules, notwithstanding that it does not appear to be a statutory requirement. While MLAP assumed such risks in entering into the Sale Agreements, taken together, the changing regulatory landscape and DOH's changing requirements brought the financial viability of the project into question. As financial viability is one of the necessary components in obtaining CON approval, all parties had a vested interest in restructuring the transaction in a way to best preserve as much value as possible for these estates.

IV. THE PROPOSED AMENDMENTS TO THE SALE AGREEMENTS

21. Given the ostensibly changing regulatory landscape, the changes inserted by DOH into the CON approval process, and the passage of time between the entry of the sale order and the approval of the receivership agreement, by this Motion, the Debtors and the Committee seek entry of an Order approving certain Amendments to the Sale Agreements. A true and correct copy of the Amendments as they relate to the APA are annexed hereto as **Exhibit B**, a true and correct copy of the Amendments as they relate to the PSA are annexed hereto as **Exhibit C**, and a true and correct copy of the revised Receivership Agreement is annexed hereto as **Exhibit D**. The following is a summary of the material terms of the Amendments:²

² The summary contained below is intended to provide the Court and parties in interest with the salient terms of the Amendments, to the extent there are any inconsistencies between the summary description of the Amendments

- (a) The aggregate cash portion of the purchase price is increased from \$15.6 million to \$15.825 million if a CON is approved by DOH for all 200 beds currently available in connection with the Komanoff Sale;
- (b) MLAP shall be entitled to a Per-Bed Credit of \$81,500 against the Increased Purchase Price (as allocated in the Amendments) if a CON is approved by DOH for between 150 and 200 beds with an additional Per Bed Credit of \$77,000 for each bed not approved under 150 beds, provided, however, MLAP shall diligently pursue CON approval for all 200 beds currently available;
- (c) MLAP, as Receiver, is authorized to utilize up to \$785,000 of the proceeds of accounts receivable generated prior to the Receivership Date (which otherwise constitutes the property of Debtors and is an Excluded Asset under the MLAP APA) to fund the expenses and liabilities arising out of, and relating to, the operation of the business of the Komanoff during the Term of the Receivership (the "**Receivable Advances**"). All Receivable Advances shall be repaid by Receiver on the earliest of: (i) the termination of the Receivership Agreement; (ii) 150 days after the Receivership Date; or (iii) upon Receiver's receipt of conditional establishment approval as operator.
- (d) In the event of any default by Receiver in the repayment of any Receivable Advances when due, Receiver expressly acknowledges that Seller will be permitted to set off any such Receivable Advances against any debtor-in-possession financing provided by Receiver or any affiliate of Receiver as contemplated by Receiver's bid for the purchase of the Facility assets and the summary of the auction results filed with the Court.
- (e) In the event of a termination of the Receivership Agreement, and provided that Receiver is entitled to a return of its Deposit under the Purchase Agreement, Receiver shall be entitled to reimbursement of up to \$1,500,000 in outstanding Advances that may remain unpaid after application of all remaining Receivership Net Cash, (the "**Estate Reimbursable Advances**") which shall be treated as a superpriority administrative claim and may only be satisfied out of the proceeds of a sale of the Facility to a third party other than Receiver or an affiliate thereof at a price that is equal to, or better than the price payable by Receiver under the terms of the Purchase Agreement. For the avoidance of doubt, under no circumstances will Receiver be entitled to repayment of any Advances, including, without limitation, Estate Reimbursable

contained herein and the actual terms of the Amendments, the terms as set forth in the Amendments shall control. Capitalized terms contained in the summary description of the Amendments that are not defined herein shall have the meaning ascribed to them in the Amendments.

Advances, other than from Receivership Net Cash, if Receiver is not entitled to the return of its Deposit under the Purchase Agreement

22. The Debtors and the Committee believe that the proposed Amendments are reasonable under the circumstances presented herein, represent additional potential value to the estate and were negotiated in good faith in light of changed circumstances. Absent approval of the Amendments, neither the Debtors nor the Committee can be certain (a) that CON approval will be obtained (as financial feasibility may be brought into question), (b) that MLAP will make the necessary investments of both working capital to fund operations and other capital expenditures to make necessary repairs and improvements, and (c) that MLAP will ultimately close on a transaction that could present years of ongoing losses. Moreover, declaring a default under and terminating the Sale Agreements, re-marketing the Komanoff assets with hopes of procuring a new purchaser, especially given Komanoff's current financial condition, undoubtedly would effect a tremendous hardship on the estate, the residents of Komanoff, and would be detrimental to the Debtors' efforts to successfully conclude these cases. Under such a scenario, not only would Komanoff lack the sufficient funds or resources to support continued operations, it is also questionable whether any renewed sale and marketing efforts, if undertaken, would result in a viable purchaser or otherwise generate equivalent funds for the estate.

V. CONCLUSION

23. Under the circumstances, the proposed Amendments are in the best interests of the Komanoff estate and necessary to ensure consummation of the proposed Komanoff Sale. Accordingly, approval of the proposed Amendments to the Sale Agreements are warranted.

VI. NOTICE

24. Notice of this Motion has been provided to (a) the Office of the United States Debtors for the Eastern District of New York; (b) counsel for MLAP; (c) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (d) all parties who appeared in connection with the hearing on the Sale Motion; (e) the following state and local taxing and regulatory authorities: (i) the Centers for Medicare and Medicaid Services, (ii) the New York State Department of Health; (iii) the United States Attorney for the Eastern District of New York, (iv) the Attorney General of the State of New York; (f) Corporation Counsel of the New York City Department of Finance, (g) counsel to the Creditors' Committee; (h) the Patient Care Ombudsman and counsel to the Patient Care Ombudsman, and (i) all parties who are known to assert a lien on the PGN assets and/or Properties (collectively, the "Notice Parties").

WHEREFORE, the Debtors respectfully requests that the Court enter an order in the form annexed as Exhibit A, approving the Amendments to the Sale Agreements, and granting such other and further relief as is just and proper.

Dated: October 28, 2014
Great Neck, New York

GARFUNKEL WILD, P.C.
*Counsel for the Debtors and
Debtors in Possession*

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Dated: October 28, 2014
New York, New York

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Exhibit A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

LONG BEACH MEDICAL CENTER, *et al.*¹

Chapter 11
Case No. 14-70593 (ast)

Debtors.

(Jointly Administered)

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ORDER APPROVING AMENDMENTS

Upon the Joint Motion² dated October 28, 2014, of LBMC and Komanoff, as debtors-in-possession in these chapter 11 cases, together with the Committee, seeking entry of an Order approving certain Amendments to the Asset Purchase Agreement by and between Komanoff and MLAP Acquisition, I, LLC, dated as of May 8, 2014, the Purchase and Sale Agreement by and between Komanoff and MLAP Acquisition II LLC, dated as of May 8, 2014, and the Form of Receivership Agreement, all relating to the Komanoff Sale, and all as more fully set forth in the Joint Motion; and the Court having subject matter jurisdiction to consider the Joint Motion and the relief request therein pursuant to 28 U.S.C. § § 157 and 1334; and the Joint Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Joint Motion having been provided, and no other or further notice need be provided; and the relief requested in the Joint Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Joint Motion; and the Court

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Long Beach Medical Center (5084) and Long Beach Memorial Nursing Home, Inc. *dba* The Komanoff Center for Geriatric and Rehabilitative Medicine (3422).

² Capitalized terms used herein, except as otherwise noted, shall have the meanings ascribed to them in the Joint Motion.

having determined that the legal and factual bases set forth in the Joint Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and the Court being satisfied based on the representations made in the Joint Motion , and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Joint Motion is hereby approved.
2. The Amendments to the Komanoff Sale Agreements, including the APA, the PSA and the Receivership Agreement are hereby approved.
2. The parties are authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Order.
3. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.
4. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Exhibit B

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (this "First Amendment"), dated as of the ___ day of October, 2014, by and between LONG BEACH MEMORIAL NURSING HOME, INC., D/B/A THE KOMANOFF CENTER FOR GERIATRIC AND REHABILITATIVE MEDICINE, a New York not-for-profit corporation (the "Seller") and MLAP ACQUISITION I LLC, a New York limited liability company ("Purchaser").

WHEREAS, Seller and Purchaser entered into that certain Asset Purchase Agreement, dated as of May 8, 2014 (the "Agreement"), for certain assets located at 375 East Bay Drive, Long Beach (the "Premises");

WHEREAS, the Agreement was approved by the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"); and

WHEREAS, Seller and Purchaser desire to amend the Agreement in certain respects.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions and agreements hereinafter provided, the parties agree as follows:

1. Recitals and Defined Terms. The recitals set forth above are incorporated herein as if set forth at length. Unless modified in accordance with the terms of this First Amendment, terms defined in the Agreement and used herein shall have the meaning ascribed thereto in the Agreement.

2. Effective Date. This First Amendment shall not be effective unless and until the entry of an order of the Bankruptcy Court approving this First Amendment.

3. Purchase Price Deposit.

a. Section 4.2(a)(i) of the Agreement is hereby deleted and replaced with the following "(i) upon execution of the Receivership Agreement, the Seller shall be authorized to use all or any portion of the Deposit to pay any accrued obligations arising from the operation of the Premises prior to the Receivership Agreement or any other expenses of administering the Seller's and Long Beach Medical Center's Chapter 11 Estates either before or after the Receivership Agreement, and upon the Closing, any remaining portion of the Deposit shall be delivered to Seller as partial consideration for the Purchased Assets."

b. Section 4.2(a)(ii) of the Agreement is hereby deleted and replaced with the following: "(ii) if this Agreement is terminated by Seller pursuant to Section 5.4(b) hereto, (other than for termination for failure to deliver any of the items in Section 11.3), any remaining portion of the Deposit shall be delivered to Seller;".

c. Section 4.2(a)(iii) of the Agreement is hereby deleted and replaced with the following: "(iii) if this Agreement is terminated pursuant to Section 5.4(c)(i), Section 5.4(c)(ii), or Section 5.4(c)(iv) hereto, any remaining portion of the Deposit shall be delivered to Seller; or".

d. Section 4.2(a)(iv) of the Agreement is hereby deleted and replaced with the following: "(iv) if this Agreement is terminated pursuant to Section 5.4 hereto for any reason other than pursuant to Section 5.4(b), Section 5.4(c)(ii), 5.4(c)(iii), or 5.4(c)(iv), or Section 5.4(c)(v) hereto, the Deposit, shall in each case be promptly returned to Purchaser

e. Section 4.2(b)(i) of the Agreement is modified by adding "Subject to Section 4.2(a)(i) of the Agreement," at the beginning of the Section.

f. Section 4.2(b)(ii) of the Agreement is modified by adding "Subject to Section 4.2(a)(i) of the Agreement," at the beginning of the Section

4. Termination of Agreement. A new Section 5.4(a)(v) is added as follows: "(v) if DOH staff, after review of Purchaser's certificate of need application, recommends the disapproval of the application for 200 beds and proposes an approval for less than one hundred twenty (120) certified beds"

5. Regulatory Approvals. Section 9.6 of the Agreement is modified by adding the following to the end of the section: "Purchaser agrees to re-file its certificate of need application with a construction component (as previously requested by DOH) for 200 licensed beds and diligently pursue such application. In the event DOH staff, after review of the application, recommends the disapproval of the application for 200 beds and proposes an approval for less than 200 certified beds (such approved bed count, the "Reduced Bed Complement"), the Purchaser shall accept such recommendation without the consent of the Seller being required, and proceed with its application with a Reduced Bed Complement. At the closing Purchaser shall be entitled to a credit, against the purchase price under the Real Estate Contract, of eighty-one thousand five hundred dollars (\$81,500) per bed for every bed it is licensed for under 200 certified beds up to 150 certified beds and seventy seven thousand dollars (\$77,000) per bed for every bed under 150 certified beds (the "Per Bed Credit"). If at any time prior to the expiration of two years from the date of the Closing, after establishment of the Purchaser as the new operator of the Facility, Purchaser then obtains an increase in the licensed bed complement over the Reduced Bed Complement, then Purchaser, if it makes such an application, shall pay to the Seller a sum equal to eighty-six thousand dollars (\$86,000) per bed approved above the Reduced Bed Complement up to a total of two hundred (200) beds. Notwithstanding the preceding, Purchaser shall have no obligation to seek to increase the bed complement after a CON may be approved with a Reduced Bed Complement."

6. Revised Cross References. Commencing in Article IV and thereafter, all internal Section references should be to the following Article. Thus, for example internal references in Article 5 to Section 4 should be to Section 5.

7. Counterparts and Facsimile. This First Amendment may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. It is also agreed that facsimile signatures will be deemed originals for all purposes.

8. Full Force and Effect. Except as amended hereby, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment has been duly executed by Seller and Purchaser as of the date first above written.

Seller:

LONG BEACH MEMORIAL NURSING HOME,
INC., D/B/A THE KOMANOFF CENTER FOR
GERIATRIC AND REHABILITATIVE
MEDICINE

By: Douglas L. Melzer
Name: DOUGLAS L. MELZER
Title: PRESIDENT & CEO

Purchaser:

MLAP ACQUISITION I, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, this First Amendment has been duly executed by Seller and Purchaser as of the date first above written.

Seller:

LONG BEACH MEMORIAL NURSING HOME,
INC., D/B/A THE KOMANOFF CENTER FOR
GERIATRIC AND REHABILITATIVE
MEDICINE

By: _____
Name:
Title:

Purchaser:

MLAP ACQUISITION I, LLC

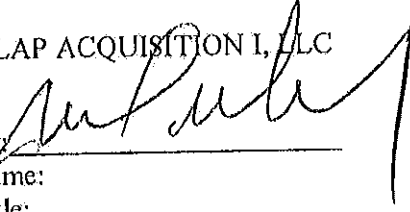
By:  _____
Name:
Title:

Exhibit C

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "First Amendment"), dated as of the ___ day of October, 2014, by and between LONG BEACH MEMORIAL NURSING HOME, INC., D/B/A THE KOMANOFF CENTER FOR GERIATRIC AND REHABILITATIVE MEDICINE, a New York not-for-profit corporation (the "Seller") and MLAP ACQUISITION II, LLC, a New York limited liability company ("Purchaser").

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement, dated as of May 9, 2014 (the "Agreement")¹, for the sale of the real estate located at 375 East Bay Drive, Long Beach (the "Premises");

WHEREAS, the Agreement was approved by the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"); and

WHEREAS, Seller and Purchaser desire to amend the Agreement in certain respects.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions and agreements hereinafter provided, the parties agree as follows:

1. Recitals and Defined Terms. The recitals set forth above are incorporated herein as if set forth at length. Unless modified in accordance with the terms of this First Amendment, terms defined in the Agreement and used herein shall have the meaning ascribed thereto in the Agreement.

2. Effective Date. This First Amendment shall not be effective unless and until the entry of an order of the Bankruptcy Court approving this First Amendment.

3. Purchase Price.

a. Section 2.2.1 of the Agreement is hereby amended by deleting "FOURTEEN MILLION AND NO/100S DOLLARS (US \$14,000,000.00)" on lines two and three and replacing it with "FOURTEEN MILLION TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (US \$14,225,000.00), subject to further adjustment as set forth in Section 9.6 of the Nursing Home Asset Agreement."

b. The last sentence of Section 2.2.2 of the Agreement is deleted and replaced with the following: "Upon execution of the receivership agreement between Seller, Purchaser and the Department of Health (the "Receivership Agreement"), the Seller shall be authorized to use all or any portion of the Deposit to pay any accrued obligations arising from the operation of the Premises prior to the Receivership Agreement or any other expenses of administering the Seller's and Long Beach Chapter 11 Estate either before or after the Receivership Agreement."

¹ Capitalized terms used but not otherwise defined herein shall have such meaning as ascribed to such terms in the Agreement.

4. Purchaser's Default. Section 12.1 of the Agreement is deleted and replaced with the following: "**SECTION 12.1 Purchaser's Default.** If Purchaser shall (a) fail or refuse to close as required by the terms of this Agreement, or (b) otherwise be in default hereunder, which default shall continue for ten (10) Business Days after written notice to Purchaser specifying such default, the parties hereto agree that the damages that Seller would sustain as a result thereof would be substantial, but would be difficult to ascertain. Accordingly, the parties hereto agree that in the event of such default, failure or refusal by Purchaser, Seller's sole remedy shall be to terminate this Agreement and retain the Deposit in which event Escrow Agent shall deliver any remaining portion of the Deposit to or at the direction of Seller, in which event Purchaser and Seller shall have no further rights or obligations under this Agreement, except those expressly provided herein to survive the termination of this Agreement. Nothing contained in this Section shall limit or diminish Purchaser's obligations or liabilities under Sections 11 and 18.10 hereof."

5. Escrow.

a. Escrow Terms. Section 15.1 of the Agreement is deleted and replaced with the following: "**SECTION 15.1 Escrow Terms.** Subject to Section 2.2.2 of the Agreement, the Deposit shall be held in escrow by Garfunkel Wild, P.C. ("Escrow Agent") pending the disbursement of such Deposit in accordance with the terms of this Agreement."

b. Distribution. Section 15.2 of the Agreement is modified by adding "Subject to Section 2.2.2," at the beginning of the Section.

6. Counterparts and Facsimile. This First Amendment may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. It is also agreed that facsimile signatures will be deemed originals for all purposes.

7. Full Force and Effect. Except as amended hereby, the Agreement shall remain in full force and effect.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this First Amendment has been duly executed by Seller and Purchaser as of the date first above written.

Seller:

LONG BEACH MEMORIAL NURSING HOME,
INC., D/B/A THE KOMANOFF CENTER FOR
GERIATRIC AND REHABILITATIVE
MEDICINE

By: *Douglas C Melzer*
Name: DOUGLAS C MELZER
Title: PRESIDENT + CEO

Purchaser:

MLAP ACQUISITION II, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, this First Amendment has been duly executed by Seller and Purchaser as of the date first above written.

Seller: LONG BEACH MEMORIAL NURSING HOME,
INC., D/B/A THE KOMANOFF CENTER FOR
GERIATRIC AND REHABILITATIVE
MEDICINE

By: _____
Name:
Title:

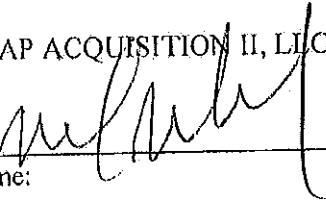
Purchaser: MLAP ACQUISITION II, LLC
By: 
Name:
Title:

Exhibit D

RECEIVER AGREEMENT -- NURSING HOME

RECEIVER AGREEMENT -- NURSING HOME (this "Agreement"), dated as of October _____, 2014, by and between LONG BEACH MEMORIAL NURSING HOME, INC., D/B/A THE KOMANOFF CENTER FOR GERIATRIC AND REHABILITATIVE MEDICINE, a New York not-for-profit corporation ("Seller"), MLAP ACQUISITION I, LLC, a New York limited liability company (the "Receiver"), and the New York State Department of Health by its duly and lawfully authorized officials (the "Department").

RECITALS

WHEREAS, Seller is a debtor under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), and filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Case") on February 19, 2014 in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court") (Case No. 14-70593);

WHEREAS, Seller is engaged in the business of owning and operating (a) a licensed 200 bed skilled nursing and residential health care facility, currently authorized to operate 150 beds (the "Facility") under the name Long Beach Memorial Nursing Home, Inc. d/b/a the Komanoff Center for Geriatric and Rehabilitative Medicine at the premises known as 375 East Bay Drive, Long Beach, New York (the "Premises");

WHEREAS, Seller and Receiver have previously entered into an Asset Purchase Agreement, dated as of May 8, 2014 (as the same may hereafter be amended or modified, the "Purchase Agreement")¹, pursuant to which Receiver agreed to purchase substantially all of the assets of Seller related to the operation of the Facility;

WHEREAS, the Bankruptcy Court has approved the Purchase Agreement and issued an order confirming that Receiver and Seller are permitted to consummate the transactions contemplated by the Purchase Agreement in accordance with the terms thereof (as the same may be supplemented, collectively the "Sale Order");

WHEREAS, Seller wants to ensure the continuity of the Facility's operations pending the closing of the transactions contemplated by the Purchase Agreement and has requested the Department (the "Department") to approve the assumption of the operation of the Facility by Receiver pursuant to the provisions of applicable laws, regulations and this Agreement; and

WHEREAS, Seller recognizes that Receiver is appointed with the approval of the Department as an interim operator of the Facility, and Seller is desirous of ultimately effectuating a transfer of the operation of the Facility to Receiver as the new established operator of the Facility pursuant to the terms of the Purchase Agreement.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, it is mutually agreed by and between the signatories to this Agreement as follows:

¹ Defined terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

ARTICLE I

RECEIVERSHIP

Section 1.01 Seller hereby confirms its request to the Department to approve the assumption of the operation of the Facility by Receiver and agrees that Receiver's obligations under this Agreement are contingent upon the Purchase Agreement being in full force and effect.

Section 1.02 Receiver, having complied with all of the requirements of the Department, is hereby appointed as receiver of the Facility to commence its operations as Receiver at 12:01 a.m. on [_____], 2014 (the date on which Receiver is authorized to act as the receiver of the Facility is hereinafter sometimes referred to as the "Receivership Date"). Receiver accepts its appointment as receiver of the Facility effective as of Receivership Date and has executed this Agreement in the appropriate space provided on the signature page attached hereto. Receiver shall accept the real and personal property occupied and used by Seller and the furniture, fixtures and equipment located at the Facility in their then present "as is" condition. Receiver shall fund all operations of the Facility from and after the Receivership Date, ensuring that the Facility has sufficient funds to satisfy its operating expenses, including, without limitation, any severance obligations and benefit obligations of employees of Seller whose employment is terminated during or after the Term of Receivership (as defined below). Receiver shall (a) honor and pay any wage payment obligations for vacation, holiday time, sick pay, and personal days which accrued prior to the Receivership Date; (b) make any regularly scheduled contributions to any funds that arise under any collective bargaining agreement as a consequence of satisfying any such obligation or liability of Seller; and (c) any severance obligations for employees terminated during the Term of Receivership (as defined below). Receiver shall be required to fund, in a timely manner, all sums necessary to maintain the Facility in good repair during the Term of Receivership. All funds provided by the Receiver in accordance with the foregoing shall be included as Advances as such term is hereinafter defined. Receiver shall be required to advance its own working capital, if necessary, to fund its obligations hereunder and in respect of the Receivership.

Section 1.03 Term.

(a) Except as herein provided, the duration of the appointment of Receiver as receiver of the Facility (sometimes hereinafter referred to as the "Term of Receivership") shall start on the Receivership Date and continue for up to nine (9) months from entry of the Sale Order (the "Outside Date"), subject to renewal, extension or earlier termination as provided below. If the Purchase Agreement is terminated for any reason, this Agreement shall automatically terminate upon the occurrence of such contingency and be of no further force and effect except as otherwise set forth hereinafter. This Agreement shall also automatically terminate upon the closing of the transactions contemplated by the Purchase Agreement. In the event of termination, the Department may, extend the duration of the appointment of Receiver until the appointment of a new receiver acceptable to the Department or the issuance of an operating certificate to a new established operator of the Facility. In such event, Seller shall join with Receiver to seek Department approval to renew or extend the appointment of Receiver for a period or periods each of which shall not exceed an additional six (6) months. Any such renewals or extensions shall be on the same terms and conditions as set forth herein or such other

terms and conditions as may be agreed upon in writing by the parties; provided, however, that the Term of Receivership may be terminated sooner, anything in this Agreement to the contrary notwithstanding, if (i) Receiver is in material breach of any of its obligations under this Agreement and which breach cannot be cured or has not been cured within twenty (20) business days after the giving of written notice by Seller to Receiver of such breach; (ii) the Department determines, in its sole discretion, that deficiencies have occurred at the Facility during the term of Receiver's appointment as receiver of the Facility which warrant the removal of Receiver; (iii) if Receiver has been convicted of a crime; or (iv) if the Department determines, with respect to matters other than deficiencies as set forth in clause (ii) above, in its sole discretion, that Receiver is not in substantial compliance with the terms and provisions of this Agreement (each of clauses (i) through (iv) herein constituting an "Early Termination Event") provided, however, that in such event the Department will have provided Receiver and Seller with written notification of the nature and extent of its non-compliance, and Receiver shall have failed, in the Department's opinion, to make sufficient progress toward attaining compliance.

(b) Receiver waives any right to a hearing under any section of the Public Health Law relative to revocation of an operating certificate, and agrees to surrender the operating certificate issued to it upon expiration or termination of this Agreement, or expiration or termination of any renewal or extension thereof, subject to the terms of this Receiver Agreement.

(c) The Purchase Agreement required Receiver to submit an application for approval of establishment to the New York State Public Health and Health Planning Council within fourteen (14) days after the date of the Sale Order. Seller represents that it will not interfere with the application of Receiver, or its designee, to become the new established operator of the Facility, and shall cooperate with Receiver as Receiver reasonably may request.

Section 1.04 Seller agrees to promptly and diligently execute all documents necessary to transfer to Receiver the operation of the Facility and all assets and property belonging to Seller and relating to the Facility (other than the Excluded Assets as defined in the Purchase Agreement (the "Excluded Assets")), it being understood by the parties that legal title to such assets and property shall not pass from Seller to Receiver unless and until all transactions contemplated by the Purchase Agreement close, including but not limited to all security deposits and prepayments of residents, if any, held by Seller for services to be provided on and after the Receivership Date, for possession and use by Receiver in the operation of the Facility during the Term of Receivership. Upon the closing under the Purchase Agreement, Receiver shall retain the assets purchased under the Purchase Agreement in accordance with its terms.

Section 1.05 Seller irrevocably agrees as consideration for the undertaking of the appointment of Receiver as receiver to promptly and diligently execute and deliver any and all documents required to transfer the operations, and all assets and property belonging to or leased to Seller, to Receiver, or its designee, as the new established operator of the Facility to the extent provided in the Purchase Agreement, if, as and when all of the conditions precedent to Seller's obligations to close on the sale of such operation, assets and property have been satisfied or waived or to any successor receiver or established operator of the Facility.

Section 1.06 Provided that the Facility has a Title XIX provider agreement, Receiver shall be reimbursed as an operator through the Medicaid program pursuant to 10 N.Y.C.R.R. Subpart 86-2. The Department and the Seller shall not be responsible for any expenses incurred by Receiver and related to the operation of the Facility which are not reimbursed pursuant to Subpart 86-2 or by any other payor.

Section 1.07 Seller, in connection with the appointment by the Department of Receiver, waives the right to terminate this Agreement or contest the appointment of the Receiver, except for (a) a termination of this Agreement upon the occurrence of an Early Termination Event, (b) claims related to the Department's alleged failure to honor its obligations or its breach or default under this Agreement or (c) breaches or defaults under this Agreement by Receiver. No such claim of the Department's or Receiver's breach or default hereunder may be made by Seller until after Seller has provided the Department or Receiver, as applicable, with written notice of its alleged failure, breach or default and such failure, breach or default shall not have been cured within a reasonable time after receipt of such notice. Ten (10) business days shall be deemed a reasonable time to cure any monetary defaults and twenty (20) business days shall be deemed a reasonable time to cure other defaults.

Section 1.08 To the extent permitted by applicable law, Receiver shall have the right to use Seller's Medicare and Medicaid program provider numbers with respect to the Facility. Upon the closing of the transactions contemplated by the Purchase Agreement, Seller shall execute and deliver to Receiver such documents as may be required to assign such numbers and its provider agreements to Receiver. Receiver shall fully indemnify Seller from and against any and all claims, liabilities, actions, etc., including, without limitation, reasonable attorneys fees, by Medicare or Medicaid, arising solely from Receiver's use of Seller's Medicare and Medicaid program provider numbers during the Term of Receivership.

Section 1.09 Termination; Substitute Receiver.

(a) Seller agrees that this Agreement shall not be terminated without the prior approval of the Department, other than a termination upon the occurrence of an Early Termination Event or in accordance with Section 1.07 hereof. If, for any reason other than the closing of the transactions contemplated by the Purchase Agreement, this Agreement expires or is terminated, including but not limited to termination upon the occurrence of an Early Termination Event or otherwise ordered by the Commissioner of Health for failure of Receiver to operate the Facility in conformance with 10 N.Y.C.R.R., or the Medicare/Medicaid requirements for long term care facilities, the Public Health Law and/or this Agreement, the parties agree that: (i) Seller shall propose and consent to the appointment of another voluntary receiver (the "Substitute Receiver"); and (ii) Seller may seek to resell the Facility, or if the Seller determines that a resale of the same as an ongoing business is not practicable, Seller and Receiver shall cooperate in the formulation and execution of a closure plan and wind-down of the operations of the Facility and Premises. In the event that Seller does not propose a Substitute Receiver within the time period delineated by the Department, the Department may appoint a Substitute Receiver without the approval of Seller or the need to petition the Supreme Court. The appointment of a Substitute Receiver shall be subject to approval by the Department and the Bankruptcy Court. In such event, Seller, the Department and the Substitute Receiver shall enter into a substitute receiver agreement substantially similar to this Agreement.

(b) In the event the Substitute Receiver is terminated or the substitute receiver agreement expires, the Facility will, subject to the prior approval of the Department, revert to the control of Seller or its designee, unless Seller consents to the appointment of another Substitute Receiver that is approved by the Department and the Bankruptcy Court.

Section 1.10 Receiver or Seller may apply to the Department for such rulings as from time to time they may deem necessary in delineating the extent of the authority of Receiver.

Section 1.11 Operation of the Facility.

(a) Receiver shall operate the business conducted at the Facility on and after Receivership Date for its own account and Receiver shall solely be responsible for all capital requirements of the business conducted at the Facility during the Term of Receivership in accordance with the terms and subject to the conditions set forth in this Agreement. Except for the Excluded Assets, Receiver shall be entitled to use all revenues to pay all expenses relating to the operation of the business conducted at the Facility during the Term of Receivership, which revenues shall not be deemed to be property of Seller's bankruptcy estate nor shall any pre-Receivership Date liens, claims or encumbrances of any of the Seller's pre-petition or post-petition creditors be deemed to attach to such revenues. Except as otherwise expressly provided in this Agreement, Receiver shall be liable for all accounts payable and other liabilities, including taxes, and employee severance and benefit obligations arising out of or relating to the operation of the business conducted at the Facility during the Term of Receivership. Receiver shall fully indemnify Seller from and against any and all claims, liabilities, actions, etc., including, without limitation, reasonable attorneys fees, in connection with the Receiver's operation of the Facility pursuant to this Section 1.11(a) during the Term of Receivership. Consistent with 10 NYCRR 600.9(c), any profits derived from operations during the Term of Receivership shall be held in trust and shall be paid over to the Receiver upon Receiver receiving establishment approval as operator. If Receiver does not receive establishment approval as operator, any profits derived during the Term of Receivership shall be paid over to the Seller and become property of the Seller's bankruptcy estate.

(b) Notwithstanding any provision of this Agreement to the contrary, Receiver shall be authorized to utilize up to \$785,000 of the proceeds of accounts receivable generated prior to the Receivership Date (which otherwise constitutes the property of Seller and an Excluded Asset) to fund the expenses and liabilities arising out of, and relating to, the operation of the business of the Facility during the Term of the Receivership (the "Receivable Advances"). All Receivable Advances shall be repaid by Receiver to Seller on the earliest of: (i) the termination of this Receivership Agreement; (ii) 150 days after the Receivership Date; or (iii) upon Receiver's receipt of conditional establishment approval as operator. In the event of any default by Receiver in the repayment of any Receivable Advances when due, Receiver expressly acknowledges that Seller will be permitted to set off any such Receivable Advances against any debtor-in-possession financing provided by Receiver or any affiliate of Receiver as contemplated by Receiver's bid for the purchase of the Facility assets and the summary of the auction results filed with the Court.

(c) Notwithstanding any provision of this Agreement to the contrary, subject, however, to the provisions of Section 2.09 and Section 3.07 hereof (i) Receiver shall be obligated

to pay (A) all expenses and liabilities arising out of, and relating to, the operation of the business located at the Facility exclusively during the Term of Receivership, (B) the wage payment obligations as set forth in Section 1.02, and (C) health facility assessment obligations for revenue relating to services rendered prior to the Receivership Date and collected by Receiver in accordance with Section 4.06 hereof, regardless of when received by the Facility or Seller, but only to the extent actually received by Receiver, and (ii) Receiver shall be liable for any and all Healthcare Program Liabilities (as such term is defined in the Purchase Agreement) arising solely from any claims submitted by Receiver to Healthcare Programs during the Term of the Receivership. In no event shall Receiver be liable for any accounts payable or other obligations and liabilities arising out of, or relating to, the operation of the Facility prior to the Receivership Date (except and to the extent otherwise provided in the Purchase Agreement and this Agreement) and such accounts payable and other obligations and liabilities shall remain the liability and responsibility of Seller (collectively, the "Excluded Liabilities"). Notwithstanding the foregoing, nothing in this Agreement shall affect Receiver or Seller's rights or obligations under the Purchase Agreement. In no event shall Seller be liable for any accounts payable or other obligations and liabilities arising out of, or relating to, the operation of the Facility during the Term of Receivership (except and to the extent otherwise provided in the Purchase Agreement) and such accounts payable and other obligations and liabilities shall remain the liability and responsibility of Receiver

ARTICLE II

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF RECEIVER

Receiver represents, warrants and agrees as follows:

Section 2.01 It shall not act as an agent of the Department nor represent or hold itself out as an agent for the Department in any matter nor shall it hold itself out as a political subdivision of the State.

Section 2.02 It shall act in good faith and shall not delegate its duties and responsibilities to any other individual or entity, except that it may hire its own administrators, consultants and staff.

Section 2.03 It shall operate the Facility in compliance with all applicable laws, rules and regulations, including, but not limited to, the requirements for participation in the Medicare/Medicaid programs.

Section 2.04 In its operation of the Facility as Receiver, it shall not engage in any practice that may result, directly or indirectly, in any financial gain to itself in its capacity as receiver, except as expressly provided under the terms of this Receiver Agreement.

Section 2.05 Receiver shall hold the assets of Seller in trust for Seller and shall, subject to the terms of this Agreement, take no action which would result in diminution of the assets entrusted to it by Seller without the prior written consent of Seller, which consent will not be unreasonably withheld or delayed or conditioned. It is also agreed to by the parties that, except as otherwise specifically provided in this Agreement, Receiver shall not be responsible for any

Excluded Liabilities as such term is defined in the Purchase Agreement and that those shall remain the responsibility of Seller.

Section 2.06 Subject to the provisions of this Agreement, in the event of the expiration or termination of the appointment of Receiver as receiver, Receiver shall promptly execute and deliver such assignments, reassignments, conveyances, releases and other documents as may be required to restore the parties to the *status quo ante* and/or to transfer the assets held in trust by Receiver, liabilities and operation of the Facility, and divest itself of all incidents of ownership thereof to Seller or to such person(s) or entities as Seller shall designate, subject to the approval of the Department.

Section 2.07 Receiver shall, within thirty (30) days after the end of each (a) month during the Term of Receivership, provide Seller and the Department with a resident census for the Facility, and (b) quarter during the Term of Receivership, a completed Monthly Operating Report summarizing Receiver's operation of the Facility during the previous quarter. Nothing herein contained shall be construed so as to limit the provisions of Section 4.03 hereof.

Section 2.08 From time to time during the Term of Receivership, the Receiver may use its own cash or other assets to fund the necessary operating expenses and working capital needs of the Facility (collectively, "Advances"). The Receiver may make Advances in such amounts and upon such repayment and other terms as the Receiver deems prudent in its sole and reasonable discretion. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the Receiver may authorize and direct repayment of the Advances from any net income or positive net cash flow generated by the Facility during the Term of Receivership after payment of all expenses and liabilities of operations and all Receivable Advances (collectively, the "Receivership Net Cash"). Subject to the provisions of Section 2.09 below, upon the expiration or termination of this Agreement, the Receiver shall be entitled to receive, for its own account, (i) repayment of any then unpaid Advances solely from, and to the extent there is sufficient Receivership Net Cash, and (ii) if Receiver receives establishment approval as operator, a distribution of all net income generated by the Facility during the Term of Receivership. Except as otherwise expressly provided in Section 2.09 below, in the event no or insufficient Receivership Net Cash exists upon termination of the Receivership, Receiver shall not be entitled to the repayment of all or any portion of any unpaid Advances. Further, if Receiver does not receive establishment approval as operator, any profits derived during the Term of Receivership shall be paid over to the Seller and become property of the Seller's bankruptcy estate. This Section 2.08 shall survive any expiration or termination of this Agreement and/or the Purchase Agreement.

Section 2.09 Subject to the further approval of the Bankruptcy Court, upon termination of this Agreement, other than by a Closing Termination or an Early Termination, and provided that Receiver is entitled to a return of its Deposit under the Purchase Agreement, Receiver shall be entitled to reimbursement of up to \$1,500,000 in outstanding Advances that may remain unpaid after application of all remaining Receivership Net Cash as provided above, (the "Estate Reimbursable Advances") which shall be treated as a superpriority administrative claim and may only be satisfied out of the proceeds of a sale of the Facility to a third party other than Receiver or an affiliate thereof at a price that is equal to, or better than the price payable by Receiver under the terms of the Purchase Agreement. For the avoidance of doubt, under no circumstances will

Receiver be entitled to repayment of any Advances, including, without limitation, Estate Reimbursable Advances, other than from Receivership Net Cash, if Receiver is not entitled to the return of its Deposit under the Purchase Agreement. In the event the Bankruptcy Court does not approve this provision of the Agreement, Seller and Receiver agree to work together in good faith to obtain Bankruptcy Court approval of an appropriate methodology for the repayment of Estate Reimbursable Advances under the terms contemplated above.

Section 2.10 Immediately upon (i) the expiration or termination of this Agreement (other than a termination of this Agreement resulting from the closing of the transactions contemplated by the Purchase Agreement), or (ii) a breach of this Agreement by Receiver that remains uncured after any applicable cure period, any instructions or agreements in place between the parties and any banking institutions, or otherwise, that provide Receiver with control over or access to Seller and/or Facility bank accounts shall automatically terminate and be of no further force and effect. Thereafter, Seller or any Substitute Receiver shall first cause all outstanding customary and reasonable expenses incurred, all unpaid Receivable Advances and thereafter all Advances made by Receiver during the Term of Receivership to be paid solely from and to the extent of any cash on hand, accounts receivable accrued during the Term of Receivership and any profits generated by the Facility during the Term of Receivership. Any remaining profits of the Facility earned during the Term of Receivership after the payment of such customary and reasonable expenses, any unpaid Receivable Advances and thereafter any Advances will be held by Seller and constitute property of the bankruptcy estate.

Section 2.11 Receiver shall not incur any new obligation or make any new borrowings secured by any assets of Seller, or undertake any transaction which would place a new encumbrance upon the assets of Seller during the Term of Receivership, without the prior written approval of Seller, the Department and the Bankruptcy Court. Notwithstanding the foregoing, it is understood and agreed by Seller and the Department, that Receiver may encumber accounts receivable of the Facility generated during the Term of Receivership as collateral for borrowings needed by Receiver to fund the working capital requirements of the Facility. Receiver shall be entitled, pursuant to Section 8.1(iv) hereof, to cause UCC-3 amendment statements to be filed, if applicable, in connection with accounts receivable of the Facility generated during the Term of Receivership to permit the Receiver to obtain financing of said receivables immediately upon the commencement of the Term of Receivership. No such encumbrances shall attach or apply to accounts receivable of the Facility relating to periods prior and subsequent to the Term of Receivership or to the proceeds of any Receivable Advances. In the event any execution or attachment is issued against Seller, Receiver, the Facility or any of their property, relating to obligations which first accrued during the Term of Receivership, other than the encumbrances of accounts receivable of the Facility generated during the Term of Receivership, such encumbrance shall be cured or removed within twenty-one (21) days after notice in writing to Receiver of such encumbrance or cured or removed within a reasonable time in the event that the same cannot be cured or removed with reasonable diligence within such twenty-one (21) day period. In no event shall any such lien or encumbrance be permitted to continue for more than sixty (60) days. Nothing contained herein shall prohibit Receiver from applying for and, subject to the required approvals, obtaining a receivership loan from the State of New York. The restrictions upon the Receiver as set forth herein shall not apply to any obligations, borrowings or encumbrances arising from or related to replacements or repairs or other physical building or reimbursable capital improvements related to the Facility. Notwithstanding the foregoing the

parties agree that (a) Receiver may place liens on any furniture, equipment and other personal property purchased by Receiver, and (b) Receiver may lease furniture and equipment in its own name and grant security interests in connection therewith.

Section 2.12 Receiver is authorized to execute and perform this Agreement and neither the execution nor delivery of this Agreement nor compliance with its terms and conditions will constitute a breach or violation of any agreement or instrument to which it is bound.

Section 2.13 Receiver shall cooperate at no cost to Seller and lend its name to such administrative and/or judicial rate appeals as Seller, as the real party in interest, deems appropriate to file (including under the Medicaid, Medicare, or any other third party reimbursement or insurance program). Receiver shall in good faith cooperate with Seller, in preparing, filing and prosecuting such appeals before the appropriate administrative or judicial bodies. It is expressly understood that Receiver, at its own cost and expense, may file such rate appeals as it may deem appropriate arising from, or relating to, its operation of the Facility. Monies generated by all appeals applicable to the Term of Receivership shall constitute revenues during the Term of Receivership and are otherwise subject to the terms and conditions of this Agreement. Monies generated by appeals applicable to periods prior to and subsequent to the Term of Receivership shall belong to Seller or any Substitute Receiver.

Section 2.14 It shall be deemed an event of default hereunder, if Receiver shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal, State or other statute or law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Receiver, and such appointment shall not have been vacated or stayed, on appeal or otherwise, or if within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated.

Section 2.15 It shall be deemed an event of default hereunder, if Receiver is convicted of a felony in connection with any activity or program subject to the regulations, supervision or administration of the New York State Department of Health or in violation of the New York State Public Officers Law, in a court of competent jurisdiction or of a crime outside of the State which, if committed within the State, would have been such a felony.

Section 2.16 Seller shall be entitled to reasonable access to all of the books and records relating to the operation of the Facility and the obligations of Seller, at the Facility, and to the Assets (as such term is defined in the Purchase Agreement) during normal business hours upon one (1) business day prior notice to Receiver upon the condition that such access does not interfere in any material respect with the operation of the Facility.

Section 2.17 Receiver shall devote whatever time is necessary, including on-site presence, to accomplish its duties and responsibilities.

Section 2.18 Receiver shall promptly comply with all of its obligations under this Agreement, the Purchase Agreement and all related agreements.

Section 2.19 Unless Receiver wishes to utilize any of Seller's contracts during the term of the Receivership, Seller shall: (a) immediately prior to the commencement of the Receivership cooperate with the Receiver in providing notice to every third party to any contract, lease or agreements relating to the Facility in writing that Receiver has been appointed the receiver of the Facility and Receiver shall have no obligations under such contract, lease, or agreement and such third party will have to enter into a New Contract (as defined below) in order to continue to do business with the Facility, and (b) within ten (10) business days of the Receivership Date, and in consultation with Receiver, file such motions as are necessary to reject in the Bankruptcy Case all contracts, leases and agreements relating to the Facility. Receiver shall thereafter be free to negotiate such contracts, leases and agreements for the Facility as it may determine (the "New Contracts") and shall comply with all such New Contracts and shall indemnify and defend Seller and hold it harmless from any action, lawsuit, arbitration, etc., and from any loss it may sustain, including reasonable attorneys' fees, which may result from Receiver's failure to comply with such New Contracts and/or the terms of and Receiver's obligations under this Agreement; provided, however, that any contracts and agreements may be canceled by Receiver if it can do so without penalty and without cost or expense to Seller or the Facility and without violation of any laws or regulations. Receiver shall enter into New Contracts only for its own account and shall not hold itself out as the agent of Seller for the purposes of entering into any New Contract or other obligation. Any New Contract entered into by Receiver shall expressly state that the performance and liability of the Seller under the New Contract shall be only with the Receiver and such New Contract shall not be a liability or obligation of the Chapter 11 estate of the Seller. Notwithstanding any provision of this Agreement to the contrary, Receiver shall have no obligations or liabilities for any breaches or failures under any contracts, leases or agreements which existed prior to the Receivership Date and the same shall be included in the definition of Excluded Liabilities for purposes of this Agreement. Notwithstanding any provision of this Agreement to the contrary and that the CBAs shall be in full force and effect during the Receivership Term, the parties agree that nothing contained in this Agreement shall be construed as requiring Receiver, as the purchaser under the Purchase Agreement, to assume any CBAs (as such term is defined in the Purchase Agreement) or any terms or conditions contained therein and the parties agree and confirm that the Purchase Agreement does not require Receiver to assume the CBAs and that Receiver's compliance with any CBAs in accordance with the terms of this Agreement shall not be deemed an assumption by Receiver of any CBA.

Section 2.20 During the Term of Receivership, Receiver shall obtain the Department's and Seller's written approval before transferring any ownership interest in Receiver to a person or entity other than an original member of Receiver and Seller's approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Receiver may propose members in Receiver as part of its CON Application. Notwithstanding the foregoing, the Receiver at all times shall be controlled by Michael Melnicke, as sole member of Receiver.

Section 2.21 Receiver shall at all times capitalize the limited liability company with one million four hundred thousand dollars (\$1,400,000) of cash.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF SELLER

Seller represents, warrants and agrees as follows:

Section 3.01 Subject to entry of an Order of the Bankruptcy Court, Seller has full power and authority to execute and perform this Agreement.

Section 3.02 Seller hereby makes available to Receiver all items of tangible personal and real property and equipment belonging to or leased by Seller on the Receivership Date and used in the operation of the Facility and all permits and licenses relating to the Facility (other than the Excluded Assets), to the extent permitted by applicable law, and all of Seller's possessory interest therein, including, but not limited to, all prepayments received by Seller with respect to services to be rendered by the Facility on or after the Receivership Date, the use of the Premises by the Receiver (which Premises are owned by Seller), and all prepayments received by Seller with respect to services to be rendered by the Facility on or after Receivership Date. Seller shall turn over to Receiver on Receivership Date all personal funds of residents of the Facility in its possession.

Section 3.03 Other than any refinancings of existing indebtedness of Seller or entry into a debtor-in-possession financing agreement with Receiver, Seller shall not incur any new obligations or make new borrowings secured by the Facility or any part of the Facility or Seller's or the Facility's assets (other than the Excluded Assets) or knowingly undertake any transaction which would cause a new lien, security agreement or other encumbrance to be placed upon the assets of Receiver, the Facility or Seller used in the operation of the Facility during the Term of Receivership without the prior written approval of Receiver and the Department. In the event any execution or attachment is issued against the Receiver and/or the Facility, Seller or its property, pursuant to a new lien that is not associated with a refinancing of existing indebtedness of Seller and relates to obligations of Seller which accrued prior to the Receivership Date, such encumbrance shall be cured or removed by Seller within twenty-one (21) days after notice in writing to the Facility of such encumbrance, or cured or removed within a reasonable time in the event that the same cannot be cured or removed with reasonable diligence within such twenty-one (21) day period. In no event shall any new lien or encumbrance be permitted to continue for more than sixty (60) days.

Section 3.04 Seller shall not be entitled to any compensation for entering into this Agreement or receivership arrangement contemplated herein.

Section 3.05 Except as otherwise required by the Bankruptcy Code, Seller and its officers and directors shall not retain any authority over the operation of the Facility on and after the Receivership Date, and shall not attempt to exercise any direction over Receiver with respect to such operation. Notwithstanding the foregoing, Seller shall timely file all Medicare and Medicaid cost reports required to be filed with respect to periods prior to the Receivership Date.

Section 3.06 Nothing in this Agreement shall be construed to diminish any rights that any person or entity not a party to this Agreement may have to proceed against Seller with respect to financial obligations arising out of transactions occurring prior to the Receivership Date.

Section 3.07 If during the Term of Receivership, Receiver receives notice of the assessment of any Healthcare Program Liabilities (as such term is defined in the Purchase Agreement) of Seller relating to the Facility for any period prior to the Receivership Date, Receiver shall promptly provide such notice to Seller. If Receiver pays any such Healthcare Program Liabilities and this Agreement subsequently expires or is terminated for any reason or the transactions contemplated by the Purchase Agreement close, Seller shall promptly reimburse Receiver for such payments made unless otherwise provided in the Purchase Agreement.

Section 3.08 Notwithstanding any provision of this Agreement to the contrary, Seller shall remain liable for any and all Excluded Liabilities (as such term is defined in the Purchase Agreement) arising out of, or relating to, the operation of the Facility prior to the Receivership Date (regardless of when the same becomes due), other than liabilities that constitute "Assumed Liabilities" (as such term is defined in the Purchase Agreement), which are expressly assumed by Receiver in accordance with the terms of the Purchase Agreement.

Section 3.09 Annexed hereto as Schedule 3.09 is a list of all material contracts, leases and agreements relating exclusively to the Facility to which Seller is a party or may be bound, and which Seller shall reject in the Bankruptcy Case in accordance with Section 2.18 hereof. Seller may amend and supplement Schedule 3.09 hereto after the date hereof and prior to the Receivership Date upon the written consent of the Receiver. Notwithstanding any provision of this Agreement to the contrary, Receiver acknowledges and agrees that Seller may not be able to immediately reject in the Bankruptcy Case any "master agreements" referred to in Schedule 3.09 hereto. Seller shall use reasonable commercial efforts to either reject such master agreements in the Bankruptcy Case, or to terminate the portions of such master agreements that relate to the Facility as soon as is practicable.

Section 3.10 Seller shall comply with all of its obligations under this Agreement and the Purchase Agreement and related agreements.

Section 3.11 Seller represents that it owns the Premises and that no lease agreement exists for the Premises. Seller acknowledges Receiver's exclusive right to occupy the Facility during the term of this Agreement.

Section 3.12 It is acknowledged that neither party will have an adequate remedy at law in the event of a breach or threatened breach by the other party of any of its obligations hereunder and the non-breaching party shall be entitled to such equitable and injunctive relief as may be available to restrain a violation or threatened violation of the provisions of this Agreement, or to compel compliance with and enforce the provisions hereof. Nothing herein shall be construed as prohibiting a party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages, or as a waiver of any legal claims as may be held by a party hereto. Recovery of damages shall include penalties, fines, costs and expenses of investigation and defense of any claim, damages for personal injury to property, diminution in the value of the Premises and reasonable fees incurred for the services of attorneys, consultants, contractors and experts. Notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other for any indirect, special, consequential, or speculative damages, including, without limitation, loss of opportunity or profits.

ARTICLE IV

POWERS, DUTIES, RIGHTS AND OBLIGATIONS OF RECEIVER

Except as limited by this Agreement, the powers, rights, duties, and obligations of Receiver shall include those accorded a receiver appointed in an action to foreclose a mortgage on real property and in equity, and Receiver shall also have the powers, duties, rights and obligations as if appointed under Section 2810(2) of the Public Health Law, including, but not limited to, the following:

Section 4.01 Receiver may sue and be sued in its capacity as receiver for the Facility.

Section 4.02 Receiver shall use all reasonable care, diligence and prudence in the use and maintenance of the Facility and the building in which the Facility is located.

Section 4.03 Receiver shall maintain an appropriate system of financial accounts with respect to the operation of the Facility, shall meet all reporting requirements of the Department, and shall itemize receipts and expenditures in a current and business-like manner in accordance with New York State rules and regulations as well as the New York State RHCF Accounting and Reporting Manual. Receiver shall have full control over and take full responsibility for all accounts and bookkeeping with the Facility during the Term of Receivership hereunder.

Section 4.04 Receiver may enter into, amend and terminate contracts and may borrow funds on behalf of the Facility, subject to Section 2.09 herein, and may incur expenses for the improvement, maintenance and operation of the Facility; provided, however, that Receiver may not assign any of its obligations hereunder.

Section 4.05 Receiver shall not be required to obtain a bond.

Section 4.06 Receiver shall collect incoming accounts receivable for services rendered by the Facility during the Term of Receivership from all sources and apply them (other than any such payments as shall constitute Excluded Assets) to the costs incurred in the performance of its functions hereunder. All payments on accounts receivable, accruing on or after the Receivership Date received from an obligor after the Receivership Date shall be applied to the receivable specifically designated by such obligor; provided that in the event that the obligor does not specifically designate a receivable, the payment shall be applied in the order of the age of the accounts receivable of such obligor, starting with the oldest such accounts receivable. All accounts receivable for services rendered by the Facility before the Receivership Date which are paid to Receiver during the Term of Receivership after application to the maximum amount of any Receivable Advances shall be paid to Seller, net of the New York Health Facility Cash Assessment thereon, by wire transfer to an account designated in writing by Seller within five (5) business days of Receiver's receipt of such funds. In addition, upon reasonable prior notice, Receiver shall allow Seller or its representative, at Seller's cost, to audit, access and copy its records relating to the foregoing.

Section 4.07 In the event that the Department determines that deficiencies exist at the Facility, and in accordance with applicable law imposes a civil penalty, such penalty may be assessed against Receiver in its personal capacity only if the Department, in its discretion,

determines either that the deficiencies arose subsequent to Receivership Date or that the deficiencies arose prior to Receivership Date, but were not corrected within a reasonable period of time; provided, however, Receiver shall have no more than thirty (30) days after the Receivership Date to correct the deficiency. Receiver shall provide Seller with prompt notice of any and all deficiencies at the Facility identified by the Department.

Section 4.08 Receiver may hire and fire such personnel, including professional consultants, as from time to time it may deem necessary or advisable, except as prohibited by law or regulation. Such consultants shall be required to keep and maintain accurate records of the time they devote to the management and operation of the Facility indicating in reasonable detail the nature and extent of the matters on which they worked so that their time may properly be allocated to appropriate cost centers. The Department at this time takes no position as to the reimbursability of such expenses under the Medicaid program.

Section 4.09 Receiver shall, at its own expense, secure all insurance necessary in the conduct of the Facility's business during the Term of Receivership, including, without limitation, malpractice, general liability, property and casualty, and workers' compensation insurance, in its own name. Such insurance shall not be less than existing levels of insurance maintained by Seller. The Department at this time takes no position with respect to the reimbursability of such expenses under the Medicaid program. If the Receiver does not procure such insurance and the Seller continues its insurance, the Receiver shall provide Seller a credit at the closing of the transactions under the Purchase Agreement for Receiver's share of the insurance during the Term of Receivership. If the transactions under the Purchase Agreement do not close, Receiver shall reimburse the Seller upon five (5) business days notice of demand.

Section 4.10 Prior to making any capital or leasehold improvement, Receiver shall notify Seller of its plans and shall be obligated to obtain Seller's consent therefore, which consent shall not be unreasonably withheld, delayed or conditioned. In connection with such improvements, Receiver shall comply with all requirements of codes, rules, laws, regulations, statutes and any requirements of regulatory agencies having jurisdiction, including but not limited to the Department. At the end of the Term of Receivership or such earlier term as provided in this Agreement, including but not limited to termination, at the option of Seller, Receiver shall return the Premises: (i) to the condition prior to entering into this Agreement, ordinary wear and tear excluded and (ii) with only those liens, encumbrances, violations, defects in title, etc. that the Premises were subject to prior to entering into this Agreement.

Section 4.11 Receiver represents that it has no employment, consulting agreements or other business agreements of any kind whatsoever with Seller (except for the Purchase Agreement and related agreements) and no other agreement of such kind will be entered into during the Term of Receivership.

Section 4.12 In the event any execution or attachment is issued against the Seller, the Receiver and/or the Facility, pursuant to a new lien and relates solely to obligations of Receiver which accrued during the Term of Receivership, such encumbrance shall be cured or removed by Receiver within twenty one (21) days after notice in writing to the Receiver of such encumbrance, or cured or removed within a reasonable time in the event that the same cannot be

cured or removed with reasonable diligence within such twenty one (21) day period. In no event shall any new lien or encumbrance be permitted to continue for more than sixty (60) days.

ARTICLE V

OPERATION OF THE FACILITY

Section 5.01 The Department and Seller shall not be responsible for any debts and obligations incurred in the operation of the Facility by Receiver during the Term of Receivership.

Section 5.02 Receiver shall operate the Facility and enter into the functions and responsibilities hereunder on Receivership Date as provided in this Receiver Agreement.

Section 5.03 The books and records of Seller relating to the Facility shall be in the possession and control of Receiver during the Receivership, and Seller shall have access to same. Nothing herein shall be deemed to transfer ownership of the books and records of Seller to Receiver. Upon termination of the Receivership, Receiver shall have access and a right to the aforesaid books and records of its Receivership, upon reasonable prior notice and Seller shall allow Receiver or its representative, at Receiver's cost, to access and copy its records.

Section 5.04 Receiver and Seller, to the extent each has such documents, shall make all books and records, accounts, agreements and documents of whatsoever nature, or copies thereof, relating to the Facility available to the Department upon demand. There will be no charge to the Department for any copies made.

Section 5.05 Seller shall have full access to the Facility during the term of the Agreement provided that such access does not interfere with Receiver's ability to operate the Facility.

ARTICLE VI

SPECIAL PROVISIONS RELATING TO THE FACILITY

Section 6.01 No provision contained herein shall be deemed to relieve Seller from any civil or criminal liability incurred or imposed by law by reason of acts or omission of Seller prior to Receivership Date. Seller waives no right with respect to disputing or contesting any asserted liability.

ARTICLE VII

RELATING TO THE DEPARTMENT

Section 7.01 A provisional operating certificate shall be deemed to have been issued to Receiver as of the Receivership Date. Such operating certificate shall be issued and delivered to Receiver by the Department as soon as practicable and shall remain in effect during the Term of Receivership. The total certified beds set forth on the provisional operating certificate shall be

limited to 150 beds. Upon termination of the appointment of Receiver as receiver pursuant to Section 1.03 herein, Receiver shall surrender its operating certificate to the Department.

Section 7.02 The Department shall promulgate a Medicaid reimbursement rate for Receiver in accordance with Subpart 86-2 if requested by Receiver. The Department, provided all conditions of participation in Title XVIII and Title XIX are met, agrees to recommend to the United States Department of Health and Human Services that a Title XVIII Provider Agreement be issued to Receiver and to issue a Title XIX Provider Agreement to Receiver.

ARTICLE VIII

BANKRUPTCY COURT PROVISIONS

Section 8.01 This Agreement is subject to and shall only become effective upon entry of the Sale Order (in form reasonably satisfactory to Receiver) (i) approving this Agreement and all provisions hereof and authorizing Seller and the Receiver to execute any and all documents and take all actions necessary to effectuate the Contemplated Transactions (as such term is defined in the Purchase Agreement); (ii) providing that the Receiver is entitled to use the receivables and revenues generated by the Receiver's operations (the "Receivership Revenues") to fund the cost of operations during the Term of Receivership, free and clear of any liens or encumbrances on the Seller's assets; with any Receivership Net Cash being paid over to Receiver solely upon its establishment approval as operator, (iii) providing that, except as otherwise provided herein, the Receivership Revenues shall not be property of the Seller's estates; (iv) authorizing the Receiver to file any documents and take any and all action necessary to remove any security interest, lien or encumbrance on Receivership Revenues. (subject to certain limitations and obligations of Receiver related thereto that are incorporated into the Sale Order and agreed to by Receiver) further providing that any obligations or liabilities incurred by the Receiver shall not be obligations or liabilities of the Chapter 11 Estate and no third party shall have the right to assert any claim against the Chapter 11 Estate in connection therewith; and (v) declaring that the Receiver shall have the obligation, if any, to pay US Trustee fees on disbursements made by the Receiver arising from and after the Receivership Date during the course of this Agreement, if any.

ARTICLE IX

MISCELLANEOUS

Section 9.01 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement.

Section 9.02 This Agreement shall be binding upon the parties hereto. Nothing contained in this Agreement is intended to or shall be construed to confer any rights or remedies on any person or entity not a party to this Agreement, including any third party beneficiary.

Section 9.03 In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provision contained herein shall not be affected or impaired thereby in any manner.

Section 9.04 The parties agree to promptly execute and deliver any and all necessary documents to give full force and effect to this Agreement.

Section 9.05 Article headings in this Agreement are for convenience only and are not a part of this Agreement. Such headings shall not affect the meaning or construction of any provision herein. Inappropriate gender references in this Agreement shall be deemed to be correct.

Section 9.06 Any notice required or permitted to be given pursuant to this Agreement shall be sufficient if given in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid as follows:

If to Receiver, to it at the Facility, with a copy to:

MLAP Acquisitions I, LLC
266 Broadway, Suite 502
Brooklyn New York 11211
Fax: (718) 972-5798
Attn: Mr. Michael Melnicke

with a copy to:

Michelman & Robinson, LLP
800 Third Avenue, 24th Floor
New York, NY 10022
Fax: 212.730.7725
Attn: Mark H. Zafrin, Esq.

Long Beach Memorial Nursing Home, Inc.
d/b/a the Komanoff Center for Geriatric and Rehabilitative Medicine
375 East Bay Drive
Long Beach, New York 11561
Attn: Douglas L. Melzer
Fax: (516) 897-1214

with a copy to:

Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
Fax: (516) 466-5964
Attn: Burton S. Weston, Esq.

If to the Department, to:

James E. Dering, Esq.
General Counsel
New York State Department of Health
Nelson A. Rockefeller Empire State Plaza
Erastus Corning Tower
24th Floor, Room 2482
Albany, New York 12237

Section 9.07 Nothing herein contained shall be deemed to change the Medicaid reimbursement policies, rules and regulations of the New York State Department of Health.

Section 9.08 Nothing herein shall be construed to mean that, as of the date of this Agreement, the Department has approved any asset purchase agreement relating to the Facility.

Section 9.09 This Agreement constitutes the entire Agreement among Seller, Receiver and the Department relative to the receivership of the Facility. Any agreement between Seller and Receiver relative to the receivership of the Facility entered into subsequent to the date of this Agreement shall be null and void unless approved by the Department.

Section 9.10 Nothing contained herein shall be construed in any way to alter or abridge the right and authorities of the Department or the New York State Public Health and Health Planning Council as provided for in the Public Health Law, except to the extent that the Department has expressly agreed to be bound herein.

Section 9.11 This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws. As between the Receiver and the Seller, the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, or any breach or default hereunder. Any and all legal proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Receiver and the Seller hereby consent to and submit to the jurisdiction and venue of the

Bankruptcy Court; provided that if the Bankruptcy Case has closed, the Receiver and Seller irrevocably agree that any legal proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof shall be brought and determined exclusively in the United States District Court for the Eastern District of New York, or if such legal proceeding may not be brought in such court for jurisdictional purposes, exclusively in the Supreme Court of New York sitting in the County of Nassau. Receiver and Seller hereby (a) irrevocably submit with regard to any such legal proceeding to the exclusive personal jurisdiction of the aforesaid courts in the event any dispute arises out of this Agreement, (b) agree that they shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court or that such action is brought in an inconvenient forum, and (c) agree that they shall not bring any action relating to this Agreement in any court other than the state or federal courts referenced above.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

LONG BEACH MEMORIAL NURSING HOME, INC., D/B/A THE KOMANOFF CENTER FOR GERIATRIC AND REHABILITATIVE MEDICINE

Douglas L. Melzer
By: DOUGLAS L. MELZER
Title: PRESIDENT + CEO

Dated: October 22, 2014

MLAP ACQUISITION I, LLC

Dated: _____

By:

Name:
Title:

NEW YORK STATE DEPARTMENT OF HEALTH

Dated: _____

By:

Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

LONG BEACH MEMORIAL NURSING HOME, INC., D/B/A THE KOMANOFF CENTER FOR GERIATRIC AND REHABILITATIVE MEDICINE

By: _____
Title:

Dated: _____

MLAP ACQUISITION I, LLC

By:

Name: 
Title:

Dated: _____

NEW YORK STATE DEPARTMENT OF HEALTH

By:

Name:
Title:

Dated: _____

SCHEDULE 3.09

Material Contracts