

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

<p>In re:</p> <p>NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.,</i></p> <p style="text-align: center;">Debtors.¹</p>	<p>§</p> <p>§ Chapter 11</p> <p>§</p> <p>§ Case No. 18-33836 (MI)</p> <p>§</p> <p>§ (Jointly Administered)</p> <p>§ (Emergency Hearing Requested)</p>
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**DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING (I) THE DEBTORS TO PAY PREPETITION WORKFORCE
OBLIGATIONS AND CONTINUE CERTAIN WORKFORCE BENEFIT PROGRAMS;
AND (II) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO HONOR
PREPETITION CHECKS FOR PAYMENT OF THE PREPETITION OBLIGATIONS**

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2018, AT 10:30 .M. IN COURTROOM 404, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address is: 10800 Richmond Avenue. Houston, Texas 77042.



Neighbors Legacy Holdings, Inc. (“NLH”) and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors” and, together with their non-Debtor affiliates, the “Company”), hereby move (the “Motion”) this Court for entry of interim and final orders (i) authorizing, but not directing, the Debtors to pay, among other things, prepetition wages, salaries, employee benefits, and reimbursable expenses (“Workforce Obligations”); (ii) authorizing, but not directing, the Debtors to continue the post-petition maintenance of any or all employee, physician, and pharmacist (collectively, the “Workforce”) benefit programs, policies, and procedures in the ordinary course of business in accordance with prepetition practices; (iii) authorizing, but not directing, the applicable banks and financial institutions to honor all related checks and electronic payment requests, provided that sufficient funds are available, in the applicable accounts to make the Workforce withholdings related thereto; and (iv) granting related relief as further described herein. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”), filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 541, 1107(a), and 1108, and Bankruptcy Rules 6003 and 6004, as well as Rule 9013-1 of the Bankruptcy Local Rules.

EMERGENCY MOTION

3. Pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, the Debtors request emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Failure to receive the applicable relief during the first 21 days of the Chapter 11 Cases (defined below) would thus severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

BACKGROUND

A. The Chapter 11 Cases

4. On July 12, 2018 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

5. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. To date, no creditors’ committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the Southern District of Texas (the “United States Trustee”). No trustee or examiner has been appointed in the Chapter 11 Cases.

7. The Debtors currently operate 22 freestanding emergency centers (the “Emergency Centers”) throughout the State of Texas, including in South Texas, El Paso, the Golden Triangle,

the Permian Basin, the Panhandle, and the greater Houston area. The Debtors' Emergency Centers are designed to offer an attractive alternative to traditional hospital emergency rooms by reducing wait times, providing better working conditions for physicians and staff, and giving patient care the highest possible priority.

8. The Debtors' original parent was founded in 2008, and the first Neighbors emergency center opened in 2009. At their peak, the Debtors operated 33 Emergency Centers across three states. In recent years, the Debtors have experienced financial difficulties caused in large part by increased competition, less favorable insurance payor conditions, declining revenues, and disproportionate overhead costs as compared to their operational income. These challenges have caused significant strain on the Debtors' liquidity and threatened their ability to continue operating as a going concern. Prepetition, the Debtors retained restructuring professionals to explore various out-of-court solutions, resulting in the closing of unprofitable Emergency Centers and downsizing their corporate overhead. Ultimately, the Debtors' out-of-court restructuring efforts were insufficient and the Debtors elected to commence these Chapter 11 Cases.

9. Additional factual background information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the First Day Declaration.

B. The Debtors' Workforce

10. The Debtors' Workforce performs a wide variety of functions critical to the Debtors' operations, the administration of these Chapter 11 Cases, and the Debtors' successful reorganization.

11. The Debtors' Workforce is comprised of three primary groups, as defined below: (i) Employees, including part-time and full-time employees, (ii) the Physicians, and (iii) the Pharmacists. The Workforce's skills, knowledge, and understanding of the Debtors' operations

and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Workforce includes highly-trained medical professionals who are not easily replaced. Without the continued, uninterrupted services of their Workforce, the Debtors' reorganization efforts will be jeopardized.

i. Employees

12. As of the Petition Date, the Debtors employ approximately 724 employees (the "Employees"), excluding Physicians and Pharmacists (discussed below). These Employees work in either the Debtors' corporate location ("Corporate") or at one of the 22 operating Emergency Centers. Additional details concerning the duties, compensation, and number of Employees working in Corporate versus at the Emergency Centers are set forth below.

13. Out of the 724 Employees, approximately 631 Employees (or 87.2%) are paid hourly, with the remainder (i.e. 93 Employees or 12.8% of Employees) paid by salary. Approximately 450 Employees (or 62.2%) are full-time, and 274 Employees (or 37.8%) are part-time.

14. The majority of the Employees receive their pay on a biweekly basis from EDMG, LLC ("EDMG"). However, the Employees who work for Neighbors Practice Management, LLC ("NPM")—which handles the Company's billing and collections services—receive their pay on a biweekly basis directly from NPM.

a. Corporate Employees

15. As of the Petition Date, there are approximately 139 Employees working in Corporate positions. The majority of the Corporate Employees work at the Debtors' corporate office, located at 10800 Richmond Ave, Houston, TX 77042.

16. The Corporate positions include the following:

	Corporate	Salaried	Hourly	Total	Annualized Base Salary
1.	Total Executive Management²	5	-	5	\$1,195,000
2.	NPM Employees³	8	57	65	\$3,110,000
3.	Clinical	9	8	1	\$975,000
4.	Operations	6	-	6	\$530,000
5.	IT	5	7	12	\$710,000
6.	Medical Staffing Services	8	-	8	\$560,000
7.	Accounting/Finance	7	3	10	\$770,000
8.	Marketing	5	-	5	\$410,000
9.	Human Resources (“HR”)	5	2	7	\$550,000
10.	Legal	6	-	6	\$435,000
11.	Executive Assistants/ Receptionists	2	2	4	\$210,000
12.	Fleet / Truck Drivers	-	2	2	\$80,000
	TOTAL EMPLOYEES IN CORPORATE	65	74	139	\$9,535,000

b. Emergency Center Employees

17. As of the Petition Date, there are approximately 585 Employees working in the Emergency Centers, which are located throughout Texas, including locations in Baytown, Midland, Odessa, Amarillo, Beaumont, Brownsville, Edgemere, Harlingen, Lubbock, McAllen, Paris, Port Arthur, Texarkana, Crosby, Kingwood, Orange, Pasadena, Pearland, Porter, Bellaire, and Mueller. The Emergency Center Employee positions (excluding Physicians and Pharmacists) include the following:

² One member of the executive management team is also a physician.

³ As mentioned above, Employees of NPM provide billing and collections services for the Debtors.

	Emergency Centers	Salaried	Hourly	Total	Annualized Base Salary
1.	Clinical	20	418	438	\$26,000,000
2.	Administration	-	139	139	\$4,500,000
3.	Marketing Liaisons	8	-	8	\$500,000
	TOTAL EMPLOYEES AT EMERGENCY CENTERS	28	557	585	\$31,000,000

ii. Physicians

18. The Company also retains licensed physicians (“Physicians”), who are independent contractors and are paid on an hourly basis by Neighbors Physicians Group, PLLC (“NPG”).⁴ NPG provides physician management and staffing services to the Company on an ongoing basis pursuant to a Master Staffing Services Agreement between NPG and Neighbors Health, LLC (the “MSA”).⁵ As stated in the MSA, the medical services are provided solely under the direction and supervision of Physicians.

19. There are approximately 180 Physicians working at the 22 operating Emergency Centers. The Physicians’ hourly rates vary depending on the location of the Emergency Center in which they work and range from \$150 to \$230 per hour.

20. NPG pays the Physicians’ hourly wages on a biweekly basis. As of the Petition Date, approximately 90 Physicians are owed \$710,000 for their services.

iii. Pharmacists

21. The Company also employs approximately 15 licensed pharmacists (“Pharmacists”), who are independent contractors and are paid on an hourly basis. The

⁴ As explained further below, the full-time Physicians may opt-in to the benefits programs offered to the non-Physician Employees by EDMG. If Physicians opt-in to EDMG’s benefits programs, Physicians receive certain additional compensation from EDMG.

⁵ The Master Staffing Services Agreement is attached hereto as Exhibit A.

Pharmacists' hourly rates vary depending on the location of the Emergency Center that employs them. Pharmacists' hours are collected and submitted by the individual Emergency Centers to EDMG, which pays the Pharmacists on a monthly basis. As of the Petition Date, approximately 15 Pharmacists are owed \$16,000 for their services.

22. The Pharmacists do not receive benefits except for the reimbursement of any necessary out-of-pocket expenses incurred in connection with the performance of his/her services, subject to appropriate documentation.

iv. Supplemental Staff

23. In addition to the foregoing Employees, Physicians, and Pharmacists, the Debtors supplement their workforce by retaining individuals with specialized expertise ("Supplemental Workers") whose services are procured indirectly through third-party staffing agencies (collectively, the "Staffing Agencies").⁶ The Supplemental Workers include:

	Position	Hourly	Total
1.	Payroll Manager	\$62.25/hour	1
2.	IT Support (Security)	\$79/hour	1
3.	Accounting Staff	\$65/hour	1
4.	Billing/Collections	\$25.75/hour - \$47.90/hour (dependent on responsibility and experience)	11
TOTAL SUPPLEMENTAL WORKERS			14

The Debtors estimate that, as of the Petition Date, there is an outstanding amount due to the Staffing Agencies of approximately \$40,000, which represents two weeks of services that were rendered prepetition.

⁶ The Staffing Agencies currently used by the Debtors include: (a) Addison Group; (b) Medix, and (c) Roth Staffing Companies, L.P.

v. **Third-Party Collections**

24. The Debtors also outsource collections to two collection firms (“Third-Party Collectors”),⁷ both of which are paid on commission and bill on a monthly basis. The Debtors expect that there is outstanding commission incurred prepetition owed to the Third-Party Collectors. The Third-Party Collectors are critical to the Debtors collecting payments for services and both have demonstrated expertise in collection. Bringing these collections in-house would be burdensome and expensive and would cause delays, which would in turn interrupt the Debtors’ cash flow. The Debtors estimate that, as of the Petition Date, there is an outstanding amount due to the Third-Party Collectors of approximately \$40,000.

RELIEF REQUESTED

25. By this Motion, the Debtors seek entry of interim and final orders authorizing, but not directing, the Debtors to: (a) pay and/or otherwise honor or perform, as applicable, prepetition obligations to the Workforce, including accrued and unpaid prepetition wages and salaries and certain other compensation described herein, including all fees in connection therewith (the “Unpaid Compensation”); (b)(i) honor and continue in the ordinary course of business until further notice various benefit plans, programs, practices, policies, and procedures (the “Workforce Benefit Programs”) (but not assume under Bankruptcy Code section 365(a) any of the plans, programs, practices, policies, procedures, or any related employment or service agreement) and (ii) make prepetition contributions and pay any prepetition amounts associated with the Workforce Benefit Programs, the most significant of which are described below, and to pay all fees and costs in connection therewith (collectively, the “Benefit Obligations”); and (c) pay over to the appropriate party all prepetition withholdings, deductions, and payroll-related taxes from the

⁷ The Third-Party Collectors currently used by the Debtors include: (a) Collect Rx; and (b) Accelerated Claims, Inc.

Workforce associated with the Unpaid Compensation and the Benefit Obligations (collectively, the “Employee Withholdings” and, together with the Unpaid Compensation and the Workforce Benefit Obligations, the “Obligations” or the “Prepetition Workforce Obligations”).

26. The Debtors believe that, as of the Petition Date, they are current on all Prepetition Workforce Obligations.

27. In addition, the Debtors request entry of an order authorizing, but not directing, the applicable banks and other financial institutions (collectively, the “Banks”) to receive, process, and pay any and all checks drawn on the Debtors’ payroll and general disbursement accounts and other forms of payment, including fund transfers and electronic payment requests, to the extent they relate to any of the foregoing and to rely on the Debtors’ direction to pay amounts authorized under this Motion provided that sufficient funds are available in the applicable accounts to make such payments.

28. The specific relief sought by the Debtors through this Motion is as follows:

A. Authorization, but not Direction, to Pay the Unpaid Compensation

29. By this Motion, the Debtors seek an order authorizing, but not directing, the Debtors to pay the Unpaid Compensation.

i. Wages and Salary Claims

30. **Employee Wage and Salary Claims:** In the ordinary course of business, the Debtors pay their Employees on a biweekly basis, every other Thursday, one week in arrears. The current aggregate gross amount for the Employee payroll is approximately \$1,400,000 per pay period. The Debtors made their most recent biweekly Employee payroll on July 10, 2018, for the period June 25, 2018, through July 8, 2018. The Debtors estimate that as of the Petition Date, approximately \$190,000 is owed on account of accrued and unpaid wages and salaries for the

Employees (the “Employee Wages and Salary Claims”) and that substantially all the amounts owed per Employee are less than the priority cap.

31. **Physician Wage Claims**: In addition to the wages and salaries paid to the Employees, the Debtors pay the wages of the Physicians on a biweekly basis, every other Friday, one week in arrears. The current aggregate gross amount for the Physician payroll is approximately \$1,420,000, per pay period. The Debtors made their most recent monthly Physician payroll on July 10, 2018 for the period June 25, 2018, through July 8, 2018. The Debtors estimate that as of the Petition Date, approximately \$205,000 is owed on account of accrued and unpaid wages for the Physicians (the “Physician Wage Claims”).

32. **Pharmacist Wage Claims**. The Debtors also pay the wages of the Pharmacists on a monthly basis. The current aggregate gross amount for the Pharmacist payroll is approximately \$12,300 per pay period. The Debtors made their most recent monthly Pharmacist payroll on July 10, 2018, for the period June 1, 2018 through June 30, 2018. The Debtors estimate that as of the Petition Date, there is no outstanding amount owed on account of accrued and unpaid wages for the Pharmacists (the “Pharmacist Wage Claims”).

ii. Other Compensation and Expenses

33. **Paid Time Off**. The Debtors also provide “paid time off” (“PTO”) to their full-time Employees, which is available to use for, among other things, vacation and sick leave. During their first year of service, Employees accrue 4.65 hours of PTO every two weeks, and up to 120 hours of PTO per year. After their first calendar year of employment, all full-time Employees receive the following PTO allowance:

Paid Time Off Accrual Schedule	
Calendar Year	PTO Allowance
2 – 5 years	120 hours
5 – 10 years	160 hours
10 plus years	200 hours

Approval of PTO is at the discretion of management, and in the event that an Employee is involuntarily terminated, PTO is not paid out. The Debtors do not believe that they owe any PTO payouts to any former Employees as of the Petition Date and seek to continue their policy post-petition in the ordinary course of business.

34. **Reimbursable Expenses**. The Debtors routinely reimburse Employees and Pharmacists for certain expenses incurred within the scope of their employment (the “Reimbursable Expenses”). There is a delay between the time expenses are incurred and the time an expense is processed and reimbursed. Consequently, it is difficult for the Debtors to determine with precision the actual amount of incurred, but not reported, reimbursable expenses as of any particular time. Typically, however, the average aggregate monthly amount expended by the Debtors for the Reimbursable Expenses is between \$3,000 and \$5,000. The Debtors request the authority to pay the Reimbursable Expenses in the ordinary course of business whether arising prepetition or post-petition.

35. **Severance**: The Debtors provide severance payments to Employees upon termination (the “Severance Obligations”). In particular, Employees may be given one week of salary per year of service with a minimum of two weeks up to a maximum of eight weeks. Debtors pay the Severance Obligations in a lump sum payment in the Employees’ final paycheck. By this Motion, the Debtors seek authority, but not direction, to honor in the ordinary course of business the severance policies and practices prior to the Petition Date.

B. Authorization, but not Direction, to Pay Prepetition Benefits and Continuation of Benefit Programs

36. In the ordinary course of business, the Debtors, through EDMG and NPM, offer various customary benefits to the Employees, as well as certain Physicians who “opt-in” to the benefits plans.⁸ The benefits offered by EDMG include healthcare benefits, a 401(k) plan, and life insurance and disability benefits (each as discussed below) (collectively, the “Benefits”). By this Motion, the Debtors seek an order authorizing, but not directing, the Debtors to make prepetition contributions and pay any prepetition amounts associated with the Benefits. In addition, though the Debtors believe that the Benefits constitute ordinary course of business expenses authorized under the Bankruptcy Code and applicable law, out of an abundance of caution, the Debtors seek authority, but not direction, to continue such programs during the pendency of the Chapter 11 Cases.

i. The Health Plans.

37. The Debtors’ healthcare plans—which include medical, dental, and vision benefits—are an important component of the Benefits offered by the Debtors (the “Health Plans”). The Debtors offer the Health Plans to all of their Employees who work 30 hours or more per week. The Health Plans are described more fully below.

(a) **Medical Plans:** The Debtors’ medical benefit plans (the “Medical Plans”) are self-funded and administered by Blue Cross Blue Shield (“BCBS”). The Debtors pay a monthly average of less than \$70,000 to BCBS for administration of the Medical Plans. In addition to the administrative fees, the Debtors pay all claims as incurred up to the amount of \$150,000 per participant annually (“Stop Loss Amount”). Any claims greater

⁸ Although the Physicians do not receive their salaries through EDMG, full-time Physicians may “opt-in” to receive a stipend equal to the applicable employee contributions that would be owed by the Physician under the plan. EDMG pays the stipend monthly.

than the Stop Loss Amount are paid by BCBS. The Debtors estimate that, as of the Petition Date, \$300,000 is outstanding on account of obligations under the Medical Plans. The Debtors are requesting authority to continue to operate the Medical Plans in the ordinary course of business. The Debtors further request authority to pay any related administrative fees under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

(b) **Dental Plan**: The Debtors offer a self-funded dental plan (the “Dental Plan”) to Employees and certain Physicians through Guardian. The Debtors pay approximately \$5,000 monthly to Guardian for administration of the Dental Plan. In addition to the administrative fees, the Debtors pay all claims as incurred. The Debtors estimate that, as of the Petition Date, \$40,000 is outstanding on account of obligations under the Dental Plan. The Debtors are requesting authority to continue to operate the Dental Plan in the ordinary course of business.

(c) **Vision Plan**: The Debtors offer a vision plan (the “Vision Plan”) to Employees and certain Physicians through Guardian. The Debtors pay approximately \$6,000 monthly to Guardian for administration of the Vision Plan. The Debtors believe that, as of the Petition Date, the Debtors are current on all obligations under the Vision Plan. The Debtors seek authority to continue the Vision Plan in the ordinary course of business.

(d) **HSA**: The Debtors offer the Employees the ability to participate in a health savings account (“HSA”), which is administered through HSA Bank. The Company does not fund any amounts into the HSA accounts. To the extent necessary, the Debtors seek authority to pay in the ordinary course of business any administrative fees on account of the HSA.

ii. **The Other Employee Benefits.**

38. The Debtors maintain other Benefits for Employees, including flexible spending accounts, a 401(k) Plan, and life insurance and disability benefits (each defined below, and collectively, the “Other Employee Benefits”).

(a) **Flexible Spending Accounts:** The Debtors also offer full-time Employees the opportunity to use tax-advantaged flexible spending accounts (“FSA”) to use pre-tax dollars toward the payment of medical or dependent care expenses. At the beginning of each calendar year, the FSA participants commit a set amount of funds for the FSA, and the Debtors collect a pro-rated amount at each payroll period and pay claims as they come due (up to the pre-committed amount). The participant submits claims to the claims administrator, and the claims administrator reimburses the Employee for the claimed amount and seeks reimbursement from the Debtors. The Debtors pay an administrative fee of approximately \$1,000 per month to Admin America for the FSA. As of the Petition Date, the Debtors believe they are current on all administrative fees and claims under the FSA. To the extent any such prepetition amounts remain outstanding, the Debtors are seeking authority to pay such amounts and continue the FSA program in the ordinary course of business.

(b) **401(k) Plan:** The Debtors offer their Employees the opportunity to participate in a Safe-Harbor 401(k) savings plan (the “401(k) Plan”), which is Administered by Nova Associates. The Employees may contribute a percentage of their base pay, subject to regulatory limits. The Debtors will match up to 4% of an Employee’s 401(k) contributions for participants who defer at least 5% of their pay. For 2018, the Debtors’ contributions are expected to total, in the aggregate, approximately \$25,000 per biweekly pay period. As of the Petition Date, the Debtors estimate that they owe

approximately \$25,000 on account of the employer match portion of the 401(k) Plan. The Debtors are seeking authority to pay amounts owed under the employer match portion of the 401(k) Plan, as well as any administrative, bookkeeping and investment advisor fees (if any), and to continue the 401(k) Plan in the ordinary course of business.

(c) **Life Insurance and Disability Benefits:** The Debtors provide their Employees life insurance, accidental death and dismemberment coverage, and long-term disability benefits (the "Life Insurance," "AD&D Coverage," and "LTD Benefits," respectively) through Guardian. Life Insurance and AD&D Coverage provide each participating full-time Employee with coverage up to his or her annual earnings, not to exceed \$500,000. Full-time Employees may opt into supplementary protection to cover accidents, critical illness, and/or hospital indemnity. LTD Benefits covers 50% of the eligible Employee's salary with a maximum amount of \$1,000 per month. The Debtors believe that, as of the Petition Date, they are current on any premiums owed and claims asserted under these programs. To the extent any such prepetition amounts remain outstanding, the Debtors are seeking authority to pay such amounts and to continue these programs in the ordinary course of business.

39. The Debtors believe that performing their obligations under the above-described Other Employee Benefits programs is important for preserving the value of the Debtors' estates. Any disruption in the benefits under such programs will call into question the Debtors' commitment to their Employees, who are essential to continuing the operations of the Debtors.

C. The Employee Withholdings for Payroll Taxes and Non-Tax Related Deductions

40. In connection with paying the Unpaid Compensation and the Benefit Obligations, the Debtors routinely deduct and/or withhold from the Employees' paychecks amounts that the Debtors are required to transmit to third parties. For example, the Debtors may deduct from the

Employees' earnings, among other things, (a) payroll taxes related to federal, state, and local income taxes, FICA, Social Security, and Medicare taxes for remittance to the appropriate federal, state, or local taxing authority; (b) employee contributions for health benefits and health care and dependent care spending accounts; (c) employee contributions to employee life insurance, , long-term disability insurance, , and personal accident insurance; (d) employee contributions to 401(k) plans and 401(k) loan repayments; and (e) legally ordered deductions, such as child support and garnishments (collectively, the "Employee Withholdings"). The Debtors then forward amounts equal to the Employee Withholdings from general operating accounts to appropriate third-party recipients.

41. Generally, these funds are deducted from Employee earnings, but due to the commencement of the Chapter 11 Cases, may not have been forwarded to the appropriate third-party recipients. Such withheld funds, to the extent they remain in the Debtors' possession, may constitute moneys held in trust and therefore may not be property of the Debtors' estates. As of the Petition Date, the Debtors believe that no Employee Withholdings. To the extent any such prepetition amounts remain outstanding, the Debtors are seeking authority to pay such amounts.

D. Authorization for the Banks

42. In addition, the Debtors request entry of an order (a) authorizing all the Banks, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers, on account of the Workforce Obligations and to the extent the Debtors have sufficient funds standing to their credit with the Banks, whether such checks or other requests were submitted before, on, or after the Petition Date; (b) authorizing the Banks to rely on the representations of the Debtors as to which checks are subject to this Motion, provided that any such Bank shall not have any liability to any party for relying on such direction and representations by the Debtors or for inadvertently

honoring or dishonoring any check or fund transfer; (c) authorizing, at the direction of the Debtors, the Banks to receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Workforce Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments and that any such Bank shall not have any liability to any party for relying on such direction by the Debtors; and (d) authorizing the Debtors to issue new post-petition checks or effect new post-petition fund transfers to replace any checks, drafts, and other forms of payment which may be inadvertently dishonored or rejected.

APPLICABLE AUTHORITY

43. The payment of the Workforce Obligations is warranted under Bankruptcy Code sections 105(a), 363(b), 507(a), 1107(a), 1108, and the “necessity of payment” doctrine. Here, this Court should follow the precedent in this District and authorize, but not direct, the Debtors to pay the Workforce Obligations. Failing to honor these obligations would have adverse consequences for the Debtors’ ability to operate their businesses during the Chapter 11 Cases and, thus, the Debtors’ reorganization. Authority to pay the Prepetition Employee and Physician Obligations is, therefore, necessary to maximize the value of the Debtors’ estates for all creditors and stakeholders.

A. Bankruptcy Code Sections 507(a)(4) and 507(a)(5) Authorize Payment of Prepetition Employee Obligations.

44. As noted above, the payment of the Prepetition Employee Obligations is justified under several theories under the Bankruptcy Code. First, Bankruptcy Code sections 507(a)(4) and 507(a)(5) require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave, and employee benefit related contributions be accorded priority in payment in an amount not to exceed \$12,850 for each individual Employee (to the extent such amounts accrued within 180 days of the Petition Date). The Debtors believe that a substantial portion of the relief

requested herein for the Employees is within the statutory priority caps of Bankruptcy Code sections 507(a)(4) and 507(a)(5). As priority claims, the Debtors are required to pay such claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein would affect only the timing, and not the amount of payment of the Prepetition Employee Obligations to the extent they constitute priority claims, and would not have any material negative impact on recoveries for general unsecured creditors.

B. Bankruptcy Code Section 105 and the Doctrine of Necessity Support Payment of the Prepetition Employee and Physician Obligations.

45. Even if a particular claim is not entitled to priority, payment is nonetheless justified under Bankruptcy Code section 105(a) and the well-established “necessity of payment doctrine.” This Court’s power to use the doctrine of necessity in the Chapter 11 Cases derives from this Court’s inherent equity powers and their statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

46. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

47. The Debtors’ ability to maximize value depends, in large part, upon the motivation of the Employees whose efforts will be critical to the successful reorganization process. The Employees will be required to commit much of their time and energy to the Debtors’

reorganization efforts. Any disruption from Employee resignations or lack of morale could have adverse effects on the Debtors' reorganization efforts. Most of the Employees (and their families) are dependent upon the wages, salaries, reimbursements, and other benefits they receive from the Debtors.

48. If amounts owed are not received or other benefits delayed, the Employees may suffer extensive personal hardship and in some cases will be unable to meet their "basic living" needs, causing harm to them and their families and potentially making it difficult or impossible for them to continue working for the Debtors. The Debtors believe that to maintain Employee morale, it is critical that they be authorized to pay each of their Employees all compensation amounts that have been earned under the Debtors' prepetition contractual obligations or practices, subject to the limitations described herein.

C. Payment of the Prepetition Employee Obligations is Authorized Under Bankruptcy Code Sections 1107(a) and 1108.

49. Moreover, the Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

50. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.*; *see also In re Mirant Corp.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003) (allowing debtor to pay claims "reasonably believe[d]" to be authorized under the *CoServ* test or whose payment was necessary "in the exercise of their business judgment . . . in order for [the debtors] to continue their respective businesses"). The *CoServ* court specifically noted that preplan satisfaction of

prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *CoServ*, 273 B.R. at 497. The court formulated a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

51. Payment of the Prepetition Employee Obligations meets the *CoServ* test. The Debtors' operations are complex and rely on the skill and expertise of the Employees. Without the ability to pay the Employees, the Debtors' ability to continue operations, and thus maximize the value of their estates, would be severely limited. Accordingly, consistent with their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, the Debtors should be authorized, but not directed, to pay all Prepetition Employee Obligations.

D. Payments of Prepetition Employee Obligations is Warranted Under Bankruptcy Code Section 363.

52. Courts have also authorized payment of prepetition obligations under Bankruptcy Code section 363 where a sound business purpose exists for doing so. Specifically, under Bankruptcy Code section 363, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. *See* 11 U.S.C. § 363. To obtain approval for the use of estate assets outside the ordinary course of business, the debtor must articulate a valid business justification for the requested use. *See Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or a debtor-in-possession

or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”). To the extent the payment of prepetition wage, salary, and benefit claims were deemed to be outside the ordinary course of business, the preservation and protection of a debtor’s business, the retention of a debtor’s employees, and the maintenance of positive employee morale provide a sufficient business justification for such payment. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

53. Payment of prepetition wages and salary claims to preserve and protect a debtor’s business and to ultimately reorganize, retain its currently working employees, and maintain positive employee morale, even if such payment were deemed to be outside the ordinary course of business, has been deemed a sufficient business justification for such an authorization. *See id.* at 175. Accordingly, this Court should grant the requested relief under Bankruptcy Code section 363.

E. Bankruptcy Code Sections 541 Authorizes Payment of the Employee Withholdings and Payment of Certain of the Prepetition Employee Obligations is Required by Law.

54. A portion of the Prepetition Employee Obligations constitutes funds held in trust for payment to third parties. The payment of the Employee Withholdings will not prejudice the Debtors’ estates because such withholdings are held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors’ estates under Bankruptcy Code section 541. *See* 11 U.S.C. § 541(b)(1), (d); *Begier v. IRS*, 496 U.S. 53 (1990) (concluding that withholding taxes are property held by a debtor in trust for another and are therefore not property of the debtor’s estate). Further, federal and state laws require the Debtors to withhold certain tax payments from the Employees’ paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672 & 7501(a).

55. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' ongoing chapter 11 process.

56. Moreover, payments which are critical to the retention and morale of the Debtors' Workforce actually add value to the estates because an unplanned reduction in the Workforce productivity could have an adverse effect on recoveries to creditors and other stakeholders.

57. Courts in this District have routinely approved the payment of prepetition claims of employee wages, salaries, expenses, and benefits in various chapter 11 cases. *See, e.g., In re Emas Chiyoda Subsea Ltd.*, No. 17-31146 (MI), Docket No. 171 (Bankr. S.D. Tex. Mar. 28, 2017); *In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. Dec. 21, 2016); *In re Goodrich Petrol. Corp.*, No. 16-31975 (MI), Docket No. 97 (Bankr. S.D. Tex. Apr. 25, 2016); *In re Midstates Petrol. Co.*, No. 16-32237 (DRJ), Docket No. 68 (Bankr. S.D. Tex. May 2, 2016); *In re Energy XXI Ltd*, No. 16-31928 (DRJ), Docket No. 55 (Bankr. S.D. Tex. Apr. 15, 2016); *In re Sherwin Alumina Company, LLC*, No. 16-20012 (DRJ), Docket No. 83 (Bankr. S.D. Tex. Jan. 13, 2016); *In re BPZ Res., Inc.*, No. 15-60016 (DRJ), Docket No. 30 (Bankr. S.D. Tex. Mar. 10, 2015).

58. For the reasons set forth above, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest, and therefore, should be granted.

59. The proposed interim order and the final order provide that the relief granted therein shall not constitute or be deemed an assumption under Bankruptcy Code section 365 of

any of the employment and service agreements to which the Debtors are a party or that relate to any of the Employee Benefit programs.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

60. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

61. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Debtors’ 50 largest unsecured creditors on a consolidated basis; (c) Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103 (Attn: Matthew E. Tashman), and via email to mtashman@reedsmith.com, counsel to KeyBank National Association in its capacity as Agent and DIP Agent; (d) the United States Attorney’s Office for the Southern District of Texas; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service; and (g) any party required to be served under Bankruptcy Local Rule 9013-1(d). Due to the nature of the relief requested herein, the Debtors submit that no other or further notice need be provided.

CONCLUSION

The Debtors respectfully request that the Court enter orders, substantially in the forms annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: Houston, Texas
July 12, 2018

PORTER HEDGES LLP

By: /s/ Eric M. English
John F. Higgins
State Bar No. 09597500
Eric M. English
State Bar No. 24062714
Genevieve M. Graham
State Bar No. 24085340
1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone: (713) 226-6000
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**PROPOSED COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION**

MASTER STAFFING SERVICES AGREEMENT

This Master Staffing Services Agreement (this “Agreement”) is entered into between Neighbors Health, LLC, a Texas limited liability company (hereinafter referred to as “Neighbors”), and Neighbors Physician Group, LLC, a Texas limited liability company (hereinafter referred to as “NPG”) (each referred to as a “Party” and collectively as the “Parties”). The “Effective Date” of this Agreement shall be the date that this Agreement is executed by Neighbors.

RECITALS:

WHEREAS, Neighbors and its affiliates are engaged in construction, operation and management of facilities which provide urgent medical care and outpatient emergency medical services as their primary service, in various locations in Texas and other states;

WHEREAS, NPG is engaged in the business of physician management and staffing services;

WHEREAS, NPG is wholly owned and operated by physicians licensed to practice in the State of Texas, each of whom is in good standing; and

WHEREAS, Neighbors desires to engage NPG to provide staffing services for its facilities (each a “Neighbors’ Facility” or the “Facility”) on an ongoing basis and NPG desires to be engaged by Neighbors for such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Relationship of the Parties

- A. NPG shall be an independent contractor of and to Neighbors. Anything in this Agreement notwithstanding, NPG, through its Executive Medical Director, shall retain the authority to direct the medical practice of the licensed physicians that it supplies to the Neighbors Facilities. Neighbors shall neither exercise control over nor interfere with any physician-patient relationship, but rather such relationships shall be maintained strictly between physicians placed by NPG with Neighbors and their patients.
- B. Each Party shall be solely responsible for and shall comply with all state and federal laws, statutes and regulations applicable to such Party and its respective business operations.

Section 2. Services to be provided by NPG

- A. NPG shall provide to Neighbors physician recruiting and management services as may be reasonably necessary for the day-to-day operations of Neighbors. NPG shall provide such services with the intent of assisting Neighbors in the enhancement of the operational efficiencies, patient care services and financial performance of Neighbors.
- B. Medical services shall be provided solely under the direction and supervision of physicians provided by NPG and, in the performance of such medical duties, they shall not be subject to any directions or control by Neighbors.
- C. During the term of this Agreement, NPG shall supervise and maintain physician personnel records relating to the physicians with whom it contracts. NPG's management of all files and records shall comply with applicable state and federal statutes.
- D. NPG shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.
- E. Upon reasonable, non-arbitrary request by Neighbors, NPG shall remove from service under this Agreement any physician who (1) is convicted of a felony or a misdemeanor related to the provision of health care, (2) has a guardian or trustee of its person or estate appointed by a court of competent jurisdiction, (3) becomes disabled so as to be unable to perform the duties required by this Agreement, (4) fails to satisfy all conditions for maintenance of professional liability insurance, (5) shall have his or her license(s) and/or privileges required to perform the services contemplated by this Agreement either suspended, revoked or otherwise limited in any material respect, (6) fails to comply with any of the material terms and conditions of Neighbors' Medical Staff Bylaws, this Agreement or any agreement between such physician and NPG, or (7) in the sole discretion of Neighbors, such physician is disruptive to the orderly operation of the Facility.

Section 3. Management and Administrative Services Agreement

Neighbors shall provide to NPG such general administrative, management, consulting, financial and business office services as may be reasonably necessary for the day-to-day operations of NPG, as more fully described in the Management and Administrative Services Agreement executed by the Parties and appended hereto as Exhibit "A." Neighbors shall provide such services with the intent of assisting NPG in the enhancement of the operational efficiencies, ancillary patient services and financial performance of NPG. Under no circumstances shall Neighbors control, direct, or intervene in any way or manner, the professional medical services provided by NPG, by and through its independent contractor physicians.

Section 4. Supervision of Practice

The independent contractor physicians provided by NPG shall be, in their performance of their medical duties, subject solely to the direction and supervision of the Executive Medical Director of NPG and, in the performance of such medical duties, they shall not be subject to any direction or control by Neighbors. Neighbors and NPG jointly shall maintain and publish from time to time Medical Staff Bylaws that shall address disciplinary procedures and standards of conduct for all NPG physicians providing services within Neighbors' Facilities. The Executive Medical Director of NPG shall adopt and incorporate the provisions of such Medical Staff Bylaws in all policy handbooks and practice guidelines utilized by NPG.

Section 5. Records

- A. Neighbors shall preserve the confidentiality of patient medical records and use information contained in such records only for the limited purpose of, and to the extent necessary to, perform the services set forth herein.
- B. During the term of this Agreement, Neighbors shall supervise and maintain custody of files and records relating to the operations of NPG. The management of all files and records of NPG by Neighbors shall comply with applicable state and federal statutes.
- C. During the term of this Agreement, and thereafter, NPG or its designees or representatives shall have reasonable access during normal business hours to the financial records of Neighbors as they relate to the engagement of independent contractor physicians for Neighbors. These include, but are not limited to, records of collections, expenses and disbursements in performing its obligations under this Agreement, and NPG may, at its expense, copy any or all such records.
- D. Access to Records. To the extent required by law, upon the written request of the Secretary of the Department of Health and Human Services, the Comptroller General or any of their duly authorized representatives, NPG shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If NPG carries out any of the duties of this Agreement through a subcontract with a value of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with a related individual or organization, NPG agrees to include this requirement in any such subcontract. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Neighbors, NPG or any physician by virtue of this Agreement.

Section 6. Insurance

- A. NPG Insurance. NPG shall obtain and keep in force during the term of this Agreement and any renewal term, professional liability insurance covering the obligations of NPG and each physician, and shall ensure that such liability insurance coverage is current for any other persons contracting with NPG for the delivery of the services hereunder, for claims arising from the providing of the services hereunder. Said policy shall contain minimum limits of liability of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate. If such insurance is maintained on a claims-made basis, such insurance shall continue throughout the term of this Agreement, and upon the termination of this Agreement, or the expiration or cancellation of the insurance, NPG shall purchase, or arrange for the purchase by its physicians of, either (i) an extended reporting endorsement (“Tail Coverage”) for a period mutually agreed to by the Parties, (ii) “Prior Acts” coverage from the new insurer with a retroactive date on or prior to the date NPG began performing services at Neighbors’ Facilities, or (iii) maintain continuous coverage with the same carrier for the period of the statute of limitations for personal injury. All such insurance shall be kept and maintained without cost or expense to Neighbors.
- B. Neighbors Insurance. During the term of this Agreement and for the period of the statute of limitations for personal injury, Neighbors shall keep and maintain, at its sole cost and expense, professional and general liability coverage for the acts and omissions of Neighbors, its officers, directors, employees and agents (excluding NPG and physicians should it or they be deemed to be agents notwithstanding the contrary intent of the Parties). All such insurance shall be issued upon such forms and in such amounts that Neighbors deems appropriate, and such insurance may be in the form of self-insurance provided that proof of such coverage shall be made available to NPG on request.

Section 7. Indemnification

Each of the Parties agrees as follows:

- A. Neighbors shall indemnify and hold NPG harmless from and against any and all loss, cost, or damages arising from: (a) any damages resulting from any misrepresentation, breach of warranty or non-fulfillment of any term, condition, or covenant on the part of Neighbors under this Agreement, or from any misrepresentation or omission set forth in any certificate or other instrument furnished or to be furnished to NPG in accordance with the provisions of this Agreement; (b) any neglect or willful act or omission by Neighbors or its employees, directors, officers, or agents; and (c) all actions, suits, proceedings, demands, assessments, judgment, costs and expenses, including reasonable attorneys’ fees and expenses, incident to any of the foregoing.

- B. NPG shall indemnify and hold Neighbors harmless from and against any and all loss, cost or damages arising from: (a) any damages resulting from any misrepresentation, breach of warranty or non-fulfillment of any term, condition or covenant on the part of NPG under this Agreement, or from any misrepresentation or omission set forth in any certificate or other instrument furnished or to be furnished to Neighbors with the provisions of this Agreement; (b) any negligent or willful act or omission by NPG or its employees, directors, officers or agents; and (c) all actions, suits, proceedings, demands, assessments, judgment, costs and expenses, including reasonable attorneys' fees and expenses, incident to any of the foregoing.
- C. In the event that any claim is asserted against a Party which is entitled to indemnification hereunder (the "Indemnified Party"), the Indemnified Party shall promptly after learning of such claim notify the other Party (the "Indemnifying Party") thereof in writing; provided, however, that the failure of the Indemnified Party to give prompt notice of such claim as aforesaid shall not relieve the obligation of the Indemnifying Party with respect to such claim. The Indemnifying Party shall have the right, by giving written notice to the Indemnified Party within ten (10) calendar days after receipt from the Indemnified Party of notice of such claim, to conduct at its expense the defense against such claim in its own name, or, if the Indemnifying Party shall fail to give such notice, it shall be deemed to have elected not to conduct the defense of the subject claim, and in such event the Indemnified Party shall have the right to conduct such defense and to compromise and settle the claim without the prior consent of the Indemnifying Party. In the event that the Indemnifying Party elects to conduct the defense of the subject claim, the Indemnified Party shall cooperate with and make available to the Indemnifying Party such assistance and materials as may be reasonably requested at the expense of the Indemnifying Party, and the Indemnified Party shall have the right at its expense to participate in the defense, provided that the Indemnified Party shall have the right to compromise and settle the claim only with the prior written consent of the Indemnifying Party. No legal proceeding in which the Indemnified Party is named as a party shall be settled by the Indemnifying Party without the Indemnified Party's prior written consent, which consent shall not be unreasonably withheld, unless such settlement or compromise (a) affects no substantive rights of the Indemnified Party, (b) involves no admission of fault by the Indemnified Party, and (c) creates no obligations or liabilities for the Indemnified Party. Any judgment entered or settlement agreed upon in the manner provided herein shall be binding upon the Indemnifying Party, and shall conclusively be deemed to be an obligation with respect to which the Indemnified Party is entitled to indemnification hereunder.
- D. The terms and conditions of this Section shall survive the expiration or termination of this Agreement.

Section 8. Term of Agreement

- A. This Agreement shall commence on the date such Agreement is executed by Neighbors and shall expire five (5) years therewith, unless terminated pursuant to the terms hereof.
- B. Unless earlier terminated as provided for in this Section 8, the term of this Agreement shall be automatically extended for additional terms of five (5) years each, unless either Party delivers to the other Party, not less than sixty (60) days prior to the expiration of the then preceding term, written notice of the intention of such Party to decline to extend the term of this Agreement.
- C. Either Party may terminate this Agreement in the event the other Party shall materially default in the performance of any duty or obligation imposed on it by this Agreement and such default continues for a period of ninety (90) days after written notice thereof has been given to the Party in default. Notice shall be effective upon delivery.

Section 8. Legal Compliance

- A. Notwithstanding any other provisions of this Agreement, if the governmental agencies, or their representatives or agents, that administer federal or state healthcare programs or any other federal, state or local governmental or nongovernmental agency, or any court of administrative tribunal passes, issues or promulgates any law, rule, regulation, standard, interpretation, order, decision or judgment, including, but not limited to, those relating to any Safe Harbor regulations pursuant to 42 U.S.C. § 1320a-7b (the “Anti-Kickback Statute”) or any self-referral regulations pursuant to 42 U.S.C. § 1395nn (known as “Stark II”), or any similar state laws, or if any event occurs (collectively or individually, a “Legal Event”), which, in the good faith judgment of either Party, materially and adversely affects any Party’s licensure, accreditation, certification or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor, or which subjects either Party or any of its affiliates, to a risk of prosecution or civil monetary penalty, either Party may elect to amend this Agreement with mutually acceptable provisions to comply with the regulation at issue or if any provision of this Agreement is held to be invalid, contrary to, or in conflict with the regulation at issue, that provision shall be deemed to be severable and shall not impair the operation of, or have any other effect upon, such other provisions of this Agreement which shall continue to be given full force and effect and bind the Parties hereto.
- B. The Parties understand with respect to the services provided hereunder, NPG is a “Business Associate” of Neighbors for federal and state privacy rule purposes. Accordingly, the Parties agree to execute a Business Associate Agreement in substantially the form attached as Exhibit “B” and incorporated herein. Additionally, Neighbors agrees that NPG and its physicians are considered to be part of an Organized Health Care Arrangement with Neighbors under which Neighbors is responsible for providing the Notice of Privacy Practices to patients, and for including NPG in such Notice.

- C. Corporate Practice of Medicine. Nothing contained herein is intended to (a) constitute the use of a medical license for the practice of medicine by anyone other than a licensed physician; (b) aid Neighbors or any other corporation to practice medicine when in fact such corporation is not licensed to practice medicine; or (c) constitute or result in any other act or create any other arrangement in violation of the Texas Medical Practice Act.

Section 9. Miscellaneous

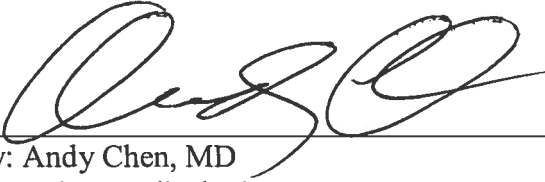
- A. Confidentiality. NPG agrees that all information obtained pursuant to its work hereunder, whether from Neighbors or otherwise, shall be and remain confidential and may not be disclosed to any third party without prior written authorization from Neighbors. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.
- B. Amendment; Extension; Waiver. No amendment, modification, waiver, replacement, termination or cancellation of any provision of this Agreement will be valid unless the same is in writing and signed by authorized representatives of the Parties hereto. Each waiver of a right hereunder does not extend beyond the specific event or circumstance giving rise to the right. No waiver by any Party of default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent occurrence. Neither the failure nor any delay on the part of any Party to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor does any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.
- C. Severability. If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby, but shall be enforced to the greatest extent permitted by law.
- D. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the matters set forth in this Agreement. This Agreement supersedes all prior agreements with respect to matters set forth in this Agreement. No course of prior dealings between the Parties, no usage of trade, and no parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any terms of this Agreement. There are no unsatisfied conditions to the full effectiveness of this Agreement.
- E. Assignment. Neither Party shall assign its rights under this Agreement without the prior written consent of the other Party.

- F. No Third-Party Consent Required. No consent of any person (including creditors or partners, members, stockholder or other owners of either Party), except those consents provided as of the date hereof, is required in connection with the execution of this Agreement or to assume the obligations and performance of the Parties pursuant to this Agreement. The Parties' obligations under this Agreement are not contingent upon any consent, license, permit, approval, or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, bureau or agency, whether local, state, federal or foreign.
- G. Headings. The section headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect any of the terms hereof.
- H. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- I. Notices. Any notices or demands required or permitted by law or any provision of this Agreement shall be in writing and may be served upon the other Party by an overnight private mail service which provides delivery confirmation or by deposit in the United States Mail, registered or certified, with return receipt requested, postage prepaid, and addressed to said Party at the address set forth on the signature page below or at such other address as such Party may designate in writing.
- J. Due Authorization. NPG and Neighbors stipulate and agree that their undersigned representatives' execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action.
- K. Third Party Beneficiaries. None of the obligations and duties of NPG or Neighbors under this Agreement shall in any way or in any manner be deemed to create any obligation of NPG or Neighbors with regard to any person or entity who is not a party to this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the 1st day of December, 2016, by and through their duly authorized officers, the day, month and year given below.

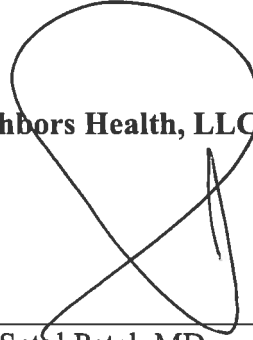
Neighbors Physician Group, LLC (“NPG”)



By: Andy Chen, MD
Executive Medical Director

Address: 10800 Richmond Avenue
Houston, TX 77042

Neighbors Health, LLC (“Neighbors”)



By: Setul Patel, MD
President and Chief Executive Officer

Address: 10800 Richmond Avenue
Houston, TX 77042

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

	§	
In re:	§	Chapter 11
	§	
NEIGHBORS LEGACY HOLDINGS, INC.,	§	Case No. 18-33836 (MI)
<i>et al.,</i>	§	
	§	(Jointly Administered)
Debtors.¹	§	(Emergency Hearing Requested)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
WORKFORCE OBLIGATIONS; (II) AUTHORIZING THE DEBTORS TO CONTINUE
CERTAIN WORKFORCE BENEFIT PROGRAMS; AND (III) AUTHORIZING
APPLICABLE BANKS AND FINANCIAL INSTITUTIONS TO HONOR PREPETITION
CHECKS FOR PAYMENT OF THE PREPETITION WORKFORCE OBLIGATIONS**

[Relates to Doc. No. _____]

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) filed their motion (the “Motion”)² for Interim and Final Orders, pursuant to sections 363, 541, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing, but not directing, the Debtors to pay, among other things, prepetition wages, salaries, employee benefits, and reimbursable expenses (“Workforce Obligations”); (ii) authorizing, but not directing, the Debtors to continue the post-petition maintenance of any or all employee, physician, and pharmacist (collectively, the “Workforce”) benefit programs, policies, and procedures in the ordinary course in accordance with prepetition practices; (iii) authorizing, but not directing, the applicable banks and financial institutions to honor all related checks and

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue, Houston, Texas 77042.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

electronic payment requests, provided that sufficient funds are available, in the applicable accounts to make the Workforce withholdings related thereto; and (iv) granting related relief as further described herein. The Court has jurisdiction over the Motion and the relief requested in the Motion pursuant to 28 U.S.C. § 1334 and venue is proper in this District pursuant to 11 U.S.C. § 1408. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order on the Motion. The relief requested by the Motion is in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest and the Debtors' gave sufficient and proper notice of the Motion and related hearings. Upon consideration of the Motion and First Day Declaration and after hearing statements in support of the Motion during proceedings before this Court, the Court finds that good cause exists to grant the requested relief.

It is therefore **ORDERED THAT**

1. The Debtors are authorized, but not directed, in their sole discretion, to pay and honor certain Unpaid Compensation as and when obligations are due.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay and honor prepetition obligations that have accrued under Benefits programs, including, but not limited to, the Health Plans, Employee Insurance Benefits, and the Other Benefits plans, and to honor, continue, or modify the Benefits programs on a post-petition basis in the ordinary course and in accordance with their prepetition practices.
3. The Debtors are authorized, but not directed, in their sole discretion, to remit all Employee Withholdings to the appropriate third parties, as and when obligations are due.
4. The Debtors are authorized to reimburse the Workforce with respect to all Reimbursable Expenses incurred prior to the Petition Date. In addition, the Debtors are

authorized to make direct payments to third parties owed amounts in connection with such Reimbursable Expenses.

5. The Debtors are authorized to continue honoring the Debtors' Severance Obligations; to pay any outstanding prepetition obligations relating thereto; and to pay Severance Obligations in accordance with the Debtors' past practice to Employees that are terminated post-petition, including severance payments to executive-level Employees, or insiders as defined by Bankruptcy Code Section 101(31), subject to the limitations set forth in Bankruptcy Code Section 503(c).

6. The Debtors are authorized to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Prepetition Employment Obligations and to withhold and pay amounts that are attributable to the deductions, including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether such taxes relate to the period before or after the Petition Date.

7. All applicable banks and other financial institutions are authorized, but not directed, (a) to receive, process, honor, and pay all such checks and electronic payment requests authorized pursuant to this Order, provided that sufficient funds are available in the applicable accounts to make the payments, and (b) to rely on the Debtors' direction to pay amounts in accordance with this Order provided that sufficient funds are available in the applicable accounts to make the payments without any duty of further inquiry and without liability for following the Debtors' instructions. Further, the Debtors are authorized to issue new post-petition checks and initiate new post-petition electronic fund transfers to replace any checks or electronic fund transfers that may be dishonored and to reimburse any related expenses that may be incurred as a result of any bank's failure to honor a prepetition check or electronic fund transfer.

8. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any Employee or other third party.

10. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity, priority, or amount of any Prepetition Employee Obligations allegedly due or owing, and all of the Debtors' rights with respect thereto are hereby reserved.

11. Any party receiving payment from the Debtors are authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.

12. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall (a) be construed as a request for authority to assume any executory contract under Bankruptcy Code section 365; (b) waive, affect, or impair any of the Debtors' rights, claims, or defenses, including, but not limited to, those arising from Bankruptcy Code section 365, other applicable law, and any agreement; (c) grant third-party beneficiary status or bestow any additional rights on any third party; or (d) be otherwise enforceable by any third party.

13. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein.

14. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

15. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Houston, Texas
July __, 2018

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE