

IT IS SO ORDERED.



Dated: December 14, 2006  
02:30:29 PM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:

CARRINGTON SOUTH HEALTH CARE  
CENTER, INC., et al.,

Debtor/Debtor-in-Possession.

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CASE NUMBER 06-41692  
(Jointly Administered)

HONORABLE KAY WOODS

CHAPTER 11

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ORDER CONFIRMING SALE OF PROPERTY FREE AND CLEAR  
OF ALL LIENS, ENCUMBRANCES, CLAIMS AND OTHER INTERESTS  
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Before the Court is the request of Carrington South Health Care Center, Inc. and Carrington South Real Estate, Inc. (collectively or individually, the "Sellers" or "Debtors"), for an order, pursuant to sections 105(a), 363, and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), confirming the sale of substantially all of their assets free and clear of liens, claims, encumbrances, and interests, with all liens, claims, encumbrances, and other interests transferring to the proceeds of sale (the "Motion"). The only response was filed

by General Electric Capital Corporation ("GECC"), which was a limited objection to the Motion (the "Response").

The Court entered an oral Order at the December 13, 2006 hearing on Debtors' Motion for Clarification and "So Ordered" the record of that hearing. This written Order is, in substance, identical to the oral Order the Court read or intended to read into the record, but it contains some stylistic changes. To the extent there are differences between this Order and the oral Order, this Order supersedes and/or amends the December 13, 2006 oral Order.

Debtors held an auction of the Purchased Assets (as identified in the Purchase Agreement) on November 20, 2006 (the "Auction"), pursuant to the authority granted in the Order Approving Debtors' Motion for an Order (i) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (ii) Establishing Dates Required in the Bidding Procedures; (iii) Scheduling a Hearing for Approval of the Sale of the Debtors' Assets; and (iv) Approving Break-Up Fee and Overbid Protections, entered on October 24, 2006 (Docket No. 26) (the "Asset Sale Procedures Order"). Debtors requested, in accordance with the results of the Auction, confirmation of the sale and approval of the Asset Purchase Agreement to the Successful Bidder (as defined below). The Court (a) having reviewed the Motion and the Response; (b) having heard the statements of counsel in support of the relief requested in the Motion at a hearing before the Court on November 29, 2006 (the "Sale Hearing"); and (c) having determined that the legal and

factual bases set forth in the Motion establish just cause for the relief granted herein;

THE COURT HEREBY FINDS THAT:

A. All capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

C. Venue of this proceeding in this District is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

D. The Motion and Notice of the Sale Hearing were served upon, among others, (i) the Office of the United States Trustee; (ii) counsel for the Successful Bidder; (iii) any entities known to have expressed an interest in a purchase transaction regarding Debtors' assets during the six (6) months prior to the Petition Date; (iv) all entities known to have, or to have asserted, any claim, encumbrance, interest, right of first refusal or other property interest in or upon any of the Purchased Assets which are to be sold pursuant to the Purchase Agreement; (v) all taxing authorities for those jurisdictions in which the Acquired Assets are located; (vi) the District Director of the Internal Revenue Service; (vii) the United States Attorney for the Northern District of Ohio; (viii) all holders of Assumed Liabilities and Excluded Liabilities (as defined in the Purchase Agreement); (ix) all parties to proposed Assigned Contracts; and (x) all entities that

filed a notice of appearance and request for service of papers in these Chapter 11 cases in accordance with Bankruptcy Rule 2002.

E. In addition, Debtors caused the Asset Sales Procedures Order to be published in the Midwest Edition of the Wall Street Journal, the Youngstown Vindicator, and the Cleveland Plain Dealer.

F. Notice of the Motion, Asset Sales Procedures Order and Sale Hearing was proper, timely, adequate and sufficient under the circumstances, pursuant to Bankruptcy Rules 2002 and 6004.

G. Pursuant to the Asset Sale Procedures Order, upon receipt of an executed confidentiality agreement, the Debtors provided to each Potential Bidder due diligence access and packages and such additional information as was reasonably requested.

H. Debtors received five (5) Qualified Bids prior to the Bid Deadline, with each such bidder providing the Good Faith Deposit of \$200,000 and evidence satisfactory to Debtors of their financial ability to consummate a sale of the Purchased Assets. Those Qualified Bids consisted of (i) 850 E. Midlothian, LLC - \$4,000,000, (ii) Vrable Land Holding Youngstown, LLC - \$4,175,000, (iii) CPAS Management Group, LLC - \$4,200,000, (iv) Hunter Management, LLC - \$4,200,000, and (v) Windsor House, Inc. - \$4,250,000, as confirmed by the Court at the hearing on November 20, 2006 (the "Qualified Bidders"). Accordingly, Debtors proceeded with the Auction in accordance with the terms and conditions set forth in the Asset Sale Procedures Order.

I Debtors designated the Qualified Bid of Windsor House, Inc. in the amount of \$4,250,000 as the Baseline Bid to serve as

the starting point for the Auction. On November 15, 2006, notice of the Baseline Bid and copies of all Qualified Bids received by Debtors were mailed to all Qualified Bidders, Counsel for GECC, and the Official Committee of Unsecured Creditors.

J. All five (5) Qualified Bidders participated in the Auction. Debtors started the competitive bidding with the Baseline Bid of \$4,250,000. After fifty-six (56) bid increments of \$50,000 were made in excess of such highest competitive bid, Vrable Land Holding Youngstown, LLC or its nominee (the "Successful Bidder" or "Buyer") made the highest offer in the amount of \$7,050,000, which Debtors believe to be the highest and best Qualified Bid for the Purchased Assets (the "Prevailing Bid"). Windsor House, Inc. submitted the Backup Bid in the amount of \$7,000,000, which is subject to the conditions and terms set forth in paragraph 5, Failure to Consummate Purchase; Backup Bids, of the Asset Sale Procedures Order.

K. At the Sale Hearing, Debtors advanced sound and sufficient reasons to confirm the sale of the Purchased Assets to the Successful Bidder based upon the Prevailing Bid and the Successful Bidder's agreement to indemnify the estate for any claims the Successful Bidder may cause or create if it breaches any of the Assigned Contracts or any liability that may arise from the date of closing forward.

L. The sale of the Purchased Assets to the Successful Bidder is in the best interests of Debtors and their estates.

M. Debtors may sell the Purchased Assets free and clear of any and all liens, encumbrances, claims, and other interests (collectively, the "Encumbrances"), with all Encumbrances transferring to the proceeds of sale, because all creditors or representatives of those that may claim an interest in the Purchased Assets (i) have consented to the proposed sale, (ii) have not objected to the proposed sale, or (iii) could be compelled in a legal or equitable proceeding to accept a money satisfaction of such Encumbrances.

N. Debtors and Successful Bidder have complied with the procedures outlined in the Asset Sale Procedures Order, and their conduct in connection with the sale of the Purchased Assets (including, without limitation, Debtors' solicitation of bids, the conduct of the Auction and the Successful Bidder's bids and proposals made in connection therewith) is approved and ratified.

O. The Asset Purchase Agreement (i) was negotiated, proposed and entered into by the parties in good faith, as a result of arms' length negotiations, without collusion; and (ii) constitutes the highest and best offer for the Purchased Assets. The Successful Bidder is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protections thereunder.

P. The sale of the Purchased Assets is conditioned upon the obligation of Debtors to transfer the Purchased Assets free and clear of all Encumbrances (except for permitted encumbrances set forth in the Asset Purchase Agreement) and the Buyer stated it

would not have entered into the Asset Purchase Agreement if the sale of the Purchased Assets were not free and clear of (i) all Encumbrances (except for permitted encumbrances), and (ii) those liabilities that accrue as an obligation of Debtors from the management of Debtors' businesses until closing, which Debtors warranted by the terms of the Asset Purchase Agreement to the Buyer would be satisfied.

Q. The Court further finds that, upon the representations of the Ohio Department of Job and Family Services ("ODJFS"), pursuant to section 5111.681 of the Ohio Revised Code, "payment withholding; exiting operator," in the event Debtors (as Sellers) transfer assets - particularly "The Ohio Medicaid Provider Agreement" - to Buyer, ODJFS is permitted to withhold what it referred to as "vendor payments" due to Debtors upon the Medicaid account. As represented by ODJFS, the provision permitting the withholding of the Medicaid payments is to assure that Medicaid overpayments by ODJFS to Debtors can be recouped in full. ODJFS represented that, as of November 28, 2006, it believes the amount due to ODJFS as a result of Medicaid overpayments on Debtors' Medicaid account for fiscal year 2002 through and including October 31 of fiscal year 2007 is \$653,109.37. ODJFS represented that, pursuant to state statute, ODJFS has the right to withhold vendor payments currently due to be paid to Debtors, not only to apply to Medicaid overpayments but also any other debt that may exist, such as unpaid franchise fees.

R. Further, the Court finds that, from December 1, 2006 when Buyer begins to manage Debtors' business, there may be an accrual on the account of Debtors for additional overpayments of Medicaid and, if so, such liabilities (on an accrual basis to the date of closing) will be obligations of Debtors and shall be considered as a "Priority Administrative Claim."

S. ODJFS represented at the Hearing that section 3721.541 of the Ohio Revised Code "Additional penalties" provides the ODJFS the right to withhold Medicaid payments due to a nursing facility, or to terminate the nursing facility's "Medicaid provider agreement" for failure to pay franchise taxes. It was represented in Court that the current amount of franchise payments due to ODJFS from Debtors is \$1,628,650.30. This Court previously entered an Interim Cash Collateral Order (Docket No. 45) (the "Cash Collateral Order"), which granted to the ODJFS a "super priority priming lien" in an amount up to \$704,741.00 to reimburse it for Medicaid vendor payments relating to October 2006.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The findings set forth above and conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

2. The Motion is GRANTED except as otherwise modified herein, and the Response is OVERRULED to the extent that it is considered an objection not otherwise resolved or addressed herein or on the record at the Hearing.

3. The sale of the Purchased Assets to the Successful Bidder is confirmed as it was orally "So Ordered" at the Hearing. Pursuant to section 363 of the Bankruptcy Code, the Debtors are authorized to sell all of their right, title and interest in and to the Purchased Assets to the Successful Bidder in accordance with the terms and conditions of the Asset Purchase Agreement, as modified by this Order and as may be further modified, for the sum of \$7,050,000, with the additional consideration of Buyer's agreement to indemnify the estate for any claims Buyer may cause or create if it breaches any of the Assigned Contracts or in connection with Buyer's obligations that arise post-closing. No stamp, transfer, excise, use, value added, registration, documentation, or conveyance fee shall apply to the transactions contemplated by the Asset Purchase Agreement, pursuant to section 1146 of the Bankruptcy Code.

4. Debtors are authorized and empowered to execute, deliver and take all actions and enter into all documents and instruments as may be necessary or appropriate to implement and effectuate the sale of the Purchased Assets as authorized herein including, but not limited to, a management agreement with Buyer. These actions also include taking all steps necessary to effectuate the transfer of all licenses and permits of Debtors to Buyer.

5. Debtors and Buyer have agreed to enter into a management agreement similar to and based upon the terms of Debtors' existing Management Agreement with Briarfield South, LLC, as approved by the Court on October 24, 2006 (Docket No. 25) and amended by an Order

entered on November 5, 2006 (Docket No. 44). Buyer shall assume management of Debtors' business, effective as of 12:01 a.m. on December 1, 2006 and continue through the date of closing, unless the Management Agreement is terminated for cause upon motion to this Court.

6. Within this Order are various modifications to the Asset Purchase Agreement. Those modifications are approved to the extent and because they do not have a material or adverse effect upon Debtors' estates. Further, Debtors are authorized to enter into any additional or other changes within the parameters of the Asset Purchase Agreement that Buyer and Debtors may determine to be necessary for the orderly administration of the ultimate sale of the Purchased Assets, provided such changes do not have a material or adverse effect on Debtors' estates.

7. Upon the agreement of the parties, ODJFS shall continue to honor the vendor payments to Debtors without interruption. Buyer, by its agreement and further by this Order, shall become liable to ODJFS for the payment of the Medicaid overpayments of Debtors' operations up to and including October 31, 2006; provided, however, this amount shall not exceed \$653,109.37. The Medicaid overpayments paid by Buyer, or a lesser amount that may be found to be due upon audit or negotiation as between Debtors and ODJFS, shall be credited against the purchase price due to Debtors from Buyer.

8. At the time the purchase price (less any credits to Buyer as provided in the Asset Purchase Agreement or this Order) is paid

to the Escrow Agent, the following items are to be paid without delay (collectively, the "Authorized Expenses"):

(i) First, normal and customary "closing" costs incurred in the sale of real estate and personal property including, but not limited to:

- (a) title work & guarantee;
- (b) survey costs;
- (c) recording costs;
- (d) escrow fees;
- (e) as to tangible personal property, any personal property tax due or unpaid; and
- (f) the proration of real estate taxes.

Collectively, these costs are necessary to closing and shall be paid. Because these costs cannot be exactly calculated in advance, these costs may not exceed, in the aggregate, one percent (1.00%) of the purchase price, unless further authorized by this Court.

(ii) Second, the following items:

- (a) the Break-Up Fee in the amount of \$125,000.00, as approved in the Asset Sale Procedures Order, payable to 850 E. Midlothian, LLC;
- (b) the "Super Priority Claim" granted to ODJFS by the Cash Collateral Order in an amount up to \$704,741.00;

- (c) the delinquent real estate taxes due the Treasurer of Mahoning County, Ohio in the amount of \$43,275.19;
- (d) employee wages and benefits, if any, not paid from operating income, consistent with the terms and conditions of the Asset Purchase Agreement; and
- (e) amounts due, if any, to the manager under the Management Agreement not paid from operating income, consistent with the terms and conditions of the Asset Purchase Agreement.

9. Pursuant to section 363 of the Bankruptcy Code, Debtors are authorized to transfer title in and to the Purchased Assets to the Successful Bidder, and the Purchased Assets shall be sold, and upon the closing date shall be, free and clear of all Encumbrances. All such Encumbrances, whether they be upon the realty, tangible or intangible personal property, shall attach to the net proceeds of the Purchased Assets after the payment of the Authorized Expenses set forth in paragraph 8, above (the "Net Proceeds"), with the same validity, priority and extent that the Encumbrances had against the Purchased Assets pre-petition; provided, however, that nothing contained herein shall be deemed to be an acknowledgment or consent by Debtors or any other party as to the amount, priority, and/or allowance of any claim, or the amount, validity, priority, force and effect, and/or immunity from avoidance of any Encumbrance. Debtors' and other parties' rights to object to, defend against,

assert, or challenge in any manner the amount, priority, or allowance of any claim or the amount, validity, priority, force and effect or perfection of any Encumbrance are hereby expressly preserved.

10. After the closing date and after (i) payment of the Authorized Expenses set forth in paragraph 8, above, and (ii) deduction of other payments made by Buyer for the benefit of Debtors pursuant to the Asset Purchase Agreement, the following shall apply with respect to the Net Proceeds of the Purchased Assets:

(i) The Escrow Agent shall set aside from the purchase price the amount of \$923,909.30 (representing the asserted balance of the State of Ohio's unpaid franchise fees) in an interest bearing escrow account until further Order of the Court. This escrow account shall be used to satisfy the cure payment, pursuant to section 365 of the Bankruptcy Code, to allow Debtors to assume and assign the Ohio Medicaid Provider Agreement without interruption.

(ii) After transferring \$923,909.30 of the Net Proceeds into the separate escrow account, described above, the balance of the Net Proceeds shall be held by the Escrow Agent in a second interest bearing escrow account pending a final Order of the Court determining the validity, priority and extent of the Encumbrances against the Net Proceeds.

(iii) If there are any surplus funds, from either (i) the \$653,109.37 (representing the Medicaid overpayments as the assumed liability of the Buyer) or (ii) the \$923,909.30 in the first escrow account, such surplus shall be deposited into the second escrow account.

(iv) Any interest accruing on or earned by either of the escrow accounts, shall be property of the Debtors' estates (separate from Net Proceeds), subject to further Order of the Court.

11. The accrual of franchise fees upon the account of Debtors from December 1, 2006, shall be an obligation of Debtors to pay in the ordinary course of business. If for any reason Debtors fail to honor that obligation until the actual transfer of the Ohio Medicare Provider Agreement to Buyer, then those franchise fees shall be paid by Buyer and credited against the purchase price.

12. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

13. The Escrow Agent is authorized and directed to promptly return the Good Faith Deposits received from all Qualified Bidders, except for the deposits of the Successful Bidder and Backup Bidder. After January 13, 2007, the Escrow Agent is further authorized and directed to release the Good Faith Deposit to Backup Bidder, unless the Escrow Agent is otherwise notified by Debtors.

14. Buyer does not constitute a successor in interest to Debtors for any purpose, including successor liability.

15. The Buyer is a purchaser in good faith of the Purchased Assets and the Assigned Contracts, and is entitled to all the protections afforded by section 363(m) of the Bankruptcy Code. Because Buyer is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale to Buyer, including assumption and assignment of the Assigned Contracts, and shall not affect rejection of the Assigned Contracts.

16. After Closing, Buyer may record a copy of this Order with the applicable public filing offices and, once recorded, this Order shall constitute conclusive evidence of the release of all Encumbrances against the Purchased Assets. As provided elsewhere in this Order, all such Encumbrances shall transfer and attach to the Net Proceeds. The appropriate filing offices are hereby directed to accept the filing by Buyer of this Order as evidence of the release of all Encumbrances against the Purchased Assets. This statement providing "evidence of release" is to the extent of Debtors' obligations under the terms of the Asset Purchase Agreement. This Order shall not imply or be construed as prejudicing any claimant's rights or claims to the Net Proceeds, which shall be determined later by the Court.

IT IS SO ORDERED.

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