

GARFUNKEL WILD, P.C.  
111 Great Neck Road  
Great Neck, New York 11021  
Telephone: (516) 393-2200  
Facsimile: (516) 466-5964  
Burton S. Weston  
Afsheen A. Shah

*Attorneys for the Debtors and Debtors-in-Possession*

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> , <sup>1</sup>	:	
	:	
	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
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**JOINT MOTION OF DEBTORS AND MONTEFIORE BUYERS  
FOR AN ORDER PURSUANT TO SECTIONS 105(a) AND 363(b)  
OF THE BANKRUPTCY CODE AUTHORIZING DEBTORS' ENTRY  
INTO A TRANSITION SERVICES AGREEMENT WITH BUYERS  
CONCERNING THE DORTHEA HOPFER SCHOOL OF NURSING**

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

Sound Shore Medical Center of Westchester and its various affiliated  
debtor entities (collectively, the "Sellers" or the "Debtors"), including the Mount

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtors' federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaeffer Extended Care Center (0781), NRHMC Services Corporation (9137), the M.V. H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0 117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

Vernon Hospital ("MVH") as debtors and debtors-in-possession in the above-captioned chapter 11 case and the Montefiore Buyers (as defined below), hereby move this Court (the "Motion"), for the entry of an order substantially in the form attached hereto as Exhibit "1," pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving that certain Transition Services Agreement Concerning the Dorthea Hopfer School of Nursing, dated November 5, 2013 (the "Transition Services Agreement"), substantially in the form attached hereto as Exhibit "2"; and granting such other and further relief as the Court deems just and proper. In support of this Motion, the Debtors and the Montefiore Buyers respectfully represent as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

2. On May 29, 2013 (the "Petition Date"), each of the Debtors commenced a case under the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"), and have been procedurally consolidated for administrative purposes under Case Number 13-22840 (RDD).

3. MVH is a voluntary, not-for-profit, 176-bed hospital located in Mount Vernon, New York. MVH houses a full range of diagnostic and therapeutic

medical and surgical services, specialty programs and ambulatory clinics.

4. MVH also operates the Dorothea Hopfer School of Nursing (the "Nursing School") in association with Mercy College of New York, and have a provisional program participation agreement with the United States Department of Education (the "Department of Education") as administered through the New York State Education Department (the "NYS Education Department"). The Nursing School is a private, registered nursing program that offers a two year Associates Degree and whose graduates are eligible to sit for the National Council Licensure Examination for registered nurses. The Nursing School also is accredited by the Accreditation Commission for Education in Nursing, Inc.

5. On the Petition Date, Montefiore SS Operations, Inc. (the "Buyer"), Montefiore MV Operations, Inc., Montefiore HA Operations, Inc., Montefiore SS Holdings, LLC, Montefiore MV Holdings, LLC, and Montefiore HA Holdings, LLC (together with the Buyer, the "Montefiore Buyers"), and the Debtors entered into that certain purchase agreement for the sale (the "Sale") of substantially all of the Debtors' assets, as amended by that certain amended and restated purchase agreement filed with the Bankruptcy Court on June 27, 2013 [Docket No. 123-2] (the "Purchase Agreement") and hope to consummate the Sale on or about November 5, 2013.

6. On October 15, 2013, the Bankruptcy Court entered the final order approving the Purchase Agreement. [Dkt. No. 381].

7. Shortly after the commencement of these chapter 11 cases, the Department of Education revoked MVH's certification to operate the Nursing School

under the provisional program participation agreement (the "Participation Agreement"), but has permitted MVH to operate the Nursing School until December 31, 2013.

8. The Buyer and Debtors have been in discussions with the Department of Education and NYS Education Department regarding the Sale and the Buyer's intent to continue operating the Nursing School on a post-closing basis. The Buyer is currently in the process of obtaining the requisite approvals and certifications from the Department of Education and NYS Education Department to continue operating the Nursing School.

9. Although the Buyer believes that it will obtain such certifications and approvals shortly after the closing of the Sale, it seeks to (a) avoid any disruption of the programs currently offered at the Nursing School and (b) ensure that the students scheduled to graduate during the current academic year, graduate and receive diplomas. Accordingly, the parties seek approval of the Transition Services Agreement.

**RELIEF REQUESTED**

10. By this Motion, the Debtors and the Montefiore Buyers seek authority, under sections 105(a) and 363(b) of the Bankruptcy Code, for an order approving the Transition Services Agreement, pursuant to which the Buyer and Sellers have agreed that MVH will, *inter alia*, maintain, and comply with, all applicable federal, state and local administrative and regulatory requirements, including licensing requirements for the Nursing School through December 31, 2013, and confer upon duly qualified graduates the degree of Associate of Science, while the Buyer seeks the

requisite approvals and certifications from the NYS Education Department and the Department of Education to operate the Nursing School.

### **THE TRANSITION SERVICES AGREEMENT**

11. The Transition Services Agreement will facilitate the Sale, continue the operation of the Nursing School and allow current students to receive their expected degrees without interruption. As discussed below, there will be no cost to the Debtors' in conjunction with the services contemplated under the Transition Services Agreement, as the Buyer will provide personnel to operate the Nursing School and pay all costs associated therewith.

12. The key terms of the Transition Services Agreement include:<sup>2</sup>

- **Transition Services (TSA § 2.1):** The Buyer shall assist the Sellers in the operation of all existing programs and classes at the Nursing School. The Sellers will (i) continue to comply with, and maintain, all applicable federal, state and local administrative and regulatory requirements, in connection with the operation of the Nursing School and (ii) confer upon duly qualified graduates the degree of Associate of Science until December 31, 2013.
- **Termination of Transition Services (TSA § 2.6):** The Buyer may terminate the agreement with thirty (30) days written notice and has no obligation to renew or extend any contract or agreement pursuant to which a Transition Service is being provided.
- **Invoices and Payment (TSA § 3.1):** The Buyer will use its own personnel to operate the programs at the Nursing

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<sup>2</sup> The summary of the Transition Services Agreement contained herein is provided for the convenience of the Court and parties in interest. In the event of any inconsistency between the summary and the terms of the Transition Services Agreement, the terms of the Transition Services Agreement shall govern. Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to such terms in the Transition Services Agreement.

School and pay all costs relating to operating the programs at the Nursing School.

- **Term (TSA § 5.1):** The Transition Services Agreement shall remain effective until the earlier of (a) December 31, 2013; (b) the date the Buyer has received all requisite approvals and certifications to operate the Nursing School or (c) upon thirty (30) days written notice to the other party.

### **BASIS FOR RELIEF**

13. The relief in this Motion is authorized by sections 105(a) and 363(b) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue an order...that is necessary or appropriate to carry out the provision of this title.” 11 U.S.C. § 105(a). *See, e.g., In re Casse*, 198 F.3d 327, 336 (2d Cir. 1999) (“11 U.S.C. § 105 is an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of section 105 is to assure the bankruptcy courts’ power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” (internal citations omitted)). *In re Flores*, 291 B.R. 44, 54 (Bankr. S.D.N.Y. 2003) (same).

14. Section 363(b) of the Bankruptcy Code permits a debtor to use property of the estate outside of the ordinary course of business after notice and a hearing. 11 U.S.C. § 363. Section 363 applies when an agreement involves the use of the estate’s assets in a way that ventures beyond an ordinary course transaction and authority to use such assets may be granted outside the ordinary course of business if the debtor demonstrates a sound business justification for obtaining the relief. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (business judgment rule requires a finding that a good business reason exists to grant a debtor’s application under section

363(b)); *In re Adelpia Communications Corp.*, No. 02-41729 (REG) (Bankr. S.D.N.Y. July 31, 2002) (same).

15. Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. Supr. 1985)). In this regard, courts in this district have approved transition service agreements in connection with the facilitation and implementation of an asset purchase agreement as a reasonable exercise of the debtor’s business judgment. See e.g., *Our Lady Of Mercy Medical Center, et al.*, Case No. 07-10609 (REG) (July 15, 2008) [Docket No. 872].

16. The Debtors and the Montefiore Buyers respectfully submit that a sound business justification exists for entering into the Transition Services Agreement, as it will facilitate the Sale of the Debtors’ business and provide for the continued operation of the Nursing School without interruption. Significantly, the Debtors’ entry into the Transition Services Agreement will ensure that students at the Nursing School scheduled to graduate this academic year will not be prevented from doing so because of MVH’s chapter 11 case.<sup>3</sup> Accordingly, the Debtors and the Montefiore Buyers submit

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<sup>3</sup> Additionally, the official committee of unsecured creditors (the “Creditors Committee”) appointed in the chapter 11 cases and the NYS Education Department (administering the Participation Agreement through the Department of Education) do not object to the terms of the Transition Services Agreement.

that the decision to enter into the Transition Services Agreement should be approved.

17. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale or use of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, commentators agree that the 14-day stay period should be eliminated to allow a transaction to close immediately where there has been no objection to the procedure. *See generally* 10 Collier on Bankruptcy 6004.09 (16th ed. 2011). Here, elimination of the 14-day stay period is warranted upon this Court’s approval of the Transition Services Agreement to allow current Nursing School students to continue their education and, as applicable, graduate without interruption due to the Sale or MVH’s bankruptcy case.

#### NOTICE

18. The movants have served notice of this Motion in accordance with the procedures set forth in the order entered on July 1, 2013 governing case management and administrative procedures for these cases [Docket No. 143-1] on (i) Office of the United States Trustee, (ii) counsel for the Creditors Committee, (iii) counsel for the Debtors' postpetition secured lenders, (iv) the Department of Education, (v) the NYS Education Department, and (vi) all parties that have requested service of notice in



these cases pursuant to Bankruptcy Rule 2002. The movants submit that no other or further notice need be given.

**NO PRIOR REQUEST**

19. No previous request for the relief sought herein has been made to this or any other court.

**WHEREFORE**, the movants respectfully request that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached hereto; and (iii) grant such other and further relief as it deems just and proper.

Dated: November 5, 2013  
Great Neck, New York

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

/s/ Afsheen Shah  
BURTON WESTON  
AFSHEEN SHAH  
111 Great Neck Road  
Great Neck, New York, NY 111021  
Telephone No. (516) 393-2200

Dated: November 5, 2013  
New York, New York

TOGUT, SEGAL & SEGAL LLP  
*Attorneys for Montefiore SS Operations, Inc., et al.,*

/s/ Frank A. Oswald  
FRANK A. OSWALD  
SCOTT A. GRIFFIN  
One Penn Plaza, Suite 3335  
New York, New York 10119  
Telephone No. (212) 594-5000

# **EXHIBIT 1**

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, et al.,<sup>1</sup> :  
: :  
: :  
Debtors. : (Jointly Administered)  
: :  
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**ORDER PURSUANT TO SECTIONS 105 (a) AND 363 (b) OF  
THE BANKRUPTCY CODE AUTHORIZING DEBTORS TO ENTER  
INTO TRANSITION SERVICES AGREEMENT WITH BUYER  
CONCERNING THE DORTHEA HOPFER SCHOOL OF NURSING**

Upon the Joint Motion (the "Motion"),<sup>2</sup> of Sound Shore Medical Center of Westchester and its various affiliated debtor entities (collectively, the "Sellers" or the "Debtors") including the Mount Vernon Hospital ("MVH") and the Montefiore Buyers for entry of an order approving a transition services agreement concerning the Dorthea Hopfer School of Nursing (the "Transition Services Agreement"), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtors' federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaeffer Extended Care Center (0781), NRHMC Services Corporation (9137), the M.V. H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under chapter 11.

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

granting such other and further relief as the Court deems just and proper; and adequate notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice is necessary; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having determined that consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief requested in the Motion, and that such relief is in the best interests of the Debtors, their estates, their creditors and the parties in interest; and upon the record in these proceedings; and after due deliberation, and sufficient cause appearing therefor, it is

**ORDERED**, that the Motion shall, and it hereby is, granted as provided herein; and it is further

**ORDERED**, the Sellers are authorized to enter into the Transition Services Agreement with the Buyer, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, and to take all actions that may be reasonably necessary or appropriate to perform all obligations contemplated thereunder; and it is further

**ORDERED**, notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Sellers are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Sellers may, in their discretion and without further delay, take any action and perform any act authorized under this Order; and it is further

**ORDERED**, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: New York, New York  
November \_\_, 2013

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT 2**

**TRANSITION SERVICES AGREEMENT  
CONCERNING DORTHEA HOPFER SCHOOL OF NURSING**

This TRANSITION SERVICES AGREEMENT, dated as of November 5, 2013, as the same may be amended from time to time in accordance with its terms, the "Agreement"), is by and among Montefiore SS Operations, Inc. (the "Buyer") and Sound Shore Medical Center of Westchester and its various affiliated debtor entities (collectively, the "Sellers" or the "Debtors"), including the Mount Vernon Hospital ("MVH").

WITNESSETH

WHEREAS, on May 29, 2013 (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and have been procedurally consolidated for administrative purposes under Case Number 13-22840 (RDD);

WHEREAS, MVH operates the Dorothea Hopfer School of Nursing (the "Nursing School") in association with Mercy College of New York and have provisional program participation agreement with the United States Department of Education as administered through the New York State Education Department. 34 C.F.R. §668.13(d)(2)(ii), which allows the Nursing School to participate in federal student financial assistance programs. Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 107 *et seq.*; 42 U.S.C. §§ 2751 *et seq.*; 34 C.F.R. § 668.26(a)(4).

WHEREAS, the United States Department of Education has revoked MVH's certification to operate the Nursing School under the provisional program participation agreement, but has permitted MVH to operate the Nursing School until December 31, 2013.

WHEREAS, on the Petition Date, certain affiliates of the Buyer, together with certain of its affiliates, and the Debtors entered into that certain purchase agreement for the sale (the "Sale") of substantially all of the Debtors' assets, as amended by that certain amended and restated purchase agreement filed with the Bankruptcy Court on June 27, 2013 (the "Purchase Agreement") and hope to consummate the Sale on or about October 31, 2013;

WHEREAS, the final order entered by the Bankruptcy Court approved the Purchase Agreement by Order dated October 15, 2013, 2013 [Dkt. No. 381].

WHEREAS, the Buyer and Sellers have agreed to enter into this Agreement pursuant to which MVH will, *inter alia*, maintain, and comply with, all applicable federal, state and local administrative and regulatory requirements,

including licensing requirements for the Nursing School through December 31, 2013, and confer upon duly qualified graduates the degree of Associate of Science while the Buyer seeks the requisite approval and certifications from the New York State Education Department and the United States Department of Education to operate the Nursing School.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

1.1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Agreement.

## ARTICLE II.

### TRANSITION SERVICES PROVIDED

2.1. Transition Services. In accordance with the terms and subject to the conditions set forth in this Agreement, during the Transition Period (as defined in Section 5.1):

(a) Buyer shall assist the Sellers in the operation of all existing programs and classes at the Nursing School; and

(b) the Sellers shall (i) continue to comply with, and maintain, all applicable federal, state and local administrative and regulatory requirements, including licensing requirements in connection with the operation of the Nursing School and (ii) confer upon duly qualified graduates the degree of Associate of Science until December 31, 2013 (hereinafter referred to individually as a "Transition Service", and collectively as the "Transition Services").

2.2. Cooperation. Each party will perform all obligations under this Agreement in good faith and use commercially reasonable efforts to cooperate with the other parties in all matters relating to the provision and receipt of the Transition Services in order to ensure and facilitate the provision to and receipt of the Transition Services.

2.3. Level of Transition Services.



(a) Sellers shall use commercially reasonable efforts to provide, or cause to be made available, the Transition Services in a timely manner and exercising the same degree of diligence and care as they exercised in performing the same or similar services in operating the Nursing School prior to entry into this Agreement; provided, however, that the Sellers shall not be liable under this Agreement for any failure of a third party in the provision of a Transition Service so long as the Sellers shall have used commercially reasonable efforts to perform or cause such third party to perform in a manner consistent with the terms of the parties existing contractual relationship or prior course of dealing as performed prior to the execution of this Agreement.

(b) To the extent that any third party consent is required in order to effectuate the terms of this Agreement with respect to any Transition Service, the Sellers will use their commercially reasonable efforts to obtain such consent. If such consent is not obtained, the Buyer and the Sellers will use their commercially reasonable efforts to enter into an alternative arrangement with respect to such Transition Service, including seeking relief from the Bankruptcy Court, to provide the Sellers with the benefits of such Transition Service.

(c) In the event that the Sellers reasonably determine that any third party has breached its obligations with respect to a related Transition Service, the Sellers shall, at the Buyer's expense, co-operate with the Buyer in resolving any resulting dispute involving such obligation, including taking all actions reasonably requested by the Buyer to (i) prosecute any action or suit relating to such breach and (ii) use their commercially reasonable efforts to enter into an alternative arrangement with respect to the Transition Service provided pursuant to such obligation. In the event that such third party pays any amount in settlement of such action or suit, such amount shall be for the account of the Buyer and shall be promptly remitted to the Buyer. The Sellers shall promptly notify the Buyer in writing of any actual or threatened material breach of an obligations relating to a Transition Service of which the Sellers may become aware from time to time.

2.4. Sharing of Information. The Sellers shall provide to the Buyer copies, as soon as practicable and in any event within two (2) Business Days of receipt, of all written correspondence and any other documents received from any Person or Governmental Authority, in each case, where such written correspondence or other documents relate to the Nursing School or any Transition Service. In addition, the Sellers shall notify the Buyer, in writing and telephonically as soon as practicable and in any event within two (2) Business Days of receipt, of all oral or other communications and other documents received by the Sellers from any Person or Governmental Authority, in each case, where such oral or other communication or other documents relate to the Nursing School or any Transition Service.

2.5. Force Majeure. Any failure or omission by the Sellers in the performance of any obligation under this Agreement shall not be deemed a breach of this Agreement or create any liability to the Buyer, if the same arises from any cause or causes beyond the control of the Sellers, including, but not limited to, the following, which, for purposes of this Agreement shall be regarded as beyond the control of each of the parties hereto: acts of God, fire, storm, flood, earthquake, governmental regulation or direction, acts of the public enemy, war, terrorism, rebellion, insurrection, riot, invasion, strike or lockout; provided, however, that such party shall resume performance whenever such causes are removed if the applicable time period for the provision of such services has not expired.

2.6. Termination of Transition Services.

(a) Notwithstanding any provision in this Agreement to the contrary, the Buyer shall have no obligation to renew or extend any contract or agreement pursuant to which a Transition Service is being provided that expires in accordance with its terms following the Closing (any such contract or agreement that expires in accordance with its terms and is not renewed or extended by the Buyer, an "Expired Contract"); provided, however, that to the extent any such contract or agreement is necessary for the continued provision of the Transition Services by Seller or otherwise required by applicable law, that Buyer shall assist and cooperate with Seller in ensuring the renewal and/or extension of such contract or agreement. From and after the date of expiration of an Expired Contract, (i) the Buyer shall have no obligation to pay any fees, costs or expenses relating to such Transition Service (other than post-Closing amounts accrued prior to such expiration date), and (ii) the Sellers shall have no obligation to continue to provide such Transition Service to the Buyer pursuant to this Agreement.

(b) Notwithstanding any provision in this Agreement to the contrary, the Buyer shall have no obligation to continue to use any Transition Service and may, by giving the Seller not less than thirty (30) days' written notice, elect to stop receiving the Transition Services provided thereunder at the date and time specified in such notice. From and after the date specified in such notice, (i) the Buyer shall have no obligation to pay any fees, costs or expenses relating to such Transition Service (other than post-Closing amounts accrued prior to such date), and (ii) the Sellers shall have no obligation to continue to provide such Transition Service pursuant to this Agreement.

ARTICLE III.

COMPENSATION

3.1. Invoices and Payment. Buyer shall use its own personnel to operate the programs at the Nursing School and pay all costs relating to operating the programs at the Nursing School. To the extent that a Transition Service includes obligations to be performed by third parties, Buyer shall directly pay such parties in connection with the relevant obligations.

3.2. Audit. During the Transition Period, the Buyer shall keep books and records of the Transition Services provided hereunder in the same detail and with the same accuracy as the Sellers keeps their books and records as of the date hereof, and in accordance with any applicable Laws or regulations..

3.3. Taxes and Charges. The Buyer shall be responsible for and pay any federal, state or local sales or other tax, duty, charge or levy (and any related interest and penalties) arising as of the Closing Date imposed as a result of its receipt of the Transition Services or with respect to the payments due to the Seller hereunder (other than any of the Sellers' income taxes with respect thereto).

#### ARTICLE IV.

##### LIABILITY

#### 4.1. Liability.

(a) The Sellers shall not be liable to the Buyer for any damages or losses incurred or suffered by the Buyer with respect to the Transition Services, except for those damages and losses incurred or suffered by the Buyer arising from the willful misconduct or gross negligence of the Sellers with respect to any Transition Service to be provided hereunder.

(b) The Buyer shall not be liable to the Sellers for any damages or losses incurred or suffered by the Sellers with respect to the Transition Services, except for those damages and losses incurred or suffered by the Sellers arising from the willful misconduct or gross negligence of the Buyer with respect to the furnishing of any Transition Service to be provided hereunder.

4.2. Limitation on Damages. In no event shall any party be liable for special, exemplary, incidental, indirect or consequential damages (including, without limitation, lost revenues, profits, savings or business), whether or not the possibility of such damages has been disclosed to it or could have been reasonably foreseen by it and whether in an action based on contract, warranty, strict liability, tort (including, without limitation, negligence) or otherwise. The Sellers' liability for any claim, loss or other

liability arising out of, or connected with, this Agreement, the provision of Transition Services or use by the purchaser of any Transition Services, whether based upon contract, warranty, strict liability, tort (including, without limitation, negligence), or otherwise, shall in no case exceed the aggregate amounts paid to the Sellers by the Buyer under this Agreement. The Sellers' entire liability and the Buyer's remedies under this Agreement shall be subject to the limitations contained in this Section 4.2.

## ARTICLE V.

### TERM

5.1. Term. This Agreement shall become effective on the Closing Date (the "Effective Date") and shall remain in force until the earlier of (a) December 31, 2013; (b) the date the Buyer have received all requisite approvals and certifications to operate the Nursing or (c) termination by either the Buyer or the Sellers on no less than thirty (30) days' written notice to the other party (the "Transition Period").

5.2. Partial Termination. In the event of any termination with respect to one or more, but less than all Transition Services, this Agreement shall continue in full force and effect with respect to any Transition Services not terminated thereby.

5.3. Survival. The provisions of Section 2.6, Articles III, IV and VI shall survive the termination of this Agreement.

## ARTICLE VI.

### MISCELLANEOUS

6.1. Entire Agreement; Amendments. This Agreement and the other Contemplated Transactions constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede and are in full substitution for any and all previous agreements, contracts, representations, warranties and conditions among the parties, whether written or oral with respect to such subject matter. No provision of this Agreement may be modified, supplemented, or amended except by a written instrument executed by each of the parties hereto.

6.2. Appendices. Each appendix delivered under the terms of this Agreement shall be in writing and shall constitute an integral part of this Agreement.

6.3. Assignment. Neither this Agreement nor any rights, duties or obligations under it are assignable (directly, indirectly, by operation of law, change of control or otherwise) by any party hereto without the prior written consent of the other parties. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, each party hereto and its successors and permitted assigns.

6.4. Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.5. Counterparts; Facsimile/pdf Signatures. This Agreement may be executed in one or more counterparts and by different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature to this Agreement by facsimile or emailing of a pdf file shall be as effective as delivery of a manually executed counterpart of this Agreement.

6.6. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person that is not a party hereto, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

6.7. Notices. Unless otherwise specified herein, all notices, requests, demands, consents and other communications hereunder shall be transmitted in writing by personal service, Federal Express or other nationally recognized overnight courier or facsimile (with confirmation of successful transmission), shall be deemed to have been duly given when received by the intended recipient, and shall be addressed as follows:

*If to Buyer, to:*

Montefiore SS Operations, Inc.  
111 East 210th Street  
Bronx, New York 10467  
Attn: Christopher S. Panczner, Esq.  
Fax: (718) 652-3404

*With a copy to:*

Togut, Segal & Segal LLP  
One Penn Plaza  
New York, New York 10119  
Attn: Frank Oswald, Esq.  
Fax: (212) 967-4258

and

Epstein Becker & Green, P.C.  
250 Park Avenue  
New York, New York 10199  
Attn: Jay E. Gerzog, Esq.  
Fax: (212) 878-8604

*If to Sellers, to:*

The Mount Vernon Hospital, Inc. and Sound Shore  
Medical Center of Westchester, *et al.*  
16 Guion Place  
New Rochelle, NY 10802  
Attn: Clark Walter, Esq.  
Fax: (914) 365-4319

*With a copy to:*

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

or to such other address, facsimile number or person as either party shall have last designated by such notice to the other party.

6.8. Waivers. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the Buyer and the Sellers or, in the case of a waiver, by the party waiving compliance. No failure on the part of any party to exercise, or delay in exercising, any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right.

6.9. Representation By Counsel; Interpretation. The Sellers and the Buyer each acknowledge that the parties to this Agreement have been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of Law or legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intent of the Buyer and the Sellers.

6.10. Severability. If any term or provision of this Agreement is held invalid, unenforceable or contrary to Law, such term or provision shall be deemed to be severable from the other terms and provisions hereof, but only to the extent necessary to bring this Agreement within the requirements of Law, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein; provided, however, that if the party that would be adversely affected by such severance demonstrates that a material inducement to its entering into this Agreement would be materially impaired, such party shall be entitled to seek an adjudication that this Agreement should be terminated on that ground.

6.11. Governing Law; Jurisdiction; Jury Trial; Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other Law that would make the Laws of any other jurisdiction other than the State of New York applicable hereto.

(b) Without limitation of any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the

foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action. The parties consent to service of process by mail (in accordance with Section 6.7) or any other manner permitted by law.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HERewith OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

**[Remainder of this page intentionally left blank. Signature page follows.]**

IN WITNESS WHEREOF, this Agreement has been signed on behalf of  
each of the parties hereto as of the date first written above.

MONTEFIORE SS OPERATIONS, INC.

By: \_\_\_\_\_  
Name:  
Title:

THE MOUNT VERNON HOSPITAL,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

SOUND SHORE MEDICAL CENTER OF  
WESTCHESTER

By: \_\_\_\_\_  
Name:  
Title:

**SIGNATURE PAGE TO TRANSITION SERVICES AGREEMENT**