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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
SOUND SHORE MEDICAL CENTER OF	:	Case No. 13-22840 (RDD)
WESTCHESTER, <u>et al.</u> ,	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
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**STIPULATION AND AGREEMENT MODIFYING THE AMENDED  
AND RESTATED ASSET PURCHASE AGREEMENT TO FACILITATE  
THE CLOSING OF THE TRANSACTIONS CONTEMPLATED THEREIN**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

**IT IS HEREBY STIPULATED AND AGREED**, by and among Sound Shore Health System, Inc. ("SSHS"), Sound Shore Medical Center of Westchester ("SSMC"), The Mount Vernon Hospital ("MVH"), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center ("SECC"), NRHMC Services Corporation ("Services Corporation"), The M.V.H. Corporation ("MVHC"), and New Rochelle Sound Shore Housing, LLC ("NRSS" and collectively with SSHS, SSMC, MVH, SECC, Services Corporation and MVHC, the "Sellers" or the "Debtors") and Montefiore New Rochelle Hospital (f/k/a Montefiore SS Operations, Inc.), Montefiore Mount Vernon Hospital (f/k/a Montefiore MV Operations,

Inc.), Schaffer Extended Care Center (f/k/a Montefiore HA Operations, Inc.) (“MSECC”), Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC (collectively, the “Buyer”), acting by and through their respective counsel, and to memorialize the concessions made by the parties to facilitate the Sale (defined below) which was successfully closed effective as of 12:01 a.m., November 6, 2013 as follows:

### **RECITALS**

#### **WHEREAS:**

A. SSMC was a not-for-profit 242-bed, community-based teaching hospital offering primary, acute, emergency and long-term health care to the working class residents of southern Westchester. SSMC was a teaching affiliate of New York Medical College, was home to a comprehensive orthopedic program and stroke and bariatric centers of recognized excellence, and housed the only trauma center in southern Westchester as well as a reputable level 3 perinatal hospital.

B. MVH was a voluntary, not-for-profit, 176-bed hospital located in Mount Vernon, New York. MVH housed a full range of diagnostic and therapeutic medical and surgical services, specialty programs and ambulatory clinics. MVH also offered comprehensive inpatient and outpatient behavioral health programs consisting of psychiatric services designed specifically for individuals whose needs had not been met through traditional approaches.

C. SECC was a 150-bed, comprehensive facility offering short-term rehabilitation/sub-acute care, as well as skilled long-term care. SECC dedicated 100-beds for long-term skilled medical management for individuals with chronic conditions or disabilities who were no longer capable to live independently. The remaining 50-beds were utilized for short-term stays and rehabilitation to accommodate patients recovering from heart surgery, heart

attacks, strokes, and orthopedic surgery. (SSMC, MVH and SECC are sometimes collectively referred to herein as the “Medical Centers”.)

D. On May 29, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under title 11 of Chapter 11 of the United States Code (the “Bankruptcy Code”). Since the commencement of these jointly administered cases, the Debtors have been managing their affairs as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

E. On the Petition Date, the Debtors filed a motion [Docket No. 17] (the “Motion”) seeking, inter alia, approval of the sale of substantially all of the Debtors’ assets (the “Sale”) pursuant to the terms of that certain Asset Purchase Agreement dated as of May 29, 2013 by and among the Sellers and the Buyer or any other successful bidder at an auction.

F. On June 10, 2013, the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) [Docket No. 67].

G. On June 21, 2013, following extensive negotiations among the Debtors, the Buyer and the Creditors’ Committee, the Debtors filed a supplemental statement in support of the Motion [Docket No. 103] seeking, inter alia, approval of the Amended and Restated Asset Purchase Agreement by and among the Sellers and the Buyer filed with the Bankruptcy Court on June 27, 2013 [Docket No. 123-2] (as amended, the “APA”).

H. By Order dated August 8, 2013 [Docket No. 259] and as supplemented by Order dated October 15, 2013 [Docket No. 381] (together, the “Sale Order”), the Bankruptcy Court approved the Sale to the Buyer.

I. The APA and the Sale Order provide for, among other things, the transfer of the Acquired Assets<sup>1</sup>, the assignment of the Assigned Contracts and the assumption of the Assumed Liabilities. The APA and the Sale Order further provide that the Buyer shall not have any liability for the Excluded Liabilities, including Successor Liabilities. See APA sections 2.4, 3.4, 7.1, 9.3 and 10.1(q), and Sale Order at paragraphs J, K, 1, 5, 6 and 7.

J. Section 2.5 of the APA provides as follows:

At the Closing and pursuant to Section 365 of the Bankruptcy Code, the Sellers shall assume and assign to Buyer, the Assigned Contracts. The cure amounts, if any, as determined by the Bankruptcy Court, necessary to cure all defaults and to pay all actual or pecuniary losses, if any, that have resulted from any defaults on the part of the Sellers under the Assigned Contracts shall be paid by the Buyer at Closing up to the maximum amount of three million dollars (\$3,000,000), if any, and Sellers shall have no liability for any such cure amount. The cure amount to be paid by the Buyer in accordance with an Assigned Contract is hereinafter referred to as a "Cure Amount," and collectively, as the "Cure Amounts." Notwithstanding anything contained herein, the Creditors' Committee shall have the right to review and object to the settlement of any Cure Amount.

K. Section 10.1(w) of the APA provides that it shall be a condition to the Buyer's obligation to consummate the transactions under the APA that the Cure Amounts for the Assigned Contracts not exceed seven million dollars (\$7,000,000) in the aggregate.

L. Section 10.1(q) of the APA provides that it shall be a condition to the Buyer's obligation to consummate the transactions under the APA that Buyer shall have received reasonably acceptable assurances, in Buyer's sole discretion, from counsel and/or appropriate regulatory agencies that Buyer shall have no successor liability resulting from the Contemplated Transactions.

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<sup>1</sup> Capitalized terms used in this Stipulation and Agreement, unless herein defined, are used with the meanings ascribed to such terms in the APA.

M. The Sale Order at paragraph K provides as follows:

Nothing in this Order shall be construed as authorizing the sale or transfer of Debtors' Medicare provider numbers and related provider agreements, free and clear of any liability or continuing obligations to the United States. The Debtors, Buyer, the U.S. Department of Health and Human Services, and the U.S. Attorney's Office for the Southern District of New York will separately address the issue of liability of the Buyer to the United States with respect to Debtors' Medicare provider numbers and related provider agreements in the event the Medicare provider agreements are among the Assigned Contracts identified in Schedule 2.1(d) of the Purchase Agreement.

N. In connection with the closing of the transactions contemplated under the APA, the Buyer and the Debtors engaged in discussions with the United States, acting on behalf of the United States Department of Health and Human Services Centers for Medicare and Medicaid Services ("CMS"), regarding the assignment of the Debtors' Medicare provider agreements and provider numbers (the "Medicare Provider Agreements") to the Buyer's operating entities as Assigned Contracts under the APA.

O. CMS was unwilling to consent to the assignment of the Medicare Provider Agreements unless the Buyer agreed to assume successor liability for certain of the Debtors' pre-closing claims and conduct, whether known or unknown.

P. As of November 4, 2013, the Debtors believed they owed CMS \$4,897,563 (exclusive of the Projected RAC Claims (defined below)) as a cure payment for assignment of the Medicare Provider Agreements. The Debtors estimate that they are due in excess of \$7,000,000 from CMS as a credit in connection with the Medicare Provider Agreements (the "Estimated Funds Due Debtors From CMS").

Q. Following extensive negotiations, the Debtors, the Buyer and CMS entered into a Stipulation and Agreement Regarding Debtors' Assumption and Assignment of Medicare Provider Agreements and Provider Numbers for Sound Shore Medical Center of

Westchester, The Mount Vernon Hospital and Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center, dated as of November 5, 2013 [Docket No. 431] (the “CMS Stipulation”).

R. The CMS Stipulation provides, among other things, for the assignment of the Medicare Provider Agreements and Provider Numbers to Buyer under the APA, the closing of cost reports prior to December 31, 2012, the fixing and payment of certain pre-closing claims and the waiver of the Debtors’ existing appeals relating to certain pre-closing claims for the year ending December 31, 2012. Reference is made to the CMS Stipulation for the complete terms and conditions thereof.

S. Similar to the position of CMS with respect to the Medicare Provider Agreements, New York State Department of Health (“DOH”) was unwilling to consent to the assignment of the Debtors’ Medicaid provider agreements and provider numbers (the “Medicaid Provider Agreements”) unless the Buyer agreed to assume successor liability for the Debtors’ pre-closing Medicaid claims and conduct.

T. As of November 4, 2013, the Debtors believed they owed DOH \$3,378,353 as a cure payment for assignment of the Medicaid Provider Agreements. The Debtors estimate that they are due not less than \$1,982,580 from DOH as a credit on account of claims in connection with the Medicaid Provider Agreements.

U. The Debtors, the Buyer and DOH are involved in negotiations to enter into a Stipulation and Agreement Regarding Debtors’ Assumption and Assignment of Medicaid Provider Agreements and Provider Numbers for Sound Shore Medical Center of Westchester, The Mount Vernon Hospital and Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (the “DOH Stipulation”).

V. The parties anticipate that the DOH Stipulation will provide, among other things, for the assignment of the Medicaid Provider Agreements and Provider Numbers to the Buyer under the APA, the closing of cost reports prior to December 31, 2012, the fixing of certain, and estimation of other, pre-closing claims and payment of such claims subject to subsequent audit and determination in the ordinary course.

W. The Debtors estimated that they would not have sufficient liquidity to operate their businesses, including SSMC, MVH and SECC, on or after November 7, 2013.

X. The Sale would not close unless the Buyer agreed to waive the conditions in Sections 10.1(q) and (w) of the APA, as described above. Absent waiver of these conditions (and others), the Buyer had the right to terminate the APA under Section 13.1(b)(i).

Y. Notwithstanding the Buyer's concerns regarding unknown, uncapped successor liability relating to the Medicare Provider Agreements and unknown, successor liability relating to the Medicaid Provider Agreements, the Buyer did not want SSMC, MVH and SECC to close with the resultant loss of thousands of jobs and vital healthcare resources to an underserved community.

Z. In order to satisfy the obligations under the CMS Stipulation and the DOH Stipulation, and as a condition to the Buyer's waiver of the closing conditions under Section 10.1(q) and (w), the Debtors and the Buyer, in consultation with the Creditors' Committee, engaged in negotiations regarding modifications to the APA in order for the closing of the Sale to be consummated prior to November 7, 2013.

AA. Further, in connection with the operation of the Medical Centers, the Buyer requested that the Debtors neither assume and assign nor reject certain executory contracts

and unexpired leases (the “Transition Agreements”)<sup>2</sup> either because the Buyer intends to continue utilizing such agreement for a limited time or, with respect to certain unexpired leases, because the Buyer has determined that leases are capital leases (i.e., disguised financings) as opposed to true leases. To facilitate Buyer’s request, the Debtors shall make available to Buyer the Transition Agreements, subject to the terms and conditions hereinafter set forth.

BB. Due to insufficient net sale proceeds at the Closing, the parties discussed post Closing appropriate protections for the Buyer in an amount up to \$9,500,000 on account of the Amended Conditional Collateral Pledge Agreement made as of November 6, 2013 by the Buyer to and for the benefit of MidCap Funding IV, LLC (the “MidCap Backstop”),<sup>3</sup> consistent with and instead of the protections provided to the Buyer under Section 3.1(b) of the APA.

CC. Accordingly, the parties agree that the APA shall be deemed modified in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE, IT IS HEREBY AGREED that:**

**Waiver of Closing Conditions**

1. The Buyer will be deemed to have waived all unsatisfied closing conditions set forth in Section 10.1 of the APA including, without limitation, Sections 10.1(q) and (w), and proceeded with the closing of the Sale, which was concluded and became effective as of 12:01 a.m. on November 6, 2013 (“Closing Date”).

2. The Buyer will be deemed to have waived the successor liability protection provisions in the APA solely in favor of (a) CMS with respect to the Medicare

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<sup>2</sup> A schedule of the Transition Agreements is annexed hereto as Exhibit 1.

<sup>3</sup> The MidCap Backstop amended and superseded the Conditional Collateral Pledge Agreement made as of June 5, 2013 by the Buyer to and for the benefit of MidCap Financial, LLC. MidCap Funding IV, LLC (“MidCap”) is a party to the MidCap Backstop as successor to MidCap Financial, LLC by assignment.



Provider Agreements and Provider Numbers, as limited by the CMS Stipulation and (b) DOH with respect to the Medicaid Provider Agreements and Provider Numbers, subject to an aggregate cap of three million dollars (\$3,000,000), as set forth in the DOH Stipulation. With respect to all other parties in interest, the Buyer shall be afforded the protections of Section 363(f) as set forth in the APA and the Sale Order which shall remain in full force and effect except as otherwise set forth herein.

### **Cure Amounts/Provider Agreements**

3. The Buyer will pay the Cure Amounts, or cause to be escrowed, in the case of estimated Cure Amounts until such time as they become fixed and allowed Cure Amounts, payable to (a) CMS in connection with the assignment of the Medicare Provider Agreements, pursuant to the CMS Stipulation, in the amount of \$4,897,563 (the “Close Out Claims”)<sup>4</sup> which excludes approximately \$924,424 on account of 2013 projected RAC claims (“Projected RAC Claims”), which the Debtors have determined are owed to CMS, or may potentially be owed to CMS as relating to the Projected RAC Claims or any additional pre-Closing Amounts relating to the Medicare Provider Agreements and not encompassed in the Close Out Claims (collectively, the “CMS Cure Payment”) and (b) DOH in connection with the assignment of the Medicaid Provider Agreements, pursuant to the DOH Stipulation, in an amount to be determined amongst DOH, the Buyer and the Debtors ( the “DOH Cure Payment”). At the Closing, the Buyer delivered \$3,378,353, the amount estimated as the DOH Cure Payment, to the Sellers’ counsel to hold in escrow. Subject to final agreement and determination

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<sup>4</sup> Such amount was paid to CMS on November 22, 2013 from Buyer’s funds which were held in escrow by Debtors’ counsel.

by the DOH, the Buyer and the Debtors, such amount shall be removed from escrow and paid to DOH following execution of the DOH Stipulation.<sup>5</sup>

4. All Estimated Funds Due Debtors From CMS that are paid to the Debtors in excess of \$3,000,000 (the aggregate cure cap under Section 2.5 of the APA) (the “Excess Estimated Funds”) shall be deemed payable to Buyer on account of, and not to exceed, the amount of that portion of the aggregate of the CMS Cure Payment and the DOH Cure Payment that exceeds \$3,000,000 (the “Cure Differential”). Excess Estimated Funds directly received by the Debtors (and not paid over to MidCap in satisfaction of its senior secured claim) up to an amount not to exceed the Cure Differential (the “Debtors Received Excess Funds”) shall immediately be paid over to Buyer in reduction and/or satisfaction of the Cure Differential. To the extent the Debtors Received Excess Funds are insufficient to satisfy the Cure Differential, Buyer shall have an administrative expense claim entitled to super priority status under section 507(b) of the Bankruptcy Code for the unpaid portion of the Cure Differential solely to the extent of any Excess Estimated Funds received by MidCap in satisfaction of its senior secured claim, which administrative claim shall be payable consistent with paragraph 9 of this Stipulation and Agreement.

5. The Estimated Claims (as defined in the DOH Stipulation) shall be processed and/or paid in the ordinary course, and to the extent any such claims or settlements result in a finding of amount(s) due to DOH because of overpayment by DOH, such amount(s) (the “Estimated Claims Cure Amount”) shall be paid by Buyer as a Cure Amount<sup>6</sup>; in the event

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<sup>5</sup> The \$3,378,353 currently being held in escrow as the estimated DOH Cure Payment may be reduced to a lesser payment amount due to revised calculations from the DOH regarding amounts due to and from the Debtors.

<sup>6</sup> It is assumed that any Estimated Claims Cure Amount paid by Buyer will be a net amount that is due to DOH on account of the Estimated Claims after deducting any amount due to the Debtors from DOH on account of the Estimated Claims. If DOH does not permit such netting, Buyer shall be entitled to a credit, to be applied to the

such processing results in a determination that the Estimated Claims were overstated, any refund or credit from DOH related thereto will be paid to the Buyer who then shall credit or pay same to the Debtors after applying any credit due to Buyer from the Debtors under this Stipulation and Agreement.

### **Cost Report Appeals**

6. It is a condition of the CMS Stipulation that the Debtors withdraw all existing appeals (the "Appeals") relating to any of the Medical Centers' cost reporting periods through December 31, 2012 that are pending on the Closing Date, including the (a) so-called Allina Appeals of which the Debtors are part of a class (the "Class") challenging the methodology of SSI and disproportionate share percentage calculations, and (b) appeals that were being individually prosecuted by the Debtors relating to the Medicare Disproportionate Share Adjustment, Medicare Outlier Payments and Outpatient Reduction Factor issues relating to certain of the Debtors' pre-Closing Medicare cost reports (the "Disproportionate Share Appeals").<sup>7</sup> The parties acknowledge that in the event the Allina Appeals are determined in favor of the Class, Buyer will obtain a prospective benefit of increased rates which translates into a quantifiable increase in Medicare payments (the "Allina Benefit"). In such event, the Debtors shall be entitled to receive a total of \$380,879 of the Allina Benefit over a period of five years

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Estimated Claims Cure Amount paid by Buyer, equal to the amount received by the Debtors from DOH on account of the Estimated Claims that DOH did not permit to be netted against the amount due to DOH on account of the Estimated Claims, provided that such credit shall not exceed the Estimated Claims Cure Amount paid by Buyer.

<sup>7</sup> With respect to the Disproportionate Share Appeals, there would have been no prospective benefit to the Debtors or the Buyer if such appeals would have been successful. Rather the benefit, if any from such appeals, would have been retroactively applied to Medicare reimbursement payments owing to the Debtors.

(including the last two months of 2013 through 2018)<sup>8</sup> from the entry of a final order in favor of the Class, provided that such payments shall not commence until the Debtors cure the arrears, if any, for amounts owing Buyer under the APA or this Stipulation and Agreement. The Buyer shall reimburse the Debtors for any allowed administrative claims (whether by agreement of the Debtors, the Buyer and the Creditors' Committee or by order of the Bankruptcy Court pursuant to the claims administration process in these cases) against the Debtors for any attorney or consultant's fee claim which may be asserted against the Debtors by counsel or consultants retained to prosecute, or assist in the prosecution of, the Appeals for the Debtors.

#### **Other Purchase Price Adjustments**

7. Due to insufficient net sale proceeds at the Closing, the parties agree that, consistent with and instead of the protections provided to the Buyer under Section 3.1(b) of the APA, the Buyer should be entitled to post Closing protections up to \$9,500,000 on account of the MidCap Backstop as follows: (i) the Buyer shall have a subordinate lien on any collateral pledged by the Sellers to MidCap in an amount equal to the amount of the payment(s), if any, received by MidCap pursuant to the MidCap Backstop, and Sellers shall promptly seek and use their best efforts to obtain Bankruptcy Court approval for the grant of such lien; and (ii) to the extent that the foregoing lien is insufficient to cover the payment(s), if any, received by MidCap pursuant to the MidCap Backstop, the Buyer shall receive a claim entitled to super priority administrative status in the Bankruptcy Case.

8. The parties acknowledge that the Buyer claims it may be entitled to other

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<sup>8</sup> The Debtors would be entitled to the pre-Closing Allina benefit of \$227,354 for the first ten (10) months of 2013.

credits to the Purchase Price, such as for repairs to tangible personal property, fixtures or improvements that constitute Acquired Assets under the APA, to the extent that the condition of such property at Closing did not meet the requirements and representations under Section 4.8(c)-(d). Buyer reserves its right to seek appropriate adjustments to the Purchase Price for up to 30 days following the execution of this Stipulation and Agreement and the Debtors and the Creditors' Committee reserve their rights to object to such adjustments. The parties will negotiate in good faith to resolve any disputes relating to such adjustments; absent a consensual resolution, the parties will submit the dispute to the Bankruptcy Court for determination.

9. Any portion of the Purchase Price that is determined and fixed after the Closing Date in accordance with the APA and this Stipulation and Agreement by agreement of the Debtors, the Buyer and the Creditors' Committee (or by the Bankruptcy Court, if an agreement cannot be reached by the Debtors, the Buyer and the Creditors' Committee) shall be paid from the Buyer to the Debtors (or otherwise credited against amounts due from the Debtors to Buyer) or paid from the Debtors to the Buyer (or otherwise credited against amounts due from the Buyer to the Debtors), as applicable. Any net amounts due to the Buyer following post-Closing adjustments of the Purchase Price and reconciliation of amounts due to and from the Buyer shall constitute an allowed administrative expense claim entitled to super priority status under section 507(b) of the Bankruptcy Code, and shall be payable within 15 days after completion of the reconciliation by the parties or, if disputed, as ordered by the Bankruptcy Court.

### **Transition Agreements**

10. With respect to those Transition Agreements which Buyer intends to utilize for a limited time:

(i) access will be until the earlier of (a) the rejection, termination or expiration date of the applicable Transition Agreement, or (b) the date upon which the applicable Transition Agreement is assumed and assigned to Buyer (the “Expiration Date”).

(ii) Upon prior approval of the Debtors, Buyer shall notify the third party vendors of the date upon which the Transition Agreements are to be rejected.

(iii) Under no circumstances will Debtors be required to extend or renew any Transition Agreement beyond its current expiration or termination date.

(iv) If a third party vendor refuses to honor the Transition Agreements following the Closing, at Buyer’s request, the Debtors shall cooperate with the Buyer, at Buyer’s expense, to obtain the use and/or benefits provided under such Transition Agreements.

(v) The Debtors will facilitate, at Buyer’s request, to obtain the consent of third party vendors for Buyer’s continued use of the Transition Agreements, it being understood that the Debtors shall have no obligation to obtain such affirmative consents.

(vi) To the extent applicable, the Buyer agrees to return items and equipment directly to third party vendors upon the Expiration Date of each of the Transition Agreements in accordance with the requirements thereof or, as required by the Transition Agreements, to arrange with third party vendors for the removal of the items and equipment. The foregoing covenant also applies to returning or destroying intellectual property and other products ancillary to the particular items and equipment being returned or destroyed, all in accordance with the Transition Agreements.

11. With respect to those Transition Agreements which Buyer has determined are Capital Leases (i.e., financings as opposed to leases):

(i) If any third party vendor successfully challenges the recharacterization of a lease, Buyer shall make the equipment subject to the challenged lease available for pick-up and/or removal by the third party and Debtors shall remit to Buyer an amount equal to the appraised value of such equipment previously paid by Buyer to the Debtors for such equipment, which amount shall be offset by any amounts due such third party for post-Closing administrative expenses (the "Recharacterized Admin Claim") as agreed to by the parties or as determined by the Bankruptcy Court upon proper application.

(ii) If any Recharacterized Admin Claim is greater than the purchase price for such asset, Buyer shall remit to Debtors the Recharaterized Claim Amount, less the appraised value of such asset.

12. The Buyer acknowledges that, but for this Stipulation and Agreement, the Debtors would have rejected the Transition Agreements effective as of the Closing. As a result, the fee to be paid by the Buyer to the Debtors (or to the counterparties under the Transition Agreements) hereunder shall be the full amount accruing under each of the Transition Agreements for the period following the Closing through the date of assignment or rejection of each of the Transition Agreements. Without limiting the foregoing, the Buyer shall be responsible for (i) any amounts (including quarterly or annual fees on a prorated basis) accruing after the Closing through the date of rejection or assignment related to the Transition Agreements, (ii) any amounts related to returning items or equipment to be returned to third party vendors, and (iii) any amounts which arise on and after the Closing Date related to lost, destroyed or damaged items or equipment while in Buyer's possession or control. The Debtors shall cause the third party vendors to remit the invoices for the Transition Agreements to the

address of the Buyer. Payments in respect of any such invoice shall be made in accordance with such Transition Agreements.

13. The Debtors shall have no liability with respect to permitting Buyer's use of the Transition Agreements and the Debtors and their respective officers, directors, agents and employees shall be held harmless and indemnified by the Buyer for claims, demands, losses, or liabilities incurred or arising out of or relating to the Debtors' services in connection with the Transition Agreements, if any, including without limitation the cost of defending any claims and other incremental costs to Debtors arising from or related to the Transition Agreements. The foregoing shall not limit Debtors' indemnification obligations pursuant to the Purchase Agreement for any actions or omissions prior to the Closing.

14. In addition to and without limiting the foregoing, the Debtors shall have no liability for consequential, exemplary, indirect, special, incidental or punitive damages, including loss of profits, revenues, data or use, incurred by the Buyer or its affiliates or any third party (even if any such party has been advised of the possibility of such damages), whether based on contract, tort or any other legal theory, arising out of or related to this Stipulation and Agreement or the Transition Agreements provided hereunder.

#### **Trust Accounts Transfer**

15. The Debtors shall cause all trust accounts for patients who are residents of SECC as of the Closing Date to be transferred to MSECC on behalf of such patients within fifteen (15) days of the Closing Date. For the avoidance of doubt, trust accounts for patients who are not residents of SECC as of the Closing Date shall not be transferred to MSECC, and MSECC shall have no responsibility with respect thereto.



16. This Stipulation and Agreement is binding upon the parties and any of their respective successors or assigns.

17. The undersigned signatories represent and warrant that they are authorized to execute this Stipulation and Agreement in their official capacity on behalf of the parties.

18. The parties hereto agree that the Bankruptcy Court shall retain exclusive jurisdiction to interpret and enforce this Stipulation and Agreement, and to resolve any disputes arising out of or relating to this Stipulation and Agreement including after confirmation of a chapter 11 plan for the Debtors, or the conversion, dismissal and/or closing of the Debtors' chapter 11 cases.

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19. This Stipulation and Agreement may be executed in counterparts by the parties, each of which may be transmitted by electronic mail or facsimile, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: New York, New York  
January 13, 2014

TOGUT, SEGAL & SEGAL, LLP  
Attorneys for the Buyer

By: /s/ Frank A. Oswald  
FRANK A. OSWALD, Esq.  
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Telephone No. (212) 594-5000

Dated: New York, New York  
January 13, 2014

GARFUNKEL WILD, P.C.  
Attorneys for the Debtors and  
Debtors-in-Possession

By: /s/ Afsheen Shah  
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**NO OBJECTION:**

Dated: New York, New York  
January 13, 2014

ALSTON & BIRD LLP  
Counsel for the Official Committee of Unsecured Creditors

By: /s/ Craig E. Freeman  
MARTIN G. BUNIN, Esq.  
CRAIG E. FREEMAN, Esq.  
90 PARK AVENUE  
NEW YORK, NY 10016  
Telephone No. (212) 210-9400

**SO ORDERED this 21st day of January, 2014**

/s/Robert D. Drain  
ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE