



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 27, 2018

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
PREFERRED CARE INC., et al.,	§	Case No.: 17-44642
	§	
Debtors.	§	Jointly Administered
	§	

ORDER (A) GRANTING AUTHORITY TO: (I) TRANSFER THE OPERATIONS AND RELATED ASSETS OF THE KENTUCKY FACILITIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (II) ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) REJECT AND TERMINATE THE KENTUCKY FACILITY LEASES; (B) APPROVING THE FORM OF OPERATING TRANSFER AGREEMENT; AND (C) GRANTING RELATED RELIEF

This matter has come before the Court on the *Motion for Order (A) Granting Authority to (I) Transfer the Operations and Related Assets of the Kentucky Facilities Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Assume and Assign Certain Executory Contracts and Unexpired Leases, and; (III) Reject and Terminate the Kentucky Facility Leases;*

(B) *Approving the Form of Operating Transfer Agreement*; and (C) *Granting Related Relief* [Docket No. 814] (the “**Motion**”).¹ The Motion was filed by Preferred Care Inc. (“**Preferred Care**”) and twenty-one (21) limited partnerships (the “**Kentucky Debtors**”) that operate twenty-one (21) skilled nursing homes in Kentucky (the “**Kentucky Facilities**”). Two of the Kentucky Debtors, Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P. (collectively, the “**HUD Debtors**”), operate facilities that were built and financed by Ziegler Financing Corporation (the “**HUD Lender**”) and insured by U.S. Department of Housing and Urban Development (“**HUD**”) programs. Preferred Care and the Kentucky Debtors are debtors and debtors-in-possession in the bankruptcy cases jointly administered in Case No. 17-44642 (the Kentucky Debtors and Preferred Care are collectively referred to as “**Movants**”). The Movants have requested, pursuant to sections 363, 365, and 1146 of Title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the entry of this order (the “**Sale Order**”):

- (a) authorizing the sale and transfer of the operations of the Kentucky Facilities and assets necessary for the operations of the Kentucky Facilities (defined more fully in the Operating Transfer Agreements as the “**Assets**”), free and clear of liens, claims, encumbrances, and interests;
- (b) approving the *Operating Transfer Agreements* (each an “**OTA**” and, collectively, the “**OTAs**”), substantially in the form attached to the Motion, by and between the Kentucky Debtors and the Purchaser(s) of the Kentucky Facilities;
- (c) approving the assumption and assignment of certain executory contracts and unexpired leases, including licenses and permits (the “**Accepted Contracts**”);

¹ Capitalized terms not defined herein shall carry the meanings ascribed to them in the Motion or the Transfer Documents, as applicable.

- (d) approving the rejection and termination of the real property leases associated with each of the Kentucky Facilities (the “**Lease Terminations**”); and
- (e) granting related relief, including relief related to the proposed Cure Costs associated with the Accepted Contracts.

On July 23, 2018, the Court conducted a hearing on the Motion (the “**Sale Hearing**”), and, having considered: (a) the Motion and the relief requested therein and transactions contemplated thereby; (b) all objections, if any, to the Motion; and (c) all matters brought to the Court’s attention at the Sale Hearing, including the arguments of counsel; and having taken judicial notice of the materials on file in the above-enumerated Chapter 11 cases, the Court has determined that the Movants have established just cause for the relief granted herein. Accordingly;

THE COURT HEREBY FINDS AND DETERMINES THAT:²

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), and (m), 365, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.
3. The Kentucky Debtors have Medicare Provider Agreements with the U.S. Department of Health and Human Services’ Centers for Medicare & Medicaid Services (“**CMS**”)

² This Sale Order constitutes the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. All findings of fact and conclusions of law announced by the Court at the Sale Hearing or in the Court’s oral ruling on the record on July 24, 2018 shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

(collectively, the “**Provider Agreements**”). The Kentucky Debtors are subject to Medicare Statutes, Regulations, procedures and policies.

4. The HUD Debtors, Preferred Care, Woodcrest RE, LLC, and Medco Henderson RE, LLC are subject to HUD statutes, regulations, procedures, policies, rules and regulatory agreements.

5. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just cause for delay and that the Sale Order shall be effective and enforceable immediately upon entry based upon the representations and facts presented.

6. The Motion has been served on the parties listed on the *Certificate of Service* filed at Docket No. 817, as well as all parties having filed a Notice of Appearance in the Chapter 11 Cases and/or registered to receive electronic service.

7. The Court finds that the scope and manner of the service provided by the Movants was proper, timely, adequate, and sufficient, in accordance with Bankruptcy Code §§ 363 and 365, Bankruptcy Rules 2002, 2002(i), 6004, 6006, and 9014, and in compliance with all prior orders of the Court related to the Assets, including the *Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. 61] (the “**Notice Procedures Order**”). No further notice of the Motion or the Sale Hearing was required. The Court further finds that a reasonable opportunity to object or to be heard regarding the relief requested in the Motion has been afforded to all creditors and parties in interest.

8. The Movants have the full power and authority to execute the OTAs and all other documents that are: 1) referenced in or contemplated by the OTA or 2) necessary or appropriate

to effectuate the transfers of the Kentucky Debtors' operations and Assets. All actions contemplated by the OTAs have been duly and validly authorized, and the Movants have the full power and authority to consummate the transactions contemplated by the OTAs. No further consents or approvals, other than entry of this Sale Order, are required for the Movants to consummate the OTAs, except as specifically provided for in this Sale Order.

9. The relief sought by the Movants in the Motion, including, but not limited to, the authorization of the sale and transfer of the operations and Assets of the Kentucky Facilities, approval of the OTAs, approval of the assumption and assignment of the Accepted Contracts; and approval of the Lease Terminations, is, at this time, in the best interests of the Movants, their bankruptcy estates, their creditors and their interest holders.

10. The Movants have demonstrated both (i) good, sufficient, and sound business purpose and justification for the subject transaction and (ii) compelling circumstances for approval of the OTAs pursuant to Bankruptcy Code §§ 363(b), and (f) and 365.

11. The OTAs were proposed and entered into by the Movants and the Purchaser in good faith. The consideration set forth in the OTAs constitutes fair value for the Assets. Neither the Movants nor the Purchaser have engaged in any conduct that would cause or permit the OTA to be avoided under Bankruptcy Code § 363(n). The Purchaser is not an "insider" of the Kentucky Debtors, as that term is defined in Bankruptcy Code § 101. The Purchaser has no connections, is not affiliates or an insider of, nor does it have any undisclosed agreements with either the Kentucky Debtors, or any of their insiders or affiliates.

12. The Purchaser is a good faith transferee of the Assets under Bankruptcy Code § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Purchaser has acted in good faith within the meaning of Bankruptcy Code § 363(m) and will rely on entry of

this Sale Order and this good faith determination in consummating and closing the transactions.

13. The OTAs were not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

14. The consideration provided for the Assets (i) is fair and reasonable, and (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.

15. Affiliates of FC Domino Acquisition, LLC, the lessors under the Master Leases to PCI, would not have agreed to terminate the Master Leases and to release claims against the Movants if the Purchaser had not agreed to the OTAs and entered into new master leases for the Kentucky Facilities. The Purchaser would not have agreed to the OTAs if the transfers provided for therein were not to be made pursuant to § 363(f) and §365 of the Bankruptcy Code, free and clear of all claims, liens encumbrances and other interests of any kind or nature whatsoever, except as specified in this Sale Order, or if the Purchaser would, or in the future could, be liable for any of the claims, liens, encumbrances or other interests against the Kentucky Debtors or the Assets, except as specified in this Sale Order. Pursuant to § 363(f) of the Bankruptcy Code, the Purchaser is entitled to know that the Assets are not infected with latent claims that will be asserted against the Purchaser after the closing.

16. As of the closing and execution of the OTAs (the “**Closing**”),³ the transfer of the Assets to the Purchaser will be a legal, valid and effective transfer of the Assets and will vest the Purchaser with all right, title and interest of the Kentucky Debtors in the Assets, free and clear of

³ The date that the Closing occurs is referred to herein as the “Closing Date.”

any and all liens (statutory or otherwise), pledges, mortgages, deeds of trust, security interests, claims, reclamation claims, charges, hypothecations, assignments, licenses, liabilities, beneficial interests, options, rights or first or last refusal, options to purchase, priority or other security agreements or preferential arrangements of any kind or nature, rights of rescission (statutory or otherwise), causes of action, covenants, restrictions, easements, rights of setoff, defects in title or other encumbrances of any kind, whether legal or equitable, secured or unsecured, material or immaterial, contingent or non-contingent, arising out of or in connection with or in any way related to the Kentucky Debtors, the Assets, or the operation of the business of the Kentucky Debtors prior to Closing, including any claim as defined in § 101(5) of the Bankruptcy Code, whether arising prior to or subsequent to the commencement of this case (but not on or subsequent to the Closing Date), and whether imposed by agreement, law, equity or otherwise, including, without limitation, any claims arising under doctrines of successor liability with respect to the Assets (collectively, the “**Claims**”), except as specifically provided in paragraphs 20 and 39-44 of this Sale Order. The Claims are hereinafter referred to as the “**Interests**.”

17. The Movants are authorized to transfer the Assets free and clear of the Interests because one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied with respect to each such interest. Any objection of a secured creditor or other holder of an Interest that timely objected to the transfer of the Assets is overruled, as one or more of the other subsections of Bankruptcy Code § 363(f) is met with respect to such party.

18. The sale and transfer of the Assets to the Purchaser is made in connection with a plan of reorganization that is to be filed by the Kentucky Debtors and constitutes a transfer pursuant to § 1146(c) of the Bankruptcy Code, which shall not be taxed under any law imposing a stamp tax or similar tax.

19. The Accepted Contracts are an integral part of the Assets and are included in the OTA. All cure costs, if any, under the Accepted Contracts will be paid by the Kentucky Debtors within 30 days of the entry of this Sale Order. The Purchaser has demonstrated adequate assurance of future performance under the Accepted Contracts.

20. The Closing under the OTA and the transactions related thereto, including the Lease Terminations, are conditioned upon entry of this Sale Order, and the assumption and assignment of the Provider Agreements is subject to the Medicare statutes, regulations, procedures, policies, and rules. The Closing under the OTA and the transactions related thereto with respect to the HUD Debtors and their operations and facilities are conditioned upon and subject to HUD Lender and HUD's approval of the Purchasers. .

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

21. The Motion is GRANTED as set forth herein and the transfer of the Assets and the assumption and assignment of the Accepted Contracts to the Purchaser is hereby authorized as set forth in this Sale Order.

22. All objections to the Motion, if any, that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

A. Approval of the Operations Transfer Agreements

23. The OTAs, all exhibits and schedules thereto, and all of the terms and conditions thereof are hereby approved.

24. Pursuant to Bankruptcy Code §§ 363(b), and (f), and 365, the Movants, as debtors-in-possession, are authorized to consummate the transfer of the Assets, pursuant to and in accordance with the terms and conditions of the OTAs, including, without limitation, to

convey the Assets to the Purchaser and to assume and assign the Accepted Contracts to the Purchaser. The terms of the OTAs are approved in all respects.

25. Without the need for any additional order of this Court, the Movants and their employees and agents are authorized to execute and deliver, and empowered to perform under, consummate and implement the OTA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the transactions, and to take all further actions as may be reasonably requested by the Purchaser or otherwise required under the OTA, including without limitation the requirements set forth on Exhibit B to the OTA entitled “Transition Procedures for Administration of Accounts Receivable”.

26. Without the need for any additional order of this Court, the Debtors are authorized and directed to comply with the provisions of the Transition Procedures for Administration of Account Receivable attached as Exhibit B to the OTA, including without limitation, recognition of the ownership interest of Purchaser in funds deposited to the Government Receivables Account which are proceeds of Purchaser’s accounts receivable generated after the Closing Date, and the transfer of the amount of such funds to Purchaser in accordance with written instructions to be provided by Purchaser, all as more fully described on Exhibit B to the OTA.

B. Approval of the Lease Terminations

27. The Lease Terminations are hereby approved pursuant to 11 U.S.C. § 365. Subject to the *Stipulation and Agreed Order* [Dkt. No. 773] extending the lease rejection deadline with respect to the Master Leases through August 1, 2018, the Master Leases and Subleases are hereby rejected and terminated as of the Closing Date.

28. With respect to each Master Lease and/or Sublease, the Motion constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. This Sale Order shall be

deemed a separate order with respect to the rejection and termination of each such Master Lease or Sublease.

C. Transfer of the Assets Free and Clear of Interests

29. The Kentucky Debtors are authorized to transfer the Assets to Purchaser in accordance with the terms of the OTA. The Kentucky Debtor shall transfer the Assets to the Purchaser on the Closing Date, in accordance with the OTA, and such transfer shall constitute a legal, valid, binding and effective transfer of the Assets and shall vest the Purchaser with good title and all right, title and interest in the Assets in accordance with the OTA free and clear of all Interests, except as specifically provided in paragraphs 39-44 of this Sale Order. The Assets shall include all of the Kentucky Debtors' Books and Records, which shall remain with the facility and be owned by the Purchaser on and after the Closing Date.

30. Pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, the transfer of the Assets to the Purchaser shall be, and hereby is, free and clear of any and all Interests, rights and encumbrances whatsoever, except as may otherwise be set forth explicitly in the OTAs or this Sale Order.

31. Except as expressly permitted by the OTAs or this Sale Order, all persons and entities holding or asserting Interests arising under or out of, in connection with, or in any way relating to the Kentucky Debtors, the Assets, the operation of the Kentucky Debtors' businesses prior to the Closing Date or the transfer of the Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Interests against the Purchaser or any of the Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Kentucky Debtors to transfer the Assets to the Purchaser in accordance with the terms of the OTA and this Sale Order.

32. This Sale Order is and shall be effective as a determination that, upon transfer of the Assets to the Purchaser, pursuant to the OTA, all Interests in, against or relating to any of the Assets conveyed to the Purchaser have been and hereby are terminated and declared to be unconditionally released, discharged and terminated, except as specifically provided in paragraphs 39-44 of this Sale Order. This Sale Order is and shall be binding upon and shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, insurance companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the OTA, except as provided in paragraphs 39-44 of this Sale Order.

D. Assumption and Assignment of Accepted Contracts

33. The Kentucky Debtors are hereby authorized and directed, pursuant to Bankruptcy Code §§ 105(a), 363 and 365 to assume, then transfer and assign the Accepted Contracts (as defined more fully in the OTA) to the Purchaser, subject to the terms of the OTA and an agreement between the Purchaser and American HealthTech regarding the software licenses that the Kentucky Debtors propose to transfer to the Purchaser. All right, title and interest in and to the Accepted Contracts shall vest in the Purchaser free and clear of all Interests which have, or could have been, asserted by the Kentucky Debtors or their creditors in connection with their

bankruptcy cases, except as specifically provided in paragraphs 39-44 of this Sale Order.

34. [INTENTIONALLY LEFT BLANK]

35. The Purchaser and the Kentucky Debtors have provided adequate assurance of future performance under the Accepted Contracts and the proposed assumption and assignment of these contracts and leases satisfies the requirements of the Bankruptcy Code, including, *inter alia*, §§ 365(b)(1) and (3) and 365(f), to the extent applicable. Any counterparty to any Accepted Contract that did not object to the proposed assumption and assignment of its agreement is hereby deemed to have consented to the assumption and assignment contemplated herein and any cure amount proposed by the Kentucky Debtors.

36. On the Closing Date, subject to an agreement between the Purchaser and American HealthTech regarding the software licenses that the Kentucky Debtors propose to transfer to the Purchaser, the Accepted Contracts will be assigned to the Purchaser and the terms of the OTA, and will remain valid and binding and in full force and effect in accordance with their respective terms for the benefit of the Purchaser, notwithstanding any provision in such contracts or leases, or under applicable law (including those described in Bankruptcy Code §§ 365(b)(2), (f)(1), and (3)), that prohibits, restricts, or conditions such assignment or transfer, or that terminates or modifies, or permits a party other than the Kentucky Debtors to terminate or modify such contracts or leases on account of such assignment or transfer pursuant to Bankruptcy Code § 365(f), except as specifically provided in paragraphs 39-44 of this Sale Order.

37. [INTENTIONALLY LEFT BLANK]

38. The Kentucky Debtors are further authorized to undertake any and all actions necessary or appropriate to consummate the proposed assignment of the Accepted Contracts to the Purchaser, as specified in the Motion and the OTA.

E. Additional Provisions

39. Notwithstanding anything in this Sale Order or the OTAs, the Kentucky Debtors shall assume the Provider Agreements and shall assign the relevant Provider Agreement(s) to the Purchasers, effective on the date(s) that operation of each of the Kentucky Debtors is transferred to the relevant Purchasers (the “**Effective Date**”) and subject to the Kentucky Debtors’ payments to the United States of America (the “**United States**”) as specified below.

40. Notwithstanding anything in this Sale Order or the OTAs, the Provider Agreements shall be automatically assigned to the Purchaser upon a change in ownership pursuant to 42 C.F.R. § 489.18(c), and upon assignment, the Provider Agreements shall be subject to all applicable Medicare statutes, regulations, policies, procedures and rules, and shall be subject to the terms and conditions under which the Provider Agreements were originally issued, including, but not limited to, the repayment of all pre-assignment Medicare overpayments and all other monetary liabilities, regardless of whether yet determined by CMS. The Provider Agreements and Purchasers shall be subject to compliance with applicable health and safety standards pursuant to all Medicare statutes, regulations, policies, procedures and rules.

41. Notwithstanding anything in this Sale Order or the OTAs, the Kentucky Debtors and the Purchasers shall submit all cost reports pursuant to all Medicare statutes, regulations, policies, procedures and rules. Should the Kentucky Debtors fail to comply with their obligations of this paragraph, the United States shall be entitled to suspend payments to the Purchasers under the applicable Provider Agreement in accordance with Medicare statutes, regulations, policies, procedures and rules until such time as the required cost reports are filed by the Kentucky Debtors or the Purchasers. The Kentucky Debtors shall cooperate with the Purchasers in the filing of the required cost reports.

42. Nothing in this Sale Order as so ordered by the Court or the OTAs shall relieve or be construed to relieve the Kentucky Debtors or any Purchasers from complying with all Medicare statutes, regulations, policies, procedures and rules, including, but not limited to, the requirement that the Kentucky Debtors and any Purchaser apply for and obtain CMS approval of a change of ownership by the filing of Form CMS-855A.

43. Nothing in this Sale Order or the OTAs shall constitute a compromise or waiver by the United States of its ability to take any affirmative or defensive action in these bankruptcy proceedings that is not inconsistent with this Sale Order. The United States shall retain its authority under the Medicare statutes, regulations, procedures, policies and rules to review, approve, deny, or pay Medicare claims made by the Kentucky Debtors or any Purchaser in the ordinary course of business. Nothing in this Sale Order or the OTAs shall impair or affect the United States' right, claim, defense or ability to recoup, set off, or otherwise recover Medicare overpayments or other monetary liabilities from the Kentucky Debtors or from any Purchaser in accordance with the Medicare statutes, regulations, procedures, policies and rules.

44. Notwithstanding anything in this Sale Order or the OTAs, the HUD Debtors, Preferred Care, Woodcrest RE, LLC, Medco Henderson RE, LLC and the Purchasers shall abide by all HUD statutes, regulations, policies, procedures, rules and regulatory agreements with respect to the transfers of the Assets and operations of the HUD Debtors. Nothing in this Sale Order or the OTAs shall impair or affect HUD's authority under its statutes, regulations, policies, procedures, rules or regulatory agreements, including, but not limited to, enforcement and administrative actions and proceedings.

45. The transactions are undertaken by the Purchaser in good faith, as that term is used in Bankruptcy Code § 363(m). Accordingly, the reversal or modification of the

authorization provided herein to consummate the transfer shall not affect the validity of the sale of the Assets to the Purchaser, unless such authorization is duly stayed prior to the Closing Date. The Purchaser is a transferee in good faith of the Assets and, upon the Closing Date, is entitled to all of the protections afforded by Bankruptcy Code § 363(m).

46. The failure to specifically reference any particular provision of the OTA in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the OTA be authorized and approved in its entirety.

47. The OTA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of this Court, provided that such modification, amendment, or supplement shall not have a material adverse effect on the Movants' bankruptcy estates, the United States, or on any one of the Movants' creditors.

48. The provisions of this Sale Order are non-severable and mutually dependent.

49. In the event of any inconsistency between the terms and provisions of this Sale Order and the OTA, the terms and provisions of this Sale Order shall control. To the extent this Sale Order does not include, or otherwise address, any provision contained in both the Motion and the OTA and where such provision in the Motion and the OTA is inconsistent, the OTA shall govern. In the event of any inconsistency between the terms and provisions of paragraphs 39 – 44 of this Sale Order on the one hand, and the terms and provisions of any other paragraph in this Sale Order, the OTA, and any related Transfer Documents or exhibits on the other hand, the terms and provisions of paragraphs 39 – 44 of this Sale Order shall control.

50. Subject to paragraphs 39 - 44 of this Sale Order, this Court shall retain jurisdiction to: (i) enforce and implement the terms and provisions of the OTA (including any breach of the

OTA), all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects; and (ii) determine (by motion and without the necessity for an adversary proceeding, where appropriate) any proceeding, dispute or controversy arising out of or related to this Sale Order, the Transaction Documents or the OTA.

51. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), there is no stay pursuant to Bankruptcy Rule 6004(h) or 6006(d) and this Sale Order shall be effective and enforceable immediately upon entry.

###END OF ORDER###

Respectfully submitted by:

/s/ Stephen A. McCartin
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