

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

NANCY JENNINGS,)	
)	
Petitioner,)	Civil Action No.
vs.)	2020CV337822
)	
JEFFREY GALLUPS,)	
)	
Respondent.)	

**RECEIVER’S EMERGENCY MOTION FOR APPROVAL AND AUTHORIZATION OF
(1) SALE OF ASSETS OF THE RECEIVERSHIP ESTATE AND
(2) BRIDGE LOAN FINANCING**

S. Gregory Hays, solely in his capacity as Receiver herein (the “**Receiver**”), appointed pursuant to the Court’s *Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief* entered in this civil action on August 16, 2023 (the “**Receivership Order**”),¹ files this *Receiver’s Emergency Motion for Approval and Authorization of (1) Sale of Assets of the Receivership Estate and (2) Bridge Loan Financing* (the “**Motion**”). This Motion is filed with the consent and approval of Frank B. Strickland, solely in his capacity as Special Master (the “**Special Master**”), appointed pursuant to the Court’s *Order for Appointment of Special Master* entered in this civil action on February 8, 2023 (the “**Special Master Order**”). In support of the Motion, the Receiver shows the Court as follows:

¹ Unless otherwise indicated, capitalized terms in this Motion will have the meanings attributed them in the Receivership Order.

I. INTRODUCTION: NECESSITY FOR EXPEDITED DISPOSITION OF SALE/LOAN MOTION

The Receiver brings this Motion on an emergency basis and requests the Court's expedited entry of an Order on this Motion (the "**Sale Order**") to preserve the value of the Receivership Estate's assets. The Receiver maintains that the Business cannot survive if the Sale Order is not entered and the sale and bridge loan pursuant to the Sale Order are not immediately approved.

The Special Master Order and the Receivership Order authorize the Special Master and the Receiver, respectively, to sell property of the Receivership Estate. Special Master Order, ¶ 6 ("The Special Master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties, *to include the sale of the Companies as soon as possible at a realistic price*") (emphasis added); Receivership Order, p. 20, ¶ 15, xx ("In addition to the specific provisions in Articles III through XIII below, the Receiver shall have the following general powers and duties: ... xx. To sell or liquidate Receivership Assets for purposes of payment of Respondent's obligations under Divorce Settlement"). The Receiver and Northside Hospital, Inc., the Buyer identified herein, require the entry of the Sale Order for clarity and to establish certain rights of the Receiver and the Buyer. Expedited entry of the Sale Order is critical to preserve the value of the Receivership Assets for the protection and benefit of the Receivership Estate.

Immediately upon the Receiver's appointment and continuing through the present, the Receiver and his business/legal team have faced a multitude of existential crises resulting from the prior owner's mismanagement and the fallout of the prior owner's felony conviction for healthcare fraud and related civil liability. Over the nearly seven months since this Court was compelled to appoint the Receiver, the Receiver has fought to restore full Medicare and health insurance participation. The Receiver has had to defend the Receivership Estate against a multitude of legal actions by governmental and private entities, including actions seeking to impose additional and

substantial financial liability on the Receivership Estate and eviction actions which would have shut down business operations at many of the Receivership Estate's facilities.

During those same seven months, the Receiver has operated the business of the Receivership Estate and has conducted intensive marketing of the business and its assets. As a result of these efforts, the Receiver has kept the business running and has received interest from several credible prospective purchasers.

The purchase/sale transaction that is the subject of this Motion represents the best offer received to date. Additionally, the offer includes desperately needed bridge financing. This financing is necessary to meet payroll obligations and to make payments to landlords to prevent evictions. Without access to this financing this week, however, the business of the Receivership Estate will be at grave risk and may not survive.

For these reasons, the Court's entry of the Sale Order on an expedited basis is crucial and in the best interests of the Receivership Estate

II. BACKGROUND

1. On June 30, 2020, Dr. Nancy Jennings ("**Petitioner**") filed this civil action against her former spouse, Dr. Jeffrey Gallups ("**Respondent**"), to enforce Respondent's obligations under a January 2017 Final Judgment and Decree of Divorce entered in Nancy H. Gallups v. Jeffrey M. Gallups, Civil Action No. 2016CV274575, including Respondent's obligation to pay Petitioner \$10,250,000 from the sale of Respondent's medical practice.

2. On February 8, 2023, the Court appointed the Special Master to oversee and facilitate Respondent's marketing and sale of the medical practice. The Special Master attempted to work with Respondent toward that end for six (6) months.

3. In August 2023, the Special Master filed his *Special Master's Report and Recommendation Respecting Status of Incremental Transfer of the Companies*, in which he detailed Respondent's refusal to cooperate and misconduct.

4. Due to the matters reported in the Special Master's Report, the Court, on its own motion, entered the Receivership Order on August 16, 2023 (the "**Appointment Date**"), appointing the Receiver as receiver of (i) Respondent; (ii) the Companies (consisting of Milton Hall Surgical Associates LLC ("**MHSA**"), Alpharetta Surgery Center LLC, and ENTI Surgery Center LLC), HCENTI LLC, ENTI Anesthesia LLC, Milton Hall Management LLC, MHSA Management LLC, Milton Hall Trust, Nutmeg Management LLC, Marble Management LLC, DRG Media LLC, and all other operating entities, holding companies, debt arrangements, voting trusts, or other trusts or entities of any kind, known or unknown, directly or indirectly controlled by Respondent or Melissa Moritz (collectively, the "**Affiliated Entities**"); (iii) all of Respondent's Assets and all assets of the Affiliated Entities, in each case consisting of assets of all class and manner and wherever situated (the "**Receivership Assets**").

5. The Receiver has engaged the law firm of Taylor English Duma LLP ("**Taylor English**") as legal counsel to the Receiver.

III. BUSINESS OPERATIONS

6. Since his appointment, the Receiver has operated the business of the Affiliated Entities (the "**Business**"). The Business and the Receiver's work are more thoroughly discussed in the November 1, 2023, *Receiver's First Interim Report*.²

² The Receiver is finalizing the *Receiver's Second Interim Report* and anticipates filing that report the week of March 18, 2024.

7. The Receiver retained Scott Wilkins as CFO of the Affiliated Entities. Mr. Wilkins had been hired by MHSA two (2) weeks prior to the Appointment Date. Mr. Wilkins became the COO on September 1, 2023, and together with the Receiver is an integral part of the management team.

8. The Receiver and Mr. Wilkins have been able to resuscitate and stabilize the Business without hefty expenditures of external fractional C-Suite hires, even in the face of considerable cash flow difficulties and operational and legal challenges, including those discussed below.

Payor Relations

9. Historically, the Affiliated Entities receive approximately 24% of their total income from Blue Cross Blue Shield of Georgia (“**BCBSGA**”) and 7% from Medicare.

10. Due in large part to Respondent’s felony conviction, Medicare terminated the Affiliated Entities’ Medicare participation in April 2023 and BCBSGA terminated the Business’s participation in BCBSGA’s network in July 2023.

11. The Receiver, Mr. Wilkins, and the Receiver’s legal counsel have been working and negotiating with Medicare and BCBSGA to restore full participation. In late 2023, Medicare resumed participation. BCBSGA participation resumed in November 2023, though BCBSGA could not activate the payment process until March 2024. As of the filing of this Motion the Business has not yet received the bulk of BCBSGA’s remittances.

Ambulatory Surgery Centers

12. The Business includes two ambulatory surgery centers. The Alpharetta Surgery Center, LLC (“**Alpharetta ASC**”) operates under a Limited Purpose Certificate of Need (the “**Alpharetta ASC CON**”).

Physician Deferred Compensation and Staff Payroll

13. The Receiver has engaged in ongoing negotiations with Physicians employed with the Affiliated Entities regarding certain deferred compensation.

14. To date, the Receiver has paid approximately \$350,000 to Physicians for deferred compensation, with substantial payments having been made on October 15, 2023, following Physicians' agreement to delay the scheduled September 2023 payment of these obligations. The Physicians' deferred compensation due to be paid in January 2024 has been delayed due to cash flow constraints.

15. Staff payroll is paid every other Friday, in the approximate amount of \$300,000 per pay period.

16. Despite cash flow constraints, the Receiver has been able to make payroll every pay period, though the ability to make payroll going forward is doubtful absent an influx of cash.

Respondent's Default under *Qui Tam* Settlement Agreement

17. Respondent and MHSA are subject to a judgment in favor of the United States and the State of Georgia (the "**Government**") arising from a *qui tam* action in the United States District Court for the Northern District of Georgia, United States ex rel. Myron Jones, MD., et al. v. Milton Hall Surgical Associates, LLC d/b/a The ENT Institute and a/k/a the Ear, Nose & Throat Institute, Jeffrey M Gallups, MD., et al., Civil Action. No. 1:17-cv-24 72 (the "***Qui Tam* Action**").

18. The parties to the *Qui Tam* Action entered into a Settlement Agreement as of November 17, 2021, whereby Respondent and MHSA agreed to pay \$3,068,434.00 (the "**Settlement Amount**") in settlement. The Settlement Agreement provides that, if the settlement payment is not fully made within the time permitted under the agreement, the Government would

have judgment against Respondent and MHSA in the amount of \$5,388,863.00 (the “**Settlement Default Amount**”).

19. In late 2023, the Government filed a motion with the District Court to record a judgment for the unpaid Settlement Default Amount due to Respondent and MHSA’s default under the Settlement Agreement.

20. Following the Receiver’s formal objection to that motion and hearing, the Receiver and the Government mediated their dispute to a successful resolution.

21. The mediated resolution requires the Receiver to pay the government the remaining Settlement Amount (approximately \$380,000) no later than June 1, 2024, to avoid liability for the remaining Settlement Default Amount (approximately \$2.7 million).

22. The Receiver intends to discharge this obligation by paying the Government the full, remaining Settlement Amount immediately from the proceeds of the Loan identified in this Motion below.

Landlord Disputes

23. Following his appointment, the Receiver discovered that Respondent had intentionally failed to pay rent for up to six (6) months at numerous locations where the Affiliated Entities conducted business.

24. Since the Appointment Date, the Business has not had sufficient cash flow to pay landlords, and the arrears under the Business’s leases presently range from 6 to 12 months.

25. The Business’s landlords have nevertheless attempted to work with the Receiver and afford the Receiver opportunity to stabilize and market the Business.

26. The landlords have mortgage and other commitments that are adversely impacted by the Business’s inability to pay rent and the mounting arrearages.

27. Absent an influx of funds into the Business to make payments to landlords, the landlords will be enforcing their contractual rights to evict the Business from the respective premises.

28. This will negatively impact the Receiver's ability to operate and market the Business and its assets.

Other Trade Creditors

29. The Business's other trade creditors, including IT service and billing/back-office service providers, are likely to terminate all services with the Business absent payment derived from some source other than ordinary course revenue.

Actions Taken to Promote the Sale of the Affiliated Entities

30. The Receiver's goal in operating the business of the Affiliated Entities is to stabilize and enhance its revenues toward sale of the enterprise at a practical price.

31. The Receiver has aggressively marketed the Business for sale to other healthcare providers, private equity groups and physician groups, and has had extensive discussions with potential purchasers, Petitioner and her counsel, and the physicians employed in the Business.

32. The Receiver has received informal interest from a number of these sources and has received written letters of intent and proposed purchase agreements.

IV. ASSET PURCHASE AGREEMENT AND BRIDGE LOAN

Northside Hospital, Inc. Asset Purchase Agreement

33. After considerable inquiry, due diligence, and negotiations, and management of the Business over seven (7) months, the Receiver, on behalf of ENTI Surgery Center, LLC, Milton Hall Surgical Associates, LLC, Milton Hall Management, LLC, MHSA Management, LLC, Alpharetta Surgery Center, LLC, HCENTI, LLC, ENTI Anesthesia, LLC, Milton Hall Trust,

Nutmeg Management LLC, Marble Management LLC and DRG Media, LLC (collectively, “Sellers”) subject to and upon Court approval, will enter into an *Asset Purchase Agreement* (the “APA”) with Northside Hospital, Inc., as Buyer (“Buyer”) for the sale of substantial assets of the Business. The Receiver is providing a paper copy of the APA to the Court to be filed under seal.

34. The terms of the APA are summarized, as follows:

- Acquired Facilities: Buyer will acquire certain of the Business’s facilities as set forth in the APA.
- Purchased Assets: All property and assets of Sellers (other than the “Excluded Assets” under the APA) used at or in connection with an Acquired Facility, including all inventory, equipment, purchased receivables, permits and licenses, intellectual property, goodwill, assumed contracts, and deposits.
- Purchase Price: As set forth in the APA.
- Closing Date: Within ten (10) business days after satisfaction or waiver of the requirements of Article IX of the APA (estimated at 30 days after Court approval of the APA).

35. The APA requires the entry of a Sale Order approving the sale upon the terms of the APA and including provisions:

- 1) vesting the Purchased Assets in the Buyer, free and clear of all Claims and Encumbrances (other than Permitted Encumbrances),
- 2) authorizing and approving the Bridge Loan Agreement (defined below);
- 3) authorizing and approving the sale of the Purchased Assets to Buyer and the other transactions contemplated by the APA on the terms and conditions set forth in the APA, free and clear of all Claims and Encumbrances (other than Permitted Encumbrances);
- 4) authorizing and approving, the assumption and assignment of the Assumed Liabilities;
- 5) authorizing and approving the retention by the Sellers of all Excluded Liabilities;
- 6) providing that the APA and the transactions contemplated therein are undertaken by Buyer and Sellers at arm’s length, without collusion, and in good faith, and do not constitute a fraudulent transfer in any respect, including, without limitation, under any state or federal law that permits the avoidance of fraudulent or preferential transfers;
- 7) confirming and acknowledging that none of Buyer or its Affiliates is or will be deemed a successor (or successor-in-interest or similar) to any of the Receivership, the Sellers

or their Affiliates, whether by virtue of the transactions contemplated herein constituting a de facto merger, mere continuation, or similar transaction, or otherwise;

- 8) voiding certain acts and transactions of Jeffrey Gallups, M.D. and Melissa Moritz with respect to the actual or purported sale, disposition, transfer or conveyance of the assets of certain of the Sellers prior to the entry of the Receivership Order; and
- 9) discharging the Receiver from all liability in the performance of the Receiver's duties respecting the APA, other than acts constituting fraud or willful misconduct.

36. The proceeds from the sale under the APA will be used, to the extent of available funds, to satisfy costs of sale, professional and attorneys' fees and expenses of the Receiver and the Special Master, Petitioner's attorneys' fees and expenses, remaining obligations to the Government, the SBA, Georgia Banking Company, landlord arrearages, accrued and unpaid alimony owed by Respondent to Petitioner, trade creditor claims accruing through the closing date, and Respondent's additional payment obligations to Petitioner.

37. The Receiver, in his business judgment, has identified the APA as representing the highest and best offer for the assets that will be sold.

38. The Receiver, in his business judgment, has determined that the APA and the transaction anticipated thereunder are in the best interests of the Receivership Estate.

39. Wherefore, the Receiver requests the Court enter a Sale Order in substantially the form attached to this Motion as Exhibit "A," approving the APA and the transactions anticipated by the APA.

Northside Hospital, Inc. Bridge Loan

40. An immediate influx of money is necessary to fund working capital required for the continued operation of the Business pending a sale or sales of Business assets.

41. The Receiver has negotiated bridge loan financing (the "**Loan**") with Northside Hospital, Inc., as Lender ("**Lender**"), on terms summarized as follows:

- Maker: ENTI Surgery Center, LLC; Milton Hall Surgical Associates, LLC; Milton Hall

Management, LLC; MHSA Management, LLC; Alpharetta Surgery Center, LLC; HCENTI, LLC; ENTI Anesthesia, LLC; Milton Hall Trust; Nutmeg Management LLC; Marble Management LLC; and DRG Media LLC (collectively, “**Maker**”)

- Lender: NORTHSIDE HOSPITAL, INC.
- Principal: Up to \$1,000,000.00.
- Annual Interest Rate: 7.00%, compounded annually.
- Maturity Date: The earlier to occur of (1) the Closing of the APA, (2) the termination of the APA by any party to the APA for any reason, and (3) May 31, 2024.
- Security: A first-priority security interest in all assets of Maker, including, without limitation, the Alpharetta ASC CON.
- Application. Outstanding principal interest will be applied toward the purchase price under the APA.

42. The terms of the Loan are set forth in the *Senior Secured Line of Credit Promissory Note and Security Agreement* (the “**Bridge Loan Agreement**”) between Lender and Maker. The Receiver is providing a paper copy of the Bridge Loan Agreement to the Court to be filed under seal.

43. After thoroughly investigating other financing options, including the option to not obtain financing, the Receiver has determined in his business judgment that the Loan is in the best interests of the Receivership Estate and will enable the Receiver to continue operating the Business until closing of the APA.

44. The Loan proceeds are necessary and will be used to pay rent arrearages and future rent, payroll, and other necessary obligations of the Business, in accordance with the terms and conditions set forth in the Bridge Loan Agreement.

45. Accordingly, the Receiver has determined that the Loan is necessary to permit the Receiver to continue operating the Business until closing of the APA transaction.

46. To facilitate the Lender’s requirement of a first-priority security interest, the

Receiver is in discussions with the SBA and Georgia Banking Company and is confident that a resolution with those two lien holders can be achieved.

47. The Receiver has been in discussions as well with counsel for the Business's landlords, and has shared the general structure of these transactions with the landlords. The Loan will enable the Receiver to begin payments to the Landlords.

48. Additionally, the Loan will enable the Receiver to pay the Government's Settlement Amount prior to the sale of Respondent's Florida Property.

49. Respecting any other liens of record, the Receiver anticipates negotiating subordination agreements with the holders of such liens and/or payments from the proceeds of the Loan to satisfy such liens.

50. Accordingly, the Receiver does not anticipate that any of these creditors would object to the relief sought by this Motion.

Request for Expedited Hearing

51. The Receiver is requesting that the Court hear this Motion on an expedited basis.

V. CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court enter a Sale Order in substantially the form of the proposed order attached to this Motion as Exhibit "A":

- a. granting this Motion;
- b. approving the APA and authorizing the transactions thereunder;
- c. approving the Bridge Loan Agreement and authorizing the Loan; and
- d. granting the Receiver such additional relief as the Court deems appropriate under the circumstances.

Respectfully submitted, March 14, 2024.

TAYLOR ENGLISH DUMA LLP

By: /s/ John K. Rezac
JOHN K. REZAC
Georgia Bar No. 601935
jrezac@taylorenghish.com

1600 Parkwood Circle, Ste. 200
Atlanta, Georgia 30339
678/336-7195
770/434-7376 (fax)

Attorney for S. Gregory Hays, Receiver

EXHIBIT "A"

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION**

NANCY JENNINGS,)	
)	
Petitioner,)	Civil Action No.
vs.)	2020CV337822
)	
JEFFREY GALLUPS,)	
)	
Respondent.)	

**PROPOSED ORDER GRANTING RECEIVER’S EMERGENCY MOTION FOR
APPROVAL AND AUTHORIZATION OF (1) SALE OF ASSETS OF THE
RECEIVERSHIP ESTATE AND (2) BRIDGE LOAN FINANCING**

This matter is before the Court on the *Receiver’s Emergency Motion for Approval and Authorization of (1) Sale of Assets of the Receivership Estate and (2) Bridge Loan Financing* (the “**Motion**”) filed March 14, 2024, by S. Gregory Hays, solely in his capacity as Receiver (the “**Receiver**”), appointed pursuant to the Court’s August 16, 2023, *Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief* entered in this civil action (the “**Receivership Order**”).¹ The Motion has been filed with the consent and approval of Frank B. Strickland, solely in his capacity as Special Master (the “**Special Master**”), appointed pursuant to the Court’s *Order for Appointment of Special Master* entered in this civil action on February 8, 2023 (the “**Special Master Order**”). By the Motion, the Receiver seeks the entry of this Order (the “**Sale Order**”) authorizing and approving the terms of the Receiver’s sale of certain assets of the Receivership Estate to Northside Hospital, Inc. (“**NH**”) and approving the terms of a bridge loan from NH to Maker (as defined below). This Motion comes to the Court on an emergency basis given the

¹ Unless otherwise indicated, capitalized terms in this Motion will have the meanings attributed them in the Receivership Order.

Receivership Estate's critical need for the bridge loan funds and for expedited approval of the sale terms.

The Court adopts as its findings of fact the Receiver's statement of facts set forth in the Motion at Section II. Background, and Section III. Business Operations. Additionally, the Court makes the following findings of fact:

The Northside Hospital, Inc. Asset Purchase Agreement

After considerable inquiry, due diligence, and negotiations, and management of the Business over seven (7) months, the Receiver, on behalf of ENTI Surgery Center, LLC, Milton Hall Surgical Associates, LLC, Milton Hall Management, LLC, MHSA Management, LLC, Alpharetta Surgery Center, LLC, HCENTI, LLC, ENTI Anesthesia, LLC, Milton Hall Trust, Nutmeg Management LLC, Marble Management LLC and DRG Media, LLC (collectively, "**Sellers**") will enter into an Asset Purchase Agreement (the "**APA**") with NH, as Buyer, for the sale of substantial assets of the Business. The Receiver has provided a paper copy of the APA to the Court to be filed under seal. Pursuant to the APA, NH will acquire certain of the Business's facilities as described in the APA (the "**Acquired Facilities**"); and all property and assets of Sellers (other than the "**Excluded Assets**" under the APA) used at or in connection with an Acquired Facility, including all inventory, equipment, purchased receivables, permits and licenses, intellectual property, goodwill, assumed contracts, and deposits (the "**Purchased Assets**"). The closing date for the sale transaction will be within ten (10) business days after satisfaction or waiver of the requirements of Article IX of the APA.

The proceeds from the sale under the APA will be used, to the extent of available funds, to satisfy costs of sale, professional and attorneys' fees and expenses of the Receiver and the Special Master, Petitioner's attorneys' fees and expenses, remaining obligations to the Government, the

SBA, Georgia Banking Company, landlord arrearages, accrued and unpaid alimony owed by Respondent to Petitioner, trade creditor claims accruing through the closing date, and Respondent's additional payment obligations to Petitioner.

The Court finds that the transactions anticipated by the APA represent the highest and best offer for the assets that will be sold and is in the best interests of the Receivership Estate.

In connection with the APA, the Receiver, on behalf of ENTI Surgery Center, LLC; Milton Hall Surgical Associates, LLC; Milton Hall Management, LLC; MHSA Management, LLC; Alpharetta Surgery Center, LLC; HCENTI, LLC; ENTI Anesthesia, LLC; Milton Hall Trust; Nutmeg Management LLC; Marble Management LLC; and DRG Media LLC (collectively, "**Maker**") and NH, as Lender, will also enter into a Senior Secured Line of Credit Promissory Note and Security Agreement (the "**Bridge Loan Agreement**"), pursuant to which NH will make available an immediate line of credit (the "**Loan**") up to \$1,000,000.00, at an annual interest rate of 7%, compounded annually, maturing upon the earlier of Closing of the APA, the termination of the APA, or May 31, 2024. NH's right to payment under the Bridge Loan Agreement will be protected by a first-priority security interest in all assets of the Maker. The Receiver has provided a paper copy of the Bridge Loan Agreement to the Court to be filed under seal.

The Court finds that the Loan is in the best interests of the Receivership Estate and is necessary to enable the Receiver to continue operating the Business until closing of the APA.

Further, the Court finds that the Special Master Order and the Receivership Order authorize the Special Master and the Receiver, respectively, to sell property of the Receivership Estate. Special Master Order, ¶ 6 ("The Special Master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties, *to include the sale of the Companies as soon as possible at a realistic price*") (emphasis added); Receivership Order,

p. 20, ¶ 15, xx (“In addition to the specific provisions in Articles III through XIII below, the Receiver shall have the following general powers and duties: ... xx. To sell or liquidate Receivership Assets for purposes of payment of Respondent’s obligations under Divorce Settlement”).

The Court finds good and adequate cause to grant the Motion and the relief sought by the Motion. Accordingly, it is hereby

ORDERED that the Motion is *granted*. It is hereby further

ORDERED as follows:

- 1) the APA and the transactions under the APA are authorized and approved;
- 2) upon closing of the APA, the Purchased Assets shall vest in NH, free and clear of all Claims and Encumbrances (other than “**Permitted Encumbrances**” as defined in the APA);
- 3) NH’s assumption of the “**Assumed Liabilities**”, as defined in the APA, is authorized and approved;
- 4) Sellers’ retention of all “**Excluded Liabilities**”, as defined in the APA, is authorized and approved;
- 5) the APA and the transactions contemplated therein are undertaken by NH, the Receiver, and Sellers at arm’s length, without collusion, and in good faith, and do not constitute a fraudulent transfer in any respect, including, without limitation, under any state or federal law that permits the avoidance of fraudulent or preferential transfers;
- 6) neither NH nor its affiliates is or will be deemed a successor (or successor-in-interest or similar) to any of the Receivership Estate, the Sellers or their affiliates, whether by virtue of the transactions contemplated by the APA and/or Bridge Loan Agreement

- constituting a *de facto* merger, mere continuation, or similar transaction, or otherwise;
- 7) the transactions of Jeffrey Gallups, M.D. and Melissa Moritz with respect to the actual or purported sale, disposition, transfer or conveyance of the assets of certain of the Sellers prior to the entry of the Receivership Order, identified in the Receivership Order as the transactions involving Nutmeg Management, LLC under the Covert Transfer Documents, are void;
 - 8) the Bridge Loan Agreement and the transactions under the Bridge Loan Agreement are authorized and approved;
 - 9) NH shall have a first-priority security interest in and lien on all assets of the Maker, which security interest and lien shall prime all existing liens as to such assets;
 - 10) the Receiver is authorized to issue for the benefit of Lender the Receiver's Certificate of Indebtedness included in this Sale Order at Appendix 1; and
 - 11) the Receiver is discharged from all liability in the performance of the Receiver's duties respecting the APA, other than acts constituting fraud or willful misconduct.

SO ORDERED this _____ day of March, 2024.

Honorable Craig L. Schwall Sr.
Judge, Superior Court of Fulton County
Atlanta Judicial Circuit

Order Prepared and Presented by:

TAYLOR ENGLISH DUMA LLP

John K. Rezac
Georgia Bar No. 601935
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
Tel: 770.434.6868
Fax: 770.434.7376
jrezac@taylorenghish.com

Attorneys for Receiver S. Gregory Hays

Appendix 1

Receiver's Certificate of Indebtedness

No. 0001

\$1,000,000.00

S. Gregory Hays, solely in his capacity as Receiver herein ("Receiver"), appointed pursuant to the August 16, 2023, Order Compelling Compliance, Appointing Receiver, and Granting Injunctive Relief (the "Receivership Order") entered in the Superior Court of Fulton County, State of Georgia (the "Court"), in the action styled, Nancy Jennings v. Jeffrey Gallups, Civil Action No. 2020CV337822 (the "Civil Action"), issues this Receiver's Certificate of Indebtedness (the "Certificate") under and by virtue of the authority of the Receivership Order.

This Certificate is issued to Northside Hospital, Inc., as Lender ("Lender"), as inducement for and to secure the indebtedness under the Senior Secured Line of Credit Promissory Note and Security Agreement (the "Loan") executed March 14, 2024, by and between the Receiver, as Receiver of and on behalf of ENTI Surgery Center, LLC; Milton Hall Surgical Associates, LLC; Milton Hall Management, LLC; MHSA Management, LLC; Alpharetta Surgery Center, LLC; HCENTI, LLC; ENTI Anesthesia, LLC; Milton Hall Trust; Nutmeg Management LLC; Marble Management LLC; and DRG Media LLC (collectively, "Maker").

This Certificate is a first priority lien upon all property, real, personal, intangible, and mixed, of Maker, wherever located (the "Collateral"), and upon any proceeds or product of the Collateral, which lien is to be prior and superior to the rights and interests of all parties to the Civil Action, and prior to the claims of all owners, stockholders, members, partners and creditors of Maker, or of anyone claiming under them or it. Lender is authorized to cause this Certificate to be recorded in the office of the clerk of the Superior Court of Fulton County, or such other county or counties as may be necessary or appropriate, but the failure to so record this Certificate shall not affect the priority of the lien for the obligations owed hereunder.

This Certificate is executed by the Receiver, not personally, but as Receiver and is payable only out of the Collateral, the proceeds of the transaction anticipated by the Asset Purchase Agreement (the "APA") by and between Lender and the Receiver, on behalf of ENTI Surgery Center, LLC, Milton Hall Surgical Associates, LLC, Milton Hall Management, LLC, MHSA Management, LLC, Alpharetta Surgery Center, LLC, HCENTI, LLC, ENTI Anesthesia, LLC, Milton Hall Trust, Nutmeg Management LLC, Marble Management LLC and DRG Media, LLC (collectively, "Sellers"), and in the manner provided by the Receivership Order or other applicable order of the Court. No personal liability shall be asserted or be enforceable against the Receiver or his representatives, attorneys, or agents.

This Certificate shall be immediately effective upon issuance by the Receiver.

In witness whereof, S. Gregory Hays, as Receiver, has signed this Certificate on March 14, 2024.

S. GREGORY HAYS, SOLELY AS RECEIVER

Signed, sealed and delivered in the presence of:

Notary Public

My Commission Expires:

(NOTARY SEAL)

CERTIFICATE OF SERVICE

This is to certify that I have on this day served a copy of the *RECEIVER'S EMERGENCY MOTION FOR APPROVAL AND AUTHORIZATION OF (1) SALE OF ASSETS OF THE RECEIVERSHIP ESTATE AND (2) BRIDGE LOAN FINANCING* upon the following persons by e-mail, as follows:

C. Knox Withers <Knox.Withers@agg.com>;
Elizabeth Green Lindsey, Esq. <elindsey@harrisonllp.com>;
Frank B. Strickland, Esq. <fstrickland@taylorenghish.com>;
Gregory M. Taube <gmt@nmrs.com>;
Jack Cartwright Esq. <cartwright@khlawfirm.com>;
Jessica G. Cino Esq. <cino@khlawfirm.com>;
Jordan B Forman <jforman@foxrothschild.com>;
Laura Ketcham <Laura.Ketcham@millermartin.com>;
Lauren A. Warner, Esq. <lwarner@cglawfirm.com>;
Melissa A. Campbell <mcampbell@bakerdonelson.com>;
Michael P. Kohler <Michael.Kohler@millermartin.com>;
Peter A. Durham, Esq. <pdurham@gloverdavis.com>;
S. Nathaniel De Veaux, MBA <ndeveaux@kkgpc.com>;
Scott R. Grubman, Esq. <sgrubman@cglawfirm.com>;
Sean C. Kulka <Sean.kulka@agg.com>;
Tim Colletti <tcolletti@bakerdonelson.com>;
Vanessa A. Leo <Vanessa.Leo@usdoj.gov>
Jim Mooney <JMooney@LAW.GA.GOV>
David Brown, Esq. <dkbrown@bakerlaw.com>

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By: /s/ John K. Rezac
JOHN K. REZAC