

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

LONG BEACH MEDICAL CENTER, et al.¹

Debtors.

Chapter 11
Case No. 14-70593-ast
14-70597-ast
(Jointly Administered)

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ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE DEBTORS' REAL ESTATE AND DESIGNATED PERSONAL PROPERTY ASSETS, (B) SCHEDULING AN AUCTION AND A SALE HEARING RELATED THERETO, (C) APPROVING THE FORM OF NOTICE OF THE AUCTION AND SALE HEARING, AND (D) APPROVING A TERMINATION FEE AND EXPENSE REIMBURSEMENT

Upon that portion (the "**Bidding Procedures Motion**") of the motion (the "**Motion**"²), dated February 19, 2014 of Long Beach Medical Center ("LBMC") and Long Beach Memorial Nursing Home, Inc., d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine ("**Komanoff**"), as debtors-in-possession (each a "Debtor, and collectively sometimes referred to as the "Debtors" or the "Medical Centers") in these chapter 11 cases (the "**Chapter 11 Cases**"), by and through their proposed attorneys, Garfunkel Wild, P.C. (each a "**Debtor**" and collectively the "**Debtors**") for entry of an Order, pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and rules 2002(a)(2) and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") (i) approving the proposed Bidding Procedures in the form of Schedule 1 hereto to be used in connection with the proposed Sale of the Acquired Assets of the Debtors to South Nassau Communities Hospital, as Buyer ("**SNCH**" or "**Buyer**"), or to any competing bidder or bidders (the "**Successful**

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, unless herein defined, shall be used with the meanings ascribed to such terms in the Motion.

Bidder(s)”) that submits or collectively submit a higher or better offer or offers for the Acquired Assets, (ii) scheduling an auction (the “**Auction**”) and a hearing to approve the Sale (the “**Sale Hearing**”); (iii) approving the form and manner of the Notice of the Auction and Sale Hearing (the “**Sale Notice**”) substantially in the form attached as Schedule 2 hereto; and (d) approving the payment of the Termination Fee and Expense Reimbursement (collectively the “**Bidding Protections**”) and certain overbid procedures; and this Court having held a hearing on the Bidding Procedures Motion on March 10, 2014 (the “**Bidding Procedures Hearing**”); and, based on the Bidding Procedures Motion and the record of the Bidding Procedures Hearing, it now appearing that the relief requested in the Bidding Procedures Motion is in the best interest of the Debtors’ estates; and after due deliberation thereon and good cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Bidding Procedures Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Bidding Procedures Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the relief sought in the Bidding Procedures Motion has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Bidding Procedures Motion has been afforded to interested persons and entities, including: (a) the Debtor’s thirty (30) largest unsecured creditors (on a consolidated basis) and, upon its appointment, counsel for the official committee of unsecured creditors (the “**Creditors’ Committee**”); (b) each of the Debtor’s secured creditors (c)

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, when appropriate. See Fed. R. Bankr. P. 7052.

the Office of the United States Trustee for the Eastern District of New York; (d) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (e) all counter-parties to the Assigned Contracts (hereinafter defined); (f) 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; (v) Corporate Counsel of the City of Long Beach; (vi) the Pension Benefit Guaranty Corporation; (vii) the Internal Revenue Service; and (viii) the New York State Department of Taxation and Finance; (g) counsel to the Buyer; (h) the United States Department of Justice, Commercial Litigation Division; (i) the United States Department of Health and Human Services; and (j) all parties who are known to assert a Lien on the Acquired Assets and related properties; (k) all counter-parties to the Assigned Contracts; and (l) all parties identified by the Debtors as potentially having an interest in acquiring some or all of the Acquired Assets (“**Notice Parties**”).

C. The proposed Sale Notice is good, appropriate, adequate, and sufficient, and is reasonably calculated to provide all interested parties, including the Notice Parties, all hospitals and healthcare systems which the Debtors previously solicited about a potential affiliation or which the Debtors believe otherwise may have an interest in acquiring some or all of the Acquired Assets together with all other parties identified by the Debtors or the Creditors’ Committee as potentially having an interest in acquiring some or all of the Acquired Assets, (collectively the “**Potentially Interested Parties**”) and all creditors of the Debtors who are listed on the Schedules to be filed by the Debtors or who have filed proofs of claim against the Debtors’ estates (“**Scheduled and Filed Creditors**”), with timely and proper notice of the Motion, the Auction, the Sale Hearing and the proposed Sale.

D. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Bidding Procedures Motion, including this Court's (i) approval of the Bidding Procedures, attached hereto as Schedule 1, (ii) approval of payment of the Bidding Protections (as described below and modified herein) from the proceeds of any Alternate Transaction or as otherwise provided in the Purchase Agreement, (iii) determination of final Cure Amounts in the manner described herein, and (iv) approval of the form and manner of service of the Sale Notice attached hereto as Schedule 2.

E. The Debtors have articulated good and sufficient reasons for, and the best interests of the Debtors' estates will be served by, this Court scheduling subsequent pre-Sale and Sale Hearings to consider whether to grant the remainder of the relief requested in the Motion, including approval of the proposed Sale in accordance with either (i) the Purchase Agreement between the Debtor and the Buyer attached as Exhibit C to the Motion, or (ii) such other agreement or agreements by and between the Debtor and the Successful Bidder or Successful Bidders, free and clear of, among other things, all liens, claims, encumbrances, and interests (collectively, "Liens") (other than the Permitted Liens) with the same to attach to the proceeds thereof pursuant to section 363 of the Bankruptcy Code.

F. The Buyer has provided the Debtors with debtor in possession financing to administer these chapter 11 cases under separate order of this Court.

G. The Bidding Protections, to the extent payable under the circumstances set forth in the Purchase Agreement, for one or more Alternate Transaction(s) for all of the Acquired Assets, or as may be modified by this Court with respect to one or more bifurcated Alternate Transaction(s) for less than all of the Acquired Assets, is (i) an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the

Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtors' estates by Buyer, (iii) reasonable and appropriate in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by Buyer, and (iv) necessary to induce Buyer to continue to pursue the Sale and to continue to be bound by the Purchase Agreement.

H. The Debtors' authorization to pay the Bidding Protections, upon one or more Alternate Transaction(s) for all of the Acquired Assets, is an essential inducement and condition relating to Buyer's entry into, and continuing obligations under, the Purchase Agreement. The Debtors' promise to pay the Bidding Protections, which has induced Buyer to submit its bid that will serve as a minimum or floor bid on which the Debtors can rely, provides a material benefit to the Debtors' estates, and their creditors by increasing the likelihood that the best possible purchase price for the Acquired Assets will be received. Accordingly, the Bidding Protections as to one or more Alternate Transaction(s) for all of the Acquired Assets, and the Bidding Procedures, are reasonable and appropriate.

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

1. All objections to entry of this Order or to the relief provided herein and requested in the Bidding Procedures Motion that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled in their entirety.

The Bidding Procedures

2. The Bidding Procedures, as set forth on Schedule 1 and incorporated herein by reference as if fully set forth herein, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Acquired Assets. Notwithstanding the above,

on or before the Objection Deadline (defined below), any party in interest may object to the criteria used by the Debtors to select the highest or otherwise best offer for the Acquired Assets.

3. The deadline for submitting bids for the Acquired Assets (the “**Bid Deadline**”) shall be **April 24, 2014, at 4:00 p.m. (EST)**.

4. Except as may be limited by the Purchase Agreement, the Debtors are authorized to extend the deadlines set forth in this Order and/or adjourn, continue or suspend the Auction and/or the Sale Hearing for any reason.

5. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

The Auction

6. The Auction shall commence at **11:00 a.m (EST) on April 29, 2014** at Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, NY 11021, or such later time or other place as decided by the Debtors, and the Debtors shall notify all Qualified Bidders of any such later time or place; provided, however, in the event that no Qualified Bids (other than that submitted by Buyer) are received by the Bid Deadline or if the aggregate value of the highest Qualified Bids that have been submitted for all or a portion of the Acquired Assets does not exceed the Minimum Bid(s), the Debtors shall not be required to conduct an Auction, and in such event the Debtors shall proceed with the approval of the Purchase Agreement.

The Bidding Protections

7. Sections 6.1, 6.2, 6.3 and 6.5 of the Purchase Agreement is approved and binding on the Debtors and their estates with respect to one or more Alternate Transaction(s) for all of the Acquired Assets. The Debtors are authorized and directed to pay the Bidding Protections, to the extent incurred and solely in the event of the consummation of a one or more Alternate Transaction(s) for all of the Acquired Assets from the first proceeds of such

transaction(s) or as otherwise set forth in the Purchase Agreement, without further order of the Court. The Court reserves judgment on the appropriate award and allocation of the Bidding Protections as may be modified with respect to one or more bifurcated Alternate Transactions for less than all of the Acquired Assets.

8. Upon the entry of an order approving a single Alternate Transaction of all of the Acquired Assets to an entity other than the Buyer, the Successful Bidder shall be required to: (i) repay to the Buyer, within five (5) business days of the entry of such order, any outstanding amounts of debtor in possession financing (“DIP Financing”); and (ii) assume and continue to perform all of Buyer’s rights and obligations in connection with the DIP Financing and under all related agreements (the “DIP Financing Agreements”) including the Carve Out, as defined in any order approving the DIP Financing Agreements. A Successful Bidder for less than all of the Acquired Assets (e.g., the Komanoff assets alone) may propose to repay only an allocable portion of the DIP Financing and only assume an allocable portion of the obligations under the DIP Financing Agreements, but there is no assurance such a partial repayment of the DIP Financing and assumption of a portion of the remaining obligations under the DIP Financing Agreements will be acceptable to the parties or the Bankruptcy Court.

9. The terms of the Purchase Agreement shall govern (i) the conditions under which the bid of Buyer is terminable (which are terms and conditions for termination of the Purchase Agreement), (ii) Buyer’s entitlement to payment of the Deposit, and (iii) the Bidding Protections, in the event of one or more Alternate Transaction(s) for all of the Acquired Assets. The Court reserves judgment on the appropriate award and allocation of the Bidding Protections as may be modified with respect to one or more bifurcated Alternate Transactions for less than all of the Acquired Assets.

Pre-Sale Hearing

10. If by **5:00 p.m. on April 25, 2014**, the Debtors, the Committee and/or SNCH notify the Court by sending an email to ast_hearings@nyeb.uscourts.gov of a dispute related to the qualification of a potential bidder, the appropriate allocation of the Bidding Protections and/or ability to credit bid in the event of a bifurcated bid for less than all of the Acquired Assets, or any other dispute relating to the Bid Procedures, a telephonic hearing shall be held before the Honorable Alan S. Trust, United States Bankruptcy Judge, on **April 28, 2014 at 1:30 p.m. (EST)** at which time this Court shall consider any issues raised by the parties. In the event of a dispute between the Debtor and the Creditors' Committee as to whether a bid should be deemed a Qualified Bid, the Bankruptcy Court may make the final determination. In the event of such a hearing, the Debtors shall provide a call in number to the Court, all secured creditors, SNCH, the proposed bidder(s) at issue, and the United States Trustee, by fax, email or overnight delivery by no later than **10:00 a.m. on April 28, 2014**, and shall simultaneously docket a letter containing such call in information.

Sale Hearing

11. The Sale Hearing shall be held before the Honorable Alan S. Trust, United States Bankruptcy Judge, on, **May 1, 2014 at 10:00 a.m. (EST)** at the United States Bankruptcy Court for the Eastern District of New York, 290 Federal Plaza, Central Islip, NY 11722, Courtroom No. 960, at which time this Court shall consider (i) approval of the Sale to SNCH or any other Successful Bidder(s); (ii) the proposed assumption and assignment of the Assigned Contracts and related Cure Amounts in connection with the Sale; (iii) the entry of the proposed sale order, substantially in the form attached to the Motion as Exhibit B (the "**Sale Order**"); (iv) any issues or objections that are timely interposed by any parties; and (v) such other or further relief as this Court may deem just or proper.

12. Except as may be limited by the Purchase Agreement, the Sale Hearing may be adjourned by the Court upon request of the Debtors, after consultation with the Creditors' Committee, without further order of this Court, in which event a notice of adjournment will be filed with this Court and served on all Qualified Bidders, or by announcing such adjournment on the record of the Sale Hearing. The Sale Hearing may also be bifurcated in the event that serious interest is expressed for less than all of the Acquired Assets (e.g., the Komanoff assets alone).

Notice

13. The Sale Notice substantially in the form attached hereto as Schedule 2 hereto is hereby approved.

14. By no later than **March 20, 2014**, the Debtors shall cause a copy of the Bidding Procedures, the Sale Notice and this Order to be served upon the Notice Parties and the Potentially Interested Parties via first class mail.

15. By no later than **March 20, 2014**, the Debtors shall cause a copy of the Sale Notice to be served upon the Scheduled and Filed Creditors, and the Federal Emergency Management Agency, via first class mail.

16. As soon as practicable after entry of this Order, the Debtors shall submit the Sale Notice for publication once in The New York Times (Local Edition) pursuant to Bankruptcy Rule 2002(l).

17. The notices as set forth in the preceding paragraphs 13 through 16 and paragraphs 19 through 21 below shall constitute good and sufficient notice of the Motion, the Bidding Procedures, the Bidding Protections, the Auction, the sale of the Acquired Assets, the assumption and assignment of the Assigned Contracts and Cure Amounts, the Sale Hearing and

the proposed Sale Order, and no other or further notice of the Motion, the Auction, the Sale Hearing and/or the proposed Sale Order shall be necessary or required.

Objections to Motion

18. Objections, if any, to the Sale Motion must be made in writing, must state with particularity the reasons for the objection or response, must conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, must set forth the name of the objecting party, the nature and basis of the objection and the specific grounds therefore, and must be filed with the Clerk of the Bankruptcy Court and shall be served so as to be **received** no later than **4:00 p.m. (EST) April 24, 2014** (the “**Objection Deadline**”), upon: (a) the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, Attn: Alfred M. Dimino, Trial Attorney, (b) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck New York, 11021, Attn: Burton Weston, Esq., Afsheen Shah, Esq. and Adam T. Berkowitz, Esq.; (c) counsel for SNCH, Proskauer Rose LLP, Eleven Times Square, New York, NY 10036-8299 Attention Rick Zall, Esq. and Lee Barkin, Esq. and Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attention: Frank A. Oswald, Esq.; and (d) counsel to the Creditors’ Committee, Klestadt & Winters, LLP, 570 Seventh Avenue, 17th Floor, New York, NY 10018, Attention Sean C. Southard, Esq.

Assigned Contracts

19. The Debtors shall file a copy of the Schedule of Assigned Contracts (the “**Assumption Schedule**”) with the Court no later than fifteen (15) days prior to the Objection Deadline and shall concurrently serve notice of such schedule upon all counterparties to the Assigned Contracts and the Notice Parties.

20. The Assumption Schedule shall identify the proposed Assigned Contracts and the corresponding Cure Amounts required by section 365 of the Bankruptcy Code, if any.

The Debtors, with the consent of Buyer or the Successful Bidder(s), as applicable, shall have the right to amend the Assumption Schedule before the tenth (10th) business day prior to the closing of the Sale to add and/or remove contracts or leases therefrom. All non-Debtor parties to the Assigned Contracts shall have until the Objection Deadline to file an objection (an “**Assumption Objection**”) to the assumption and assignment of the Assigned Contracts listed on the Assumption Schedule to which they are parties, or to the Cure Amounts listed for those Assigned Contracts, provided, however, if the Buyer is not the Successful Bidder at the Auction, non-Debtor parties shall have an extension through and including **April 30, 2014, at 4:00 p.m.** to file an Assumption Objection solely with respect to the adequate assurance of future performance of such Successful Bidder in an Alternate Transaction. Any party filing an Assumption Objection shall state with specificity the basis of the objection and what Cure Amount it asserts, and shall include appropriate documentation in support thereof.

21. The Debtors, with the consent of SNCH or the Successful Bidder(s), as applicable, shall have the right to amend the Assumption Schedule at any time prior to ten (10) business days before the closing of the Sale to add additional Assigned Contracts thereto. The Debtors shall file and serve notice of any such amendment (an “**Amendment Notice**”) on all non-Debtor parties to the Assigned Contracts added to the Assumption Schedule by that amendment. All non-Debtor parties to the Assigned Contracts added to the Assumption Schedule pursuant to this paragraph shall have until fifteen (15) days after the date of service of the applicable Amendment Notice to file an Assumption Objection.

22. If an Assumption Objection is timely filed and not consensually resolved, this Court may hold a hearing with respect to such Assumption Objection either at the Sale Hearing or at such other date as this Court shall designate. If the Assumption Objection relates

only to the Cure Amount of an Assigned Contract, that Assigned Contract may be assumed by the Debtors and assigned to Buyer or the Successful Bidder(s), as applicable, provided, however, that the amount asserted by the objecting party as the proper Cure Amount, or a different amount set by this Court, shall be held in escrow pending further order of this Court or mutual agreement of the parties as to the proper Cure Amount for that Assigned Contract. The Debtors and Buyer or the Successful Bidder(s), as the case may be, are hereby authorized to settle, compromise, or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Assigned Contract without Court approval or notice to any party, and shall file a notice of such settlement within five (5) days of such agreement being reached.

23. If no Assumption Objection is timely filed and served, and subject to entry of an Order by this Court at the Sale Hearing approving the Sale and proposed assumption and assignment of the Assigned Contracts in connection therewith, the Cure Amounts set forth in the Assumption Schedule, as amended, shall be controlling notwithstanding anything to the contrary in such Assigned Contracts, and the non-Debtor parties to the Assigned Contracts shall be barred from asserting against the Debtors or Buyer (or the Successful Bidder(s)) any other claim arising from the applicable Assigned Contracts.

24. The effective date of any assumption and assignment of any Assigned Contract shall be the date on which the Sale closes. Any Cure Amounts to be paid under any Assigned Contract shall be paid by Buyer (or Successful Bidder(s), as applicable) either prior to, upon, or promptly following the closing of the Sale or as otherwise agreed to by the parties to the Assigned Contract.

Additional Provisions

25. The Debtors are authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the requirements established by this Order.

26. Nothing contained in this Order precludes any party in interest from objecting to the Sale in accordance with the objections procedures set forth herein and no party shall be deemed to have consented to the Sale by virtue of not having objected to the Bidding Procedures Motion.

27. The Debtors are hereby authorized to implement the Bidding Procedures and conduct the Auction without the necessity of complying with any state or local bulk transfers law or requirement or any similar law of any state or other jurisdiction which applies in any way to any of the transactions under the Purchase Agreement.

28. This Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order, including jurisdiction to allocate the consideration paid for some or all of the Acquired Assets to each individual asset, as necessary, to determine the proceeds to which a Lien attached.

29. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof and shall be effective and enforceable immediately upon entry hereof.

Dated: March 13, 2014
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge