

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (THM)

Jointly Administered

Ref. Docket Nos. 264, 341, 569, 614 & 695

**CERTIFICATION OF COUNSEL REGARDING REVISED PROPOSED
SALE ORDER WITH HICKORY POINT BANK & TRUST**

On May 1, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving the Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired*

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/Petersen>.



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Leases, and (IV) Granting Related Relief [Docket No. 264] (the “Bid Procedures Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

On May 21, 2024, the Court entered an order approving the Bid Procedures Motion [Docket No. 341] (the “Bid Procedures Order”) and, among other things, the Bidding Procedures.

On June 26, 2024, in accordance with the Bid Procedures Order, the Debtors filed the *Notice of Stalking Horse Bidder and Proposed Bid Protections* [Docket No. 564] (the “Notice of Stalking Horse Bidder”),² designating Petersen Acquisitions, LLC as the Stalking Horse Bidder for certain of the Assets.³

On June 26, 2024, the Debtors filed a proposed form of order approving the Sale of substantially all of their Assets [Docket No. 569].

On July 3, 2024, the Debtors filed the *Amended Notice of Successful Bidders* [Docket No. 614], pursuant to which the Debtors announced that the Debtors, in consultation with the Consultation Parties, selected four Successful Bidders at the conclusion of the Auction: (i) HP Developers, LLC was selected as the Successful Bidder for three facilities, Courtyard Estates of Canton, Courtyard Estates of Sullivan, and Legacy Estates of Monmouth; (ii) Bank of Farmington was selected as the Successful Bidder for CYE Farmington; (iii) Hickory Point Bank & Trust (“Hickory Point”) was selected for CYE Girard (such Sale, the “Hickory Point Sale”); and (iv) Petersen Acquisitions, LLC, as the Stalking Horse Bidder, was selected as the Successful Bidder for the remainder of the Debtors’ Assets.⁴

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Bid Procedures Motion, the Bid Procedures Order, or the Notice of Stalking Horse Bidder, as applicable.

³ The Court approved the Stalking Horse Bidder Bid Protections a hearing on July 1, 2024 [Docket No. 596].

⁴ The Debtors designated Vantage Senior Care, LLC as the Back-Up Bidder for three facilities.

On July 10, 2024, the Court held a hearing to consider approval of the Sales of certain of the Debtors' Assets to Petersen Acquisitions, LLC and HP Developers, LLC. At the hearing, the Court advised that it would enter an order approving the Hickory Point Sale if the Hickory Point Sale was consensual among all interested parties and the Debtors submitted an order under certification of counsel indicating such consensus.

On July 24, 2024, the Debtors filed the *Notice of Filing of Proposed Sale Order With Hickory Point Bank & Trust* [Docket No. 695], to which a proposed form of order approving the Hickory Point Sale (the "Proposed Hickory Point Sale Order") was attached as Exhibit A. Objections to entry of the Proposed Hickory Point Sale Order were due by 12:00 p.m. (ET) on July 29, 2024 (the "Objection Deadline").

Prior to the Objection Deadline, the Debtors received informal responses from the Official Committee of Unsecured Creditors (the "Committee") and JMB Capital Partners Lending, LLC (the "DIP Lender"). In resolution thereof, the Debtors revised the Proposed Hickory Point Sale Order (the "Revised Proposed Hickory Point Sale Order"), attached hereto as **Exhibit 1**. For the convenience of the Court and all interested parties, a blackline of the Revised Proposed Hickory Point Sale Order marked against the Proposed Hickory Point Sale Order is attached hereto as **Exhibit 2**.

The Debtors have circulated the Revised Proposed Hickory Point Sale Order to the Committee, the DIP Lender, Hickory Point, and other parties in interest (collectively, the "Parties"), and the Parties have advised the Debtors' undersigned counsel that they, respectively, do not object to its entry.

Accordingly, the Debtors respectfully request that the Court enter the Revised Proposed Hickory Point Sale Order at its earliest convenience without further notice or a hearing.

Dated: July 29, 2024
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

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*Counsel for the Debtors and Debtors in
Possession*

EXHIBIT 1

Revised Proposed Hickory Point Sale Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. 695

ORDER APPROVING STIPULATION REGARDING COURTYARD ESTATES OF GIRARD TO RESOLVE DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF (III) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT, AND (IV) GRANTING RELATED RELIEF; AND (B) AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF [D.I. 264]

Upon consideration of the *Stipulation Regarding Courtyard Estates of Girard to Resolve Debtors' Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and*

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Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 264] (the "Stipulation"),² entered into by and among the Debtors, on the one hand, and Hickory Point Bank & Trust, on the other hand, a copy of which is attached hereto as **Exhibit 1**, and having determined that this Court has jurisdiction to enter this Order in accordance with 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and having determined that due and appropriate notice of the relief provided for herein has been given under the circumstances; and this Court having determined that the agreements set forth in the Stipulation are in the best interests of the Debtors, their estates, their creditors and other parties in interest; and good and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Stipulation attached to this Order as **Exhibit 1** is hereby approved and is incorporated herein by reference.
2. The Stipulation and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of this Court, provided that any

² Capitalized terms used but not otherwise defined herein have the meaning given to such terms in the Stipulation.

such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

3. Nothing in this Order shall alter or amend the rights of JMB Capital Partners Lending, LLC (the "DIP Lender") under the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Use of Cash Collateral, and (VII) Granting Related Relief* (the "Final DIP Order") [Docket No. 313]. As provided in the Final DIP Order, the Debtors shall hold all cash proceeds received from a Sale in escrow at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware until all DIP Obligations (as defined in the Final DIP Order) are paid in full, and such proceeds from the Sale shall be subject to the liens and superpriority claims granted in favor of the DIP Lender under the Final DIP Order and may not be distributed or otherwise used until all DIP Obligations are paid in full.

4. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order or the Stipulation.

5. This Order and the Stipulation shall become effective immediately upon entry of this Order notwithstanding anything in the Federal Rules of Bankruptcy Procedure or otherwise to the contrary.

EXHIBIT 1

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. D.I. 264

STIPULATION REGARDING COURTYARD ESTATES OF GIRARD TO RESOLVE DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES AND ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF (III) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT, AND (IV) GRANTING RELATED RELIEF; AND (B) AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED LIABILITIES AND PERMITTED ENCUMBRANCES, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF [D.I. 264]

The above-captioned debtors and debtors in possession (collectively, the "Debtors") and Hickory Point Bank & Trust (as agent, "HPBT" and, together with the Debtors, the "Parties") hereby stipulate and agree as follows:

WHEREAS, on March 20, 2024 (the "Petition Date"), the Debtors each commenced with the United States Bankruptcy Court for the District of Delaware (the "Court") a voluntary case

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(collectively, the “Chapter 11 Cases”) under title 11 of the United States Code (the “Bankruptcy Code”).

WHEREAS, on March 21, 2024, the Debtors’ filed *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Nonconsensual Use of Cash Collateral, (VII) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 38] (the “DIP Motion”) seeking, among other things, authorization of a \$45 million debtor-in-possession financing facility (the “DIP Loan”).

WHEREAS, on May 1, 2024, the Debtors filed the *Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of all or Substantially all of the Debtors’ Assets Free and Clear of all Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice thereof (III) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances Other than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 264] (the “Sale Motion”).

WHEREAS, on May 14, 2024, the Court entered its *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative*

Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Use of Cash Collateral, and (VII) Granting Related Relief [D.I. 313] (the “DIP Order”).

WHEREAS, the Debtors admit, stipulate, acknowledge and agree that Debtor CYE Girard HCO, LLC (the “Debtor”) is party to various loan documents in favor of HPBT (the “Girard Loan”), pursuant to which the Debtor granted HPBT a security interest in certain real and personal property assets related to an assisted living facility located at 1016 West North Street, Girard, IL, known as “Courtyard Estates of Girard” (the “Girard Facility”) and, as of the Petition Date, approximately \$1,824,177.42 is outstanding under the Girard Loan (the “Girard Claim”); *see also* DIP Order, ¶ R.(a).

WHEREAS, the Sale Motion requested approval for the sale of substantially all of the Debtors’ assets, including the Girard Facility.

WHEREAS, on May 21, 2024, the Court entered its *Order (I) Approving (A) Bidding Procedures and (B) Assumption and Assignment Procedures and (II) Granting Related Relief* [D.I. 341] (the “Bid Procedures Order”).

WHEREAS, in accordance with the Bid Procedures Order, HPBT submitted a credit bid with respect to the Girard Facility (the “Bid”).

WHEREAS, on July 2 and July 3, 2024, the Debtors held an auction pursuant to the Bid Procedures Order.

WHEREAS, to resolve the Sale Motion, after extensive arms’ length negotiations, the Parties reached an agreement regarding the Bid and the disposition of the Girard Facility, which terms (including, without limitation, the implementation of a credit bid by way of a receivership followed by

a deed in form agreed to by Plaintiff (the “Deed”)² in favor of HPBT on account of the Girard Claim and a cash payment of \$209,346 (the “Cash Payment” and, collectively, with the Deed, the “Purchase Price”) are memorialized in this stipulation (this “Stipulation”).

NOW THEREFORE, in consideration of the recitals and agreements contained herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Relief from the Automatic Stay. Immediately upon entry of the order approving this Stipulation (the “Order”), the automatic stay under section 362 of the Bankruptcy Code shall be lifted to allow HPBT to commence a proceeding in Illinois on an expedited basis with the consent of the Debtor, in a form attached hereto as Exhibit A (the “Receivership Pleadings”), seeking the entry of the order substantially in the form attached hereto as Exhibit B (the “Receivership Order”) and the appointment of a receiver (the “Receiver”) with respect to the Girard Facility and its operations. Debtor hereby agrees to waiver of service of process with respect to such proceeding, and to have such a proceeding heard on an expedited basis. For the avoidance of doubt, upon entry of this Order, and solely with respect to the Girard Facility, the Debtor hereby consents and agrees to the appointment of the Receiver and entry of the Receivership Order.

2. Operations. Solely as it relates to the Girard Facility, upon the earlier of (i) entry of the Receivership Order; or (ii) twenty-one days (21) days after the entry of this Order (the “Closing Date”), (i) in accordance with Paragraph 6 below, all expenses related to the Girard Facility shall be the sole obligation of, and funded by, HPBT and (ii) the management and operation of the Girard Facility shall be the sole obligation of HPBT or the Receiver, as applicable. Notwithstanding anything in the

² The Deed shall under no circumstances be construed or deemed a deed in lieu of foreclosure under 735 ILCS 5/15-1401 or pursuant to any statute, judicial, administrative or judicial determination and the Deed shall contain language to such effect.

Receivership Order to the contrary, HPBT (and not the Debtors) is solely responsible for any obligations otherwise attendant to the Debtors in a receivership scenario (including, without limitation, any costs or expenses of the Receivership, provision of insurance, and related items). Such operations and receivership shall remain in place until the earlier of (a) a closed sale of the Girard Facility by HPBT to a third party or (b) October 1, 2024, at which time HPBT (or its designee) will be deemed to have accepted title from the Debtor (and the Debtor will be deemed to have authorized the transfer of such title) issued to HPBT (or its designee) for the real and personal property related to the Girard Facility, which title issued to HPBT (or its designee) shall have all force and effect as if approved by this Court pursuant to this Stipulation and the Order. With respect to subparagraph (b) herein, upon the failure to close a sale of the Girard Facility by HPBT to a third party by October 1, 2024, HPBT (or its designee) will be deemed to have accepted title from the Debtor (and the Debtor will be deemed to have authorized the transfer of such title) issued to HPBT (or its designee) to the real and personal property related to the Girard Facility, which title issued to HPBT (or its designee) shall have all force and effect as if approved by this Court pursuant to this Stipulation and the Order.

3. Indemnification. HPBT shall indemnify, defend, and hold harmless the Debtor from and against, and shall reimburse the Debtor for, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and expenses of counsel for the Debtor) that may be imposed on, incurred by, or asserted against the Debtor in any manner related to or arising out of operations of the Girard Facility during the period beginning on the Closing Date and ending on the date that the Girard Facility is transferred to HPBT (or its designee) or a third party in accordance with applicable law.

4. Reporting. Following entry of the Receivership Order, the Debtor's reporting

obligations in the Chapter 11 Cases shall not include reporting with respect to the Girard Facility.

5. No Affirmative Recovery. Notwithstanding anything to the contrary in this Stipulation or the Order, HPBT hereby waives any right to affirmative monetary recovery from the Debtors or the Debtors' estates (including from the Excluded Assets (as defined below)) on the Girard Claim (but reserves the right to assert such claim defensively as a setoff) and, instead, HPBT's recovery shall be from the proceeds with respect to the ultimate sale of the Girard Facility by the Receiver (and HPBT's lien and claim shall be preserved for that purpose).

6. Apportionment. All of the revenues and expenses related to the Girard Facility shall be apportioned based upon the period for which each arose or accrued on a per diem basis (the "Apportionment") between the Debtors on the one hand and HPBT on the other hand, as of the Closing Date. Specifically, entitlement to all revenues generated or accrued (and associated collections) and obligation for all expenses incurred or accrued shall apply to and be maintained by the Debtors on a per diem basis for the period prior to the Closing Date, and by HPBT on a per diem basis for the period after the Closing Date. For the avoidance of doubt, (a) neither the Receiver nor HPBT shall have any obligation to any party with respect to the Girard Facility prior to the Closing Date, including to any of the Debtors' creditors, or with respect to any real estate taxes that are due and payable after the Closing Date but relating to a time period prior to the Closing Date (which shall be paid by or on behalf of Debtors, including payment of 2023 property taxes on or prior to the Closing Date) and (b) other than the Apportionment or other obligations set forth herein, the Debtors shall have no obligation to any party with respect to the Girard Facility after the Closing Date. Furthermore, HPBT shall have a right to any deposits, prepayments or collections received by the Debtors with respect to the Girard Facility relating to the period after the Closing Date.

7. Cash Payment. Upon entry of an Order approving this Stipulation, HPBT hereby

agrees to pay to the Debtor in immediately available funds TWO HUNDRED NINE THOUSAND THREE HUNDRED FORTY-SIX DOLLARS (\$209,346), to be allocated as follows: (A) \$39,669 representing the Walker & Dunlop commission (2% of the Purchase Price); (B) \$7,200 representing the breakup fee (3% of the allocation to the Girard Facility as set by the stalking horse); and (C) \$162,477 representing HPBT's allocated share of the direct and indirect expenses of the Debtors with respect to the DIP Loan, which amount shall be escrowed and shall be used to pay any and all administrative expenses relating to the Girard Facility (including property taxes) and to the extent any funds remain after payment of such administrative expenses, such funds shall remain escrowed pending further order of this Court. Following the provision of the Cash Payment, HPBT shall have no further liability with respect to the DIP Loan and the Defendant and Debtors shall provide, or cause to be provided, to HPBT a release or UCC termination statement of the Financing Statement filed with the Illinois Secretary of State by JMB Capital Partners, LLC (#030591232).

8. Excluded Assets. Notwithstanding anything to the contrary set forth in this Stipulation, the Order, or the Receivership Order, the assets of the Debtor set forth on Exhibit C hereto (the "Excluded Assets") shall not (i) be subject to the Receivership or otherwise transferred to HPBT (or its designee) or a third party or (ii) used to satisfy the Girard Claim and shall remain property of the Debtor and its estate.

9. Access to Records. HPBT, the Receiver, and any third party that acquires the Girard Facility shall provide to the Debtors access to (a) their respective personnel who have custody of the Debtors' books and records for periods prior to the Closing Date and (b) all books and records for periods prior to the transfer of the Girard Facility to HPBT (or its designee) or a third party and shall preserve such books and records or deliver copies of such books and records to the Debtors, subject to compliance with applicable law, for purposes of (i) preparing any tax returns, (ii) enforcing rights

or obligations of Debtor under this Stipulation, (iii) complying with the requirements of, or responding to inquiries by, any governmental authority, (iv) investigating and defending malpractice, employee or other claims, (v) filing or defending cost reports and tax returns, (vi) filing exceptions to the Medicare routine cost limits, or (vi) administering the Chapter 11 Cases. In addition, the Committee, any chapter 7 trustee, and any trustee appointed under a confirmed plan of reorganization or liquidation in the Chapter 11 Cases (the “Plan Trustee”) shall have the same rights as the Debtors to access personnel and books and records as set forth in the previous sentence. The Committee, any Plan Trustee, and any chapter 7 trustee shall be given at least sixty (60) days’ notice prior to destruction of any of the Debtors’ books and records.

10. Final Resolution. This Stipulation shall constitute the final resolution of the Sale Motion and the Bid. Therefore, the Sale Motion is hereby resolved with respect to the Girard Facility upon entry of the Order.

11. Notice. Any notice, consent, approval or consultation shall be provided, sought, or obtained for the respective Party by and through their undersigned counsel.

12. Miscellaneous.

a. The undersigned who executes this Stipulation by or on behalf of each respective party represents and warrants that they have been duly authorized and empowered to execute and deliver this Stipulation on behalf of such party.

b. This Stipulation may be executed in counterparts and each such counterpart together with the others shall constitute one and the same instrument.

c. The Stipulation and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that

any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

d. The Parties are hereby authorized to take such further actions as are necessary effectuate this Stipulation. For the avoidance of doubt, in the event HPBT (or its designee) accepts the Deed from the Debtor to the Girard Facility, the Parties shall cooperate to facilitate the conveyance, preparation, execution and recording of deeds and the execution of all related property transfer documents.

13. Jurisdiction. This Stipulation shall remain subject to the jurisdiction of the Court with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Stipulation, including the indemnification provision set forth in Paragraph 3.

14. Immediate Effect. This Stipulation and the Order shall become effective immediately upon entry of the order by the Court, notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise.

[Remainder of page intentionally left blank]

Dated: July 24, 2024

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

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*Counsel to Hickory Point Bank & Trust, as
agent*

/s/ Michael Flanagan

Michael Flanagan, in his capacity as
*proposed Receiver of the Courtyard Estates
of Girard*

EXHIBIT A

Receivership Pleadings

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

HICKORY POINT BANK & TRUST,

Plaintiff,

v.

CYE GIRARD HCO, LLC,

Defendant.

Case No. 2024-CH-

**VERIFIED COMPLAINT FOR APPOINTMENT OF RECEIVER
AND FOR OTHER RELIEF**

Plaintiff Hickory Point Bank & Trust (“HPBT”), by and through its undersigned counsel, Hart, Southworth & Witsman, files this Verified Complaint for Appointment of a Receiver and Other Relief pursuant to 735 ILCS § 5/15-1701 *et seq.*, against Defendant CYE Girard HCO, LLC (“Debtor”) and states as follows in support thereof:

NATURE OF THE CASE

1. This is an action for breach of contract, appointment of a Receiver over the affected property pursuant to the provisions of a Mortgage and pursuant to the stipulation and agreement of Defendant, and for enforcement of security interests.
2. Debtor owns an assisted living facility known as Courtyard Estates of Girard in Girard, Illinois in Macoupin County (the “Facility”).
3. Debtor is in default of its obligations to HPBT under a \$2,000,000.00 commercial loan and has failed to cure the defaults, instead filing a bankruptcy petition. Debtor pledged all of its assets, including real property located at 1016 West North Street, Girard, Illinois to HPBT as security for the loan.

PARTIES

4. HPBT is an Illinois banking corporation with a principal address at 225 North Water Street, Decatur, Illinois 62523.

5. Debtor is an Illinois corporation with a principal address in Peoria, Illinois, who owns the Property (as defined below) and operates the Facility.

JURISDICTION AND VENUE

6. This Court has original jurisdiction to hear this case pursuant to 735 ILCS §§ 5/15-1701 – 1704 and pursuant to the original jurisdiction to hear all justiciable matters pursuant to article VI of the Illinois Constitution.

7. This Court has personal jurisdiction over Defendant pursuant to 735 ILCS § 5/2-209 because Defendant has conducted, and continues to conduct, ongoing business operations, and owns real and/or personal property located, within the State of Illinois.

8. Venue in Macoupin County is appropriate pursuant to 735 ILCS § 5/2-102 because the Property is located in Macoupin County and Defendant is conducting business in Macoupin County.

FACTUAL BACKGROUND

A. The Loan

9. On August 2, 2021, pursuant to a Promissory Note (“Note”), HPBT made a loan to Debtor in the original principal amount of \$2,000,000.00 (the “Loan”). A true and correct copy of the Note is attached hereto as **Exhibit A**.

10. Pursuant to the terms of the Note and Loan, Debtor was obligated to make monthly payments to HPBT of \$12,020.91 starting on September 2, 2021 and continuing until maturity with balance due at maturity. *See* Exhibit A.

11. In connection with the Loan, Debtor provided an Assignment of Rents dated August 2, 2021 and a Mortgage dated August 2, 2021 to HPBT granting a mortgage on the Property and security interest in assets related thereto (the “Mortgage”) to secure the Loan. A true and correct copy of the Mortgage is attached hereto as **Exhibit B** and a true and correct copy of the Assignment of Rents is attached hereto as **Exhibit C**.

12. As set forth in the Mortgage, Debtor’s obligations and performance under the Loan Agreement are secured by a first priority lien in favor and for the benefit of HPBT, on the real property located at 1016 West North Street, Girard, Illinois 62640 together with all improvements erected on the property and all easements, appurtenances and fixtures a part of the property (collectively, the “Property”).

13. Pursuant to the Mortgage, HPBT is entitled to the appointment of a receiver. Specifically, the Mortgage provides that upon default and failure of Debtor to make any payment when due under the Mortgage and notice, HPBT shall have the right to declare the entire indebtedness secured by the Mortgage to be immediately due and payable with recovery of all expenses, including but not limited to reasonable attorneys’ fees and costs. The Mortgage further provides that upon the occurrence of an event of default: “Lender shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the rents of the Property . . .” **See Exhibit B.**

B. Defaults

14. Debtor defaulted under the terms of the Loan by failing to pay the required monthly payments, starting in April, 2024.

C. Amounts Due and Owing under the Loan Agreement

15. As of July 22, 2024, \$1,860,777.24 was due and payable under the Loan, which amount includes \$1,820,968.84 in principal due under the Note, \$39,808.40 in interest due under the Note, which interest will continue to accrue at \$295.91 per day, and which is exclusive of fees, collection costs, reasonable attorneys' fees, and other charges payable under the Loan Agreement that continue to accrue.

16. HPBT brings this action to recover its damages as a result of Debtor's breaches of the Loan Agreement, and to appoint a receiver to protect the Property, for the benefit of creditors and residents of the Facility.

D. Lifting of the Automatic Stay and Stipulation to Appointment of Receiver

17. Debtor filed a bankruptcy petition under title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware on March 20, 2024. *In re SC Healthcare Holding, LLC*, Case No. 24010443 (TMH).

18. On _____, 2024, the Bankruptcy Court entered an Order lifting the automatic stay under section 362 of the Bankruptcy Code to allow HPBT to commence this proceeding on an expedited basis to seek the appointment of a receiver with respect to the Facility and its operations. Debtor agreed to waive service of process with respect to this proceeding, and to have the proceeding heard on an expedited basis, and Debtor consented and agreed to the appointment of a receiver and entry of the agreed Order Appointing Receiver. *See Exhibit D* (Bankruptcy Court Order approving Stipulation and lifting stay); **Exhibit E** (Stipulation regarding Courtyard Estates of Girard); and **Exhibit F** (proposed agreed Order).

FIRST CAUSE OF ACTION
BREACH OF CONTRACT (NOTE AND LOAN)

19. HPBT repeats and incorporates the allegations set forth in paragraphs 1 through 18 above as if fully set forth herein.

20. The Loan and Note are all enforceable agreements supported by valid consideration pursuant to which Debtor is obligated to pay certain specified amounts and perform certain obligations owed to HPBT.

21. HPBT has performed all of its obligations under the Loan and Note.

22. HPBT is the holder of the Note.

23. Debtor failed to timely pay all amounts owed under the Loan and Note and otherwise perform its obligations under and pursuant to the Loan in breach of these agreements.

24. As of July 22, 2024, \$1,860,777.24 was due and payable under the Loan Agreement, which amount includes \$1,820,968.84 in principal due under the Note, \$39,808.40 in interest due under the Note, which interest will continue to accrue at \$295.91 per day, and which is exclusive of fees, collection costs, reasonable attorneys' fees, and other charges payable under the Loan and Note that continue to accrue.

25. As a result of Debtor's breaches of the Loan and Note, HPBT has suffered significant actual damages, which damages are increasing and ongoing, and has incurred and continue to incur, significant costs, fees and expenses, including attorneys' fees, which HPBT is entitled to recover from Debtor and from Debtor's property.

SECOND CAUSE OF ACTION
SPECIFIC PERFORMANCE OF THE MORTGAGE
APPOINTMENT OF A RECEIVER OVER FACILITY

26. HPBT repeats and incorporates the allegations set forth in paragraphs 1 through 18 above as if fully set forth herein.

27. The Mortgage provides that upon a default in payment, HPBT shall be entitled to have a receiver appointed to take possession of and manage the Property and to collect the rents of the Property.

28. A payment default has occurred under the Loan and the Mortgage.

29. Debtor has stipulated and agreed to appointment of a receiver over the Facility. **See Exhibit E.**

30. HPBT is further entitled to appointment of a receiver to preserve the Property for the benefit of creditors and residents pursuant to Illinois law including 735 ILCS §§ 5/15-1701 through 1704.

REQUEST FOR RELIEF

WHEREFORE, HPBT respectfully requests judgment be entered in its favor and against Defendant, and that this Court grant HPBT the following relief:

(a) enter judgment on the First Cause of Action in HPBT's favor and against Debtor in the amount of at least \$1,860,777.24, plus pre-judgment at the additional per diem rate through the date of Judgment, and post-judgment interest, costs, expenses, attorneys' fees and all other amounts to which HPBT is entitled;

(b) enter judgment on the Second Cause of Action in HPBT's favor and enter an Order appointing Michael F. Flanagan as a receiver over the Facility; and;

(c) grant HPBT such other relief as this Court deems just and proper.

Date: _____, 2024

HICKORY POINT BANK & TRUST, Plaintiff

By: _____
One of Its Attorneys

Samuel J. Witsman (ARDC #6193744)
Alexander S. Prillaman (ARDC #6339535)
Hart, Southworth & Witsman
Suite 501, One North Old State Capitol Plaza
Springfield, Illinois 62701
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VERIFICATION

I, Jeffrey L. Raes, as an authorized signatory of Hickory Point Bank & Trust certify that I have read the foregoing Complaint, the statements contained herein are true and based on my personal knowledge and my review of the relevant documents of Hickory Point Bank & Trust, except as to those statements stated upon information and belief. With respect to statements based upon my information and belief, I believe those statements to be true based on information available to me and relevant documents of Hickory Point Bank & Trust.

Signed under the pains and penalties of perjury this ____ day of _____, 2024.

_____, _____

State of Illinois
Sangamon County

On this ____ day of _____, 2024 before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the attached document, and acknowledged to me that he signed it voluntarily and for its stated purpose.

_____, Notary Public

My Commission Expires: _____

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

HICKORY POINT BANK & TRUST,

Plaintiff,

v.

CYE GIRARD HCO, LLC,

Defendant.

Case No. 2024-CH-

**EMERGENCY MOTION OF PLAINTIFF HICKORY POINT BANK & TRUST FOR
IMMEDIATE APPOINTMENT OF RECEIVER**

Plaintiff Hickory Point Bank & Trust (“HPBT”) moves for an Order appointing Michael F. Flanagan as receiver (“Receiver”) over the Courtyard Estates of Girard assisted living facility (“Facility”) owned and operated by Defendant CYE Girard HCO, LLC (“Debtor”) because Debtor is in default of its obligations to HPBT. HPBT is entitled to appointment of a receiver pursuant to the terms of the Mortgage between it and Debtor, and Debtor stipulated to appointment of a receiver in the United States Bankruptcy Court for the District of Delaware. Receiver’s appointment is necessary to provide a structured process for the management of the Facility, in order to safeguard the health and welfare of the Facility’s residents and ultimately to preserve assets and to prepare for sale of the Property to benefit creditors.

HPBT made a \$2,000,000 Loan to Debtor in 2021 secured by the Property. Debtor has defaulted on the Loan by failing to make the required monthly payments since April, 2024. As of July 22, 2024, Debtor is currently obligated to HPBT under the Loan in the total amount of

\$1,860,777.24 which includes the principal amount of \$1,820,968.84, with accrued unpaid interest of \$39,808.40 and ongoing interest accruing at the daily rate of \$295.91.

On March 20, 2024, Debtor and other related corporations and LLCs filed a bankruptcy petition under title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. *In re SC Healthcare Holding, LLC*, Case No. 24010443 (TMH). On July 10, 2024, the Bankruptcy Court entered an Order lifting the automatic stay under section 362 of the Bankruptcy Code to allow HPBT to commence this proceeding on an expedited basis to seek the appointment of a receiver with respect to the Facility and its operations. Debtor agreed to waive service of process with respect to this proceeding, and to have the proceeding heard on an expedited basis, and Debtor consented and agreed to the appointment of a receiver and entry of the agreed Order Appointing Receiver. *See* Exhibits D and E to the Verified Complaint.

Debtor is not a manufacturer of widgets or other business that can be run on low cash flows – Debtor is responsible for maintaining the health and safety of humans in its care and its operations must be responsibly managed and preserved. HPBT submits that Debtor has failed to uphold these obligations and a receiver is necessary.

Pursuant to loan documents with HPBT, HPBT is entitled to the appointment of a receiver upon default of the Mortgage. Moreover, despite Debtor's dispute as to any failure to uphold obligations to maintain health and safety of their residents, Debtor consents to the appointment of a receiver and waives service of process and further notice, as set forth in the Stipulation filed and approved in the Bankruptcy Court.

Cause to appoint a receiver also exists under 735 ILCS §§ 5/15-1701 through 5/15-1704 because Debtor is in default of its obligations to HPBT and has failed to cure the default. The

mortgaged property is in danger of being lost, removed, materially injured, diminished in value, or squandered due to Debtor's lack of funds.

HPBT's proposed receiver Michael F. Flanagan has over thirty five (35) years of experience as an attorney (who is currently licensed to practice in the States of Missouri, Kansas, Illinois and Nebraska) working with distressed long term care facilities, has served as a receiver, counsel or consultant for more than 275 skilled nursing and assisted living facilities in more than thirty (30) states and is fully qualified to step in and stabilize the situation created by Debtor. In fact, Mr. Flanagan has been appointed as receiver for 19 other Petersen facilities, pursuant to Orders entered in two cases pending in the United States District Court for the Northern District of Illinois. *X-Caliber Funding LLC v. El Paso HHC, LLC*, Case No. 3:24-cv-50034 (N.D. Ill. Jan. 25, 2024) (Order attached); *Capital Funding, LLC v. Batavia, LLC*, Case No. 1:24-cv-888 (N.D. Ill. Feb. 8, 2024) (Order attached).

Accordingly, as detailed in the Verified Complaint for Appointment of Receiver and for Other Relief filed herewith and the Memorandum in Support of this Motion filed contemporaneously, HPBT requests the immediate appointment of a receiver over Debtor's assets with the authority to take control of and manage the Facility; to collect rents, accounts receivable and moneys owed to Debtor; and to marshal Debtor's assets to pay its debts.¹

¹ All undefined capitalized terms used herein shall have the meanings given to them in the Verified Complaint for Appointment of Receiver and For Other Relief unless otherwise so stated.

Dated: _____, 2024

HICKORY POINT BANK & TRUST, Plaintiff

By: _____
One of Its Attorneys

Samuel J. Witsman (ARDC #6193744)
Alexander S. Prillaman (ARDC #6339535)
Hart, Southworth & Witsman
Suite 501, One North Old State Capitol Plaza
Springfield, Illinois 62701
Telephone: (217) 753-0055
switsman@hswnet.com
aprillaman@hswnet.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Emergency Motion for Immediate Appointment of Receiver was filed electronically and was Emailed to the counsel of record for the Debtor in the Bankruptcy Case pending in the Bankruptcy Court for the District of Delaware, *In re SC Healthcare Holding, LLC*, Case No. 24010443 (TMH), on _____, 2024.

/s/ _____
Attorney for Hickory Point Bank & Trust

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS**

HICKORY POINT BANK & TRUST,

Plaintiff,

v.

CYE GIRARD HCO, LLC,

Defendant.

Case No. 2024-CH-

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION OF PLAINTIFF
HICKORY POINT BANK & TRUST FOR IMMEDIATE APPOINTMENT OF
RECEIVER**

Defendant CYE Girard HCO, LLC (the “Debtor”) owns and operates the Courtyard Estates of Girard, an assisted living facility in Macoupin County (the “Facility”). Debtor is in default on the \$2,000,000 Loan and Note with Plaintiff Hickory Point Bank & Trust (“HPBT”) and is unable to pay its bills. Debtor has stipulated to the lifting of the automatic stay in Bankruptcy Court and to the appointment of a receiver for the Facility and to the entry of the agreed order to this effect.

As explained in HPBT’s Verified Complaint for Appointment of Receiver and For Other Relief filed herewith, Debtor has defaulted on a commercial loan. As a result of the default, HPBT seeks the appointment of receiver Michael F. Flanagan to take control of and operate the Facility.

Receiver’s appointment is necessary to provide a structured process for the management of the Facility to benefit creditors and the residents of the Facility.

I. Factual Background.

A. The Loan

On August 2, 2021, pursuant to a Promissory Note (“Note”), HPBT made a loan to Debtor in the original principal amount of \$2,000,000.00 (the “Loan”). A true and correct copy of the Note is attached to the Verified Complaint as **Exhibit A**. Pursuant to the terms of the Note and Loan, Debtor was obligated to make monthly payments to HPBT of \$12,020.91 starting on September 2, 2021 and continuing until maturity with balance due at maturity. See Exhibit A.

In connection with the Loan, Debtor provided an Assignment of Rents dated August 2, 2021 and a Mortgage dated August 2, 2021 to HPBT granting a mortgage on the Property and security interest in assets related thereto (the “Mortgage”) to secure the Loan. A true and correct copy of the Mortgage is attached to the Verified Complaint as **Exhibit B** and a true and correct copy of the Assignment of Rents is attached to the Verified Complaint as **See Exhibit C**.

As set forth in the Mortgage, Debtor’s obligations and performance under the Loan Agreement are secured by a first priority lien in favor and for the benefit of HPBT, on the real property located at 1016 West North Street, Girard, Illinois 62640 together with all improvements erected on the property and all easements, appurtenances and fixtures a part of the property (collectively, the “Property”).

Pursuant to the Mortgage, HPBT is entitled to the appointment of a receiver. Specifically, the Mortgage provides that upon default and failure of Debtor to make any payment when due under the Mortgage and notice, HPBT shall have the right to declare the entire indebtedness secured by the Mortgage to be immediately due and payable with recovery of all expenses, including but not limited to reasonable attorneys’ fees and costs. The Mortgage further provides that upon the occurrence of an event of default: “Lender shall have the right to be placed as

mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the rents of the Property . . .” **See Exhibit B.**

B. Defaults

Debtor has defaulted on the Loan by failing to make the required monthly payments since April, 2024. As of July 22, 2024, Debtor is currently obligated to HPBT under the Loan in the total amount of \$1,860,777.24 which includes the principal amount of \$1,820,968.84, with accrued unpaid interest of \$39,808.40 and ongoing interest accruing at the daily rate of \$295.91.

II. Legal Standard

The Illinois Mortgage Foreclosure Law (“IMFL”) “employs mandatory language and drastically curtails a trial court’s discretion in deciding motions to appoint a receiver.” *Centerpoint Props. Trust v. Olde Prairie Block Owner, LLC*, 923 N.E. 2d 878, 882 (1st Dist. 2010) (citing *Mellon Bank. N.A. v. Midwest Bank & Trust Co.*, 638 N.E. 2d 640, 645 (1st Dist. 1993)). “The word ‘shall’ as used in [IMFL] means mandatory and not permissive.” 735 ILCS § 5/15-1105(b).

IMFL section 15-1701(b)(2) provides that “if (i) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the mortgagee shall upon request be placed in possession of the real estate, except that if the mortgagor shall object and show good cause, the court shall allow the mortgagor to remain in possession.” 735 ILCS § 5/15-1701(b)(2).

IMFL section 15-1702(a) provides that “[w]henver a mortgagee entitled to possession so requests, the court shall appoint a receiver.” 735 ILCS § 5/15-1702(a). Further, [w]henver a

receiver is to be appointed, the mortgagee shall be entitled to designate the receiver.” 735 ILCS § 5/15-1702(b).

IMFL section 15-1704(a) further provides that “upon request of any party and a showing of good cause, the court shall appoint a receiver for the mortgaged real estate.” 735 ILCS § 5/15-1704(a).

A receiver appointed under IMFL “shall have possession of the mortgaged real estate and other property subject to the mortgage during the foreclosure, shall have full power and authority to operate, manage and conserve such property, and shall have all the usual powers of receivers in like cases.” 735 ILCS§ 5/15-1704(b).

Under IMFL section 15-1704(b), a receiver shall have the power and authority to:

- (1) secure tenants and execute leases for the real estate, the duration and terms of which are reasonable and customary for the type of use involved, and such leases shall have the same priority as if made by the owner of the real estate; but, unless approved by the Court, the receiver shall not execute oil, gas or other mineral leases, or (even if otherwise allowed by law) leases extending beyond the time of the receiver’s possession; provided, however, with respect to residential real estate leased by the receiver, nothing in this Section shall affect the legal rights of any lessee with respect to the safety and habitability of the residential real estate;
- (2) collect the rents, issues and profits from the mortgaged real estate;
- (3) insure the mortgaged real estate against loss by fire or other casualty;
- (4) employ counsel, custodians, janitors and other help; and
- (5) pay taxes which may have been or may be levied against the mortgaged real estate.

735 ILCS § 5/15-1704.

Under section 1701(b)(2), evidence showing that the mortgagor is in default “establishes a reasonable probability of success in a mortgage foreclosure action.” *Centerpoint Props. Trust*,

923 N.E. 2d at 888-90. In deciding a receiver motion, a court need not hold an evidentiary hearing but can rule on the papers. *See Centerpoint Props. Trust*, 923 N.E. 2d at 888-90.

III. Argument.

HPBT has satisfied the two requirements entitling it to possession of the Property. First, the Mortgage entitles HPBT to have a receiver appointed to take possession of and manage the Property and to collect the rents of the Property due and owing after the date of entry of the attached proposed Order Appointing Receiver. *See e.g. Centerpoint Props. Trust*, 923 N.E. 2d at 888-90 (finding authorization by terms of mortgage to take possession when mortgage provided for appointment of receiver upon the occurrence of an event of default).

Second, there is a reasonable probability that HPBT will prevail on its claim of breach of the loan because Debtor is in default on the loan. *See id.* (“a proven default establishes a reasonably probability of success in a mortgage foreclosure action”).

Under IMFL section 15-1702(a), HPBT is entitled to appointment of a receiver upon request because HPBT is entitled to possession of the Property pursuant to section 15-1701(b)(2). HPBT is also entitled to designate the receiver pursuant to section 15-1702(b).

In addition, on _____, 2024, the Bankruptcy Court entered an order lifting the automatic stay under section 362 of the Bankruptcy Code to allow HPBT to commence this proceeding on an expedited basis to seek the appointment of a receiver with respect to the Facility and its operations. Debtor agreed to waive service of process with respect to this proceeding, and to have the proceeding heard on an expedited basis, and Debtor consented and agreed to the

appointment of a receiver and entry of the agreed Order Appointing Receiver. *See* Exhibits D and E to the Verified Complaint.

HPBT respectfully recommends that Michael F. Flanagan be appointed as the receiver in this matter. Mr. Flanagan has significant experience in acting as a receiver in such matters. His credentials and experience are described in the resume attached as an Exhibit to this Memorandum. HPBT further requests that Mr. Flanagan, in his capacity as receiver, be authorized to employ Tuter Senior Living & Health Care, L.L.C. or its affiliated companies, including Gardant Management Solutions, Inc. (the “Manager”), to provide management services for the Facility. An overview of the credentials and experience of the Manager is attached hereto as an Exhibit.

HPBT’s proposed receiver Michael F. Flanagan has over thirty five (35) years of experience as an attorney (who is currently licensed to practice in the States of Missouri, Kansas, Illinois and Nebraska) working with distressed long term care facilities, has served as a receiver, counsel or consultant for more than 275 skilled nursing and assisted living facilities in more than thirty (30) states and is fully qualified to step in and stabilize the situation created by Debtor. In fact, Mr. Flanagan has been appointed as receiver for 19 other Petersen facilities, pursuant to orders entered in three cases pending in the United States District Court for the Northern and Central District of Illinois. *X-Caliber Funding LLC v. El Paso HHC, LLC, et al.*, Case No. 3:24-cv-50034 (N.D. Ill. Jan. 25, 2024) (Order attached); *Capital Funding, LLC v. Batavia, LLC, et al.*, Case No. 1:24-cv-888 (N.D. Ill. Feb. 8, 2024) (Order attached); *X-Caliber Capital LLC v. Charleston HCC, LLC, et al.*, Case No. 2:24-cv-02034 (C.D. Ill. Feb. 13, 2024) (Order attached).

HPBT asks that the Court empower the receiver to take such actions as the receiver deems necessary and prudent in order to (i) take possession of, hold, manage, and control the Property during the pendency of this action; (ii) protect the Property so that there will be no excessive

depreciation or devaluation of the Property during the pendency of this action; (iii) manage the affairs of Debtor as it relates to the Facility, as and to the extent set forth in the attached proposed Order Appointing Receiver; (iv) marshal Debtor's assets as and to the extent set forth in the attached proposed Order Appointing Receiver to pay its debts and to preserve the Property; (v) as and to the extent set forth in the attached proposed Order Appointing Receiver, lease and collect the rents, income, and profits from the Property, if any, and apply the same toward the payment of expenses associated with the management and protection of the Property and toward the payment of judgments rendered herein in favor of HPBT; (vi) employ any professionals required to complete the duties of the receiver pursuant to appropriate application being made and approved by the Court; (vii) submit applications and reports subject to further order(s) and rules of the Court; and (viii) do such other things as this Court may from time to time hereafter authorize by subsequent written order.

IV. Conclusion.

For the foregoing reasons, HPBT requests that this Court appoint Michael F. Flanagan as receiver to take control of and manage the Property and Facility, collect rents and sale proceeds related to the Property and Facility, manage the affairs of the Facility, and marshal Debtor's assets related to this Property and Facility to pay its debts and to preserve the Property, as and to the extent set forth in the attached proposed Order Appointing Receiver.

Dated: _____, 2024

HICKORY POINT BANK & TRUST, Plaintiff

By: _____
One of Its Attorneys

Samuel J. Witsman (ARDC #6193744)
Alexander S. Prillaman (ARDC #6339535)
Hart, Southworth & Witsman
Suite 501, One North Old State Capitol Plaza
Springfield, Illinois 62701
Telephone: (217) 753-0055
switsman@hswnet.com
aprillaman@hswnet.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum in Support of Emergency Motion for Immediate Appointment of Receiver was electronically and was Emailed to the counsel of record for the Defendant in the Bankruptcy Case pending in the Bankruptcy Court for the District of Delaware, *In re SC Healthcare Holding, LLC*, Case No. 24010443 (TMH), on _____, 2024.

/s/ Samuel J. Witsman
Attorney for Hickory Point Bank & Trust

EXHIBIT 2

Blackline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. ~~69~~695

**ORDER APPROVING STIPULATION REGARDING
COURTYARD ESTATES OF GIRARD TO RESOLVE DEBTORS'
MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING A
HEARING ON THE APPROVAL OF THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND
CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED
LIABILITIES AND PERMITTED ENCUMBRANCES, AND THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING
CERTAIN BIDDING PROCEDURES AND ASSUMPTION AND
ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER
OF NOTICE THEREOF (III) AUTHORIZING THE DEBTORS TO
ENTER INTO THE STALKING HORSE PURCHASE
AGREEMENT, AND (IV) GRANTING RELATED RELIEF; AND
(B) AN ORDER (I) APPROVING ASSET PURCHASE
AGREEMENT, (II) AUTHORIZING THE SALE OF ALL OR
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND
CLEAR OF ALL ENCUMBRANCES OTHER THAN ASSUMED
LIABILITIES AND PERMITTED ENCUMBRANCES,
(III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES, AND (IV) GRANTING RELATED RELIEF [D.I. 264]**

Upon consideration of the *Stipulation Regarding Courtyard*

Estates of Girard to Resolve Debtors' Motion for Entry of (A) an Order (I)

¹ The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, whose cases are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information is available on a website of the Debtors' claims and noticing agent at <http://www.kccllc.net/Petersen>.

*Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof (III) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 264] (the "Stipulation"),² entered into by and among the Debtors, on the one hand, and Hickory Point Bank & Trust, on the other hand, a copy of which is attached hereto as **Exhibit 1**, and having determined that this Court has jurisdiction to enter this Order in accordance with 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and having determined that due and appropriate notice of the relief provided for herein has been given under*

²

Capitalized terms used but not otherwise defined herein have the meaning given to such terms in the Stipulation.

the circumstances; and this Court having determined that the agreements set forth in the Stipulation are in the best interests of the Debtors, their estates, their creditors and other parties in interest; and good and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Stipulation attached to this Order as **Exhibit 1** is hereby approved and is incorporated herein by reference.

2. The Stipulation and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

3. Nothing in this Order shall alter or amend the rights of JMB Capital Partners Lending, LLC (the "DIP Lender") under the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay; (V) Authorizing the Debtors to Enter Into Agreements with JMB Capital Partners Lending, LLC, (VI) Authorizing Use of Cash Collateral, and (VII) Granting Related Relief (the "Final DIP Order") [Docket No. 313]. As provided in the Final DIP Order, the Debtors shall hold all cash proceeds received from a Sale in escrow at a bank that has executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware until all DIP Obligations (as defined in the Final DIP Order) are paid in full, and such proceeds from the Sale shall be subject to the liens and superpriority

claims granted in favor of the DIP Lender under the Final DIP Order and may not be distributed or otherwise used until all DIP Obligations are paid in full.

4. ~~3.~~ This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order or the Stipulation.

5. ~~4.~~ This Order and the Stipulation shall become effective immediately upon entry of this Order notwithstanding anything in the Federal Rules of Bankruptcy Procedure or otherwise to the contrary.

EXHIBIT 1

Stipulation

[Intentionally Omitted]