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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.

Debtors.

Chapter 11
Case No. 13-22840 (RDD)
(Jointly Administered)

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**DEBTORS' SUPPLEMENTAL STATEMENT IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF (I) AN 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, (D) APPROVING A BREAK-UP FEE AND EXPENSE
REIMBURSEMENT; AND (II) GRANTING RELATED RELIEF**

Sound Shore Medical Center ("SSMC") and certain of its debtor affiliates (each a "Debtor" and collectively, the "Debtors") in these chapter 11 cases (the "Chapter 11 Cases"), by and through their proposed attorneys, Garfunkel Wild, P.C., hereby file this supplemental statement (the "Statement") to the motion (the "Motion")¹, dated May 29, 2013 [Docket No. 17] for the entry of the Scheduling Order and (I) and Order: (a) approving the Bidding Procedures for the Auction of the Debtors' Acquired Assets; (b) scheduling an Auction and Sale Hearing; (c) approving the form and manner of the Notice of the Auction and Sale Hearing; and (d) approving the Break-Up Fee and Expense Reimbursement; and (II) entry of a Subsequent Order (x)

¹ Capitalized terms used in this Statement, unless herein defined, are used with the meanings ascribed to such terms in the Motion.

approving a sale of the Acquired Assets, free and clear of all liens, claims and encumbrances, except as expressly assumed in the Purchase Agreement, to Montefiore SS Operations, Inc., Montefiore MV Operations, Inc., Montefiore HA Operations, Inc, and Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC, (collectively referred to as “MMC” or “Buyer”) or any other successful bidder at the Auction as determined by the Bidding Procedures; (y) approving the Assignment Procedures related to the assumption and assignment of certain executory contracts and unexpired leases related to the Acquired Assets, and fixing the Cure Amounts (as hereinafter defined), and (z) granting related relief, and states as follows.

BACKGROUND

1. On May 29, 2013, after a period of extensive negotiations with MMC, the Debtors entered into the Purchase Agreement pursuant to which MMC has agreed to purchase from the Debtors substantially all of the Debtors’ real property and operating assets (the “Acquired Assets”), free and clear of liens, claims and encumbrances (except as expressly assumed) for aggregate consideration to the Debtors’ estates in the amount of \$54,000,000 plus the appraised value of Furniture, Equipment and Inventory acquired by MMC (the “Purchase Price”). The total Purchase Price is comprised of: (a) assumption of the Assumed Liabilities, (b) satisfaction of the Cure Amounts in an amount of up to \$3 million, and (c) payment of amounts due under the Guaranty², (d) assumption of the Assumed Employee Liabilities in an amount of up to \$9,000,000; and (e) payment of cash in an amount equal to the balance of the Purchase Price.

² In connection with the DIP Financing, MMC has agreed to provide, *inter alia*, a collateral grant in the amount of \$10 million in the form of a letter of credit or cash to secure the DIP Term Loan and has further agreed to grant a continuing lien in post-closing accounts receivable to secured any shortfall in the DIP Revolving Loan in an

2. The Motion describes in detail the deterioration of the Debtors' financial condition, the Debtors' extensive search for a strong healthcare strategic partner or other affiliation for the Medical Centers, the effort to identify hospitals and healthcare systems that might have an interest in coming into the downstate geographical market and have the financial strength to combine with, and improve the Debtors. The Motion recounts the reasons that Yale, NYU, and NS/LIJ passed on a prospective arrangement, the failed negotiations with WCHCC and compressed negotiations with MMC that resulted in the Purchase Agreement. (*See*, Paragraphs 16-27)

3. Despite the extensive and time consuming "marketing process", the Purchase Agreement contemplates competitive bidding and designates MMC as the so-called stalking horse bidder. Thus, the Motion as an initial matter seeks entry of a Bid Procedures Order, approval of a Break Up Fee and Expense Reimbursement, and scheduling and approving the form of Notice of Auction and Sale Hearing.

THE PROPOSED MODIFICATION OF THE SALE PROCESS

4. Shortly after the Committee's formation, the Debtors and the Committee's professionals conferred and requested financial information was provided, including copies of the Debtors' recent appraisals of the SSMC, MVH and SECC properties. Thereafter, counsel to the Debtors, MMC and the Committee met to review the Committee's comments and proposed changes to the APA.

amount not to exceed \$5 million (collectively, the "Guaranty"). Absent the Guaranty, MidCap would not have provided the DIP Financing

5. An overriding interest of all the parties is to ensure the sale and approval process be conducted as quickly as possible so as to curtail any continuing drain on estate assets caused by historical and continuing losses from operations. Put simply, the quicker a sale can be approved and regulatory and non-bankruptcy approvals obtained, the less loan proceeds estate assets will be utilized by the Debtors and the more that might be available for creditors generally.

6. Thus, the Committee made a proposal to MMC and the Debtors that the Purchase Price under the Purchase Agreement be increased and certain other terms be modified in consideration for the Committee's agreement and support of a private sale of the Acquired Assets to MMC without competitive bidding. In that manner, the Committee, the Debtors and MMC believe that the timing of sale approval process can be compressed, certainty can be achieved and steps therefore taken to save costs and preserve assets for the benefit of creditors.

7. After extensive negotiations, the parties have agreed to the following, subject, of course, to Bankruptcy Court approval:

(a) The Purchase Price will be increased by \$4.75 million to \$58.75 million plus the appraised value of Furniture, Equipment and Inventory;

(b) Sections 2.5 and 10.1(w) of the Purchase Agreement will be amended to provide, in effect, that up to the first \$3 million of Cure Amounts shall be paid by MMC and credited against the Purchase Price, any Cure Amounts over \$3 million shall be borne by MMC without credit against the Purchase Price, and if Cure Amounts exceed \$7 million, MMC has a right to terminate the APA;

(c) Section 3.1(a) be modified to provide that any appraisal firm conducting an appraisal of the Furniture, Equipment and Inventory be acceptable to the Committee in addition to MMC;

(d) The Committee would expressly reserve objection rights with respect to Transition Patient Payments and Assumed Employee Liabilities under Sections 3.1(c) and 3.8, respectively, and the selection of an accounting firm to determine the amount of the Transition Payments in the event of a dispute must be acceptable to the Committee;

(e) Any allocation of the Purchase Price among Acquired Assets by MMC will not be binding on the estates;

(f) Section 2.1(l) shall be modified to give the Committee the right to object to any assets being classified as Restricted Assets;

(g) The Committee shall have the right to object to any Cure Amount agreed to by the Debtors and MMC; and

(h) The \$10 million cash collateral pledge or letter of credit provided by MMC as security for the DIP Term Loan shall be deemed the Deposit (based on the adjusted amount of \$58.75 million) under the Purchase Agreement. In the event of a breach of the Purchase Agreement by MMC, the Debtors shall be entitled to any undrawn funds under the Guaranty up to the Deposit Amount, and if such amount is less than the Deposit Amount, MMC will provide cash in an amount equal to the shortfall.

8. The Debtors, the Committee and MMC are in the process of revising and restating the Purchase Agreement to reflect these modifications and amendments (the “Restated Purchase Agreement”).

9. The Debtors submit that the enhancement to the Purchase Price and other concessions agreed to by MMC is certainly fair consideration for modifying the sale process to provide for a private sale to MMC without competitive bidding. Indeed, the benefits to the estates and creditors generally are significant. Most importantly, it is likely to result in substantial savings to the estate to the extent the sale process can be simplified, the approval process potentially expedited, time and resources curtailed and operational costs and professional fees reduced. These savings would all fall to the bottom line and be available to creditors generally.

10. There already has been an extensive prepetition marketing effort. Given the not-for-profit hospital structure in New York, the list of potential acquirors is limited to start and excludes almost all out of state prospects as the substantial majority of those are for profit institutions. DOH’s requirement that a strategic partner be an “active parent” (i.e. providing

direct financial, management and administrative support) further limits the pool of likely partners.

11. The Debtors believe that it reached and explored a potential arrangement with all hospitals and systems that might have had an interest in the Westchester geographical market. At the end of the day, MMC's interest and proposal was the only real and viable offer. Even with continued marketing, the Debtors and the Committee do not realistically believe that a competitive bidder which can make a qualified bid will emerge.

12. Finally, the Debtors expect to fully demonstrate at the Sale Hearing that the Purchase Price being paid by MMC, particularly as adjusted, is consistent with values reflected in the appraisals obtained by the Debtors and MMC adjusted for capital requirements.

13. Thus, the Debtors request entry of a scheduling order that will set a hearing on approval of the Sale to MMC without an Auction and without the need for competitive bidding. The Debtors propose that anyone's right to object to the concept of a private sale be preserved for the Sale Hearing, and nothing contained in the scheduling order would compromise those rights³.

³ Although approval of a Break Up Fee and Expense Reimbursement (redefined in the Restated Purchase Agreement as a "Termination Fee") in the context of a private sale becomes irrelevant, the Debtors and MMC nonetheless continue to request approval of the Break Up Fee and Expense Reimbursement in the event an objection to a private sale is ultimately sustained, an Auction occurs, MMC ultimately is not the successful bidder or the Debtors breach their obligations under the Restated Purchase Agreement in which case MMC would be entitled to payment of the Break Up Fee and Expense Reimbursement in accordance with the terms of the Restated Purchase Agreement.

WHEREFORE, the Debtors respectfully request that the Court enter an order consistent with the terms hereof scheduling a Sale Hearing on the Debtors' Motion, as modified hereby, to approve a private sale of the Acquired Assets to MMC and granting such other and further relief as is just and proper.

Dated: June 21, 2012
Great Neck, New York

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