

SUPERIOR COURT  
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STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

CHARLES S. KINNEY, CHIEF  
EXECUTIVE OFFICER AND TRUSTEE  
Plaintiff

v.

C.A. No. 2011-0781

WESTERLY HOSPITAL HEALTHCARE, INC.,  
THE WESTERLY HOSPITAL, ATLANTIC  
MEDICAL GROUP, INC., OCEAN MYST, MSO  
LLC, WOMEN'S HEALTH OF WESTERLY,  
LLC, AND NORTH STONINGTON HEALTH  
CENTER, INC.  
Defendants

**ORDER APPROVING THE SALE OF THE ASSETS OF  
THE WESTERLY HOSPITAL AND THE RELATED ENTITIES FREE AND CLEAR  
OF LIENS AND LIABILITIES**

On February 28, 2012, this Court heard the Special Master, W. Mark Russo's Petition for Instructions seeking authority to implement a process to secure proposals for the acquisition, strategic partnership and/or repositioning of The Westerly Hospital and the Related Entities. After a hearing thereon and after the procedures were noticed out by the Special Master to parties-in-interest for comment and input, this Court entered an Order dated March 12, 2012, establishing the Mastership Transaction Process (the "Mastership Transaction Process Order" and the "Mastership Transaction Process", respectively).

Furthermore, on June 13, 2012, this Court held a hearing and granted the Special Master's Petition for Instructions (the "Petition"), regarding the Presentation and Acceptance of a Stalking Horse Offer by LMW Healthcare, Inc., and LMW Physicians, Inc., as guaranteed by Lawrence & Memorial Hospital Corporation (collectively, "L&M" or the "Buyer") as set forth in the form of Asset Purchase Agreement (the "APA") attached hereto as *Exhibit A* (except as

otherwise defined herein, the capitalized terms herein are defined in the APA, as may be amended from time to time).<sup>1</sup> The Order authorizing the Special Master to enter into the APA subject to higher and better offers is referenced herein as the "Sales Procedures Order."

The Mastership Transaction Process Order, set forth criteria to which weight would be afforded to preserve The Westerly Hospital and the Related Entities as assets to the community both from the standpoint of healthcare and the regional economy. *See* Mastership Transaction Process Order at ¶¶ 7 and 12.

In accordance therewith, the L&M "Stalking Horse Offer", as embodied within the APA, addressed such weighted criteria as follows:<sup>2</sup>

1. An assumption (or satisfaction) of over \$22M in The Westerly Hospital and the Related Entities' liabilities;
2. A commitment to pay for a "tail" malpractice insurance policy that Westerly Hospital will require upon sale at an estimated cost of approximately \$2 million;
3. A commitment to pay Closing costs and transactional expenses that Westerly Hospital will incur in this proceeding in the estimated amount of \$1.5 million;
4. A commitment to fund "cure" costs which are not captured in assumed liabilities;
5. A commitment to continue the Westerly Hospital identity and name, including its non-profit status and community mission;
6. A commitment to establish a Hospital Board with members drawn from residents of the Westerly service area. Moreover, a commitment to put residents of the Westerly

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<sup>1</sup> The APA is attached without schedules. The schedules are maintained by the Special Master.

<sup>2</sup> To the extent the terms of the APA, as amended hereby, conflict with the summary provided for herein, the terms of the APA shall control.

service area on the reconstituted Board of Trustees of the Hospital as well as the Board of Trustees of the Buyer's parent;

7. A commitment to carry out a broad-based community capital campaign in support of the Westerly Hospital and a commitment that all such funding will be raised in the Hospital's name and remain for the benefit of the Hospital's non-profit and community mission;
8. A commitment to maintain the Westerly Hospital as an acute care, community hospital for a minimum of 5 years after the Closing. Included within that important commitment, is a commitment not to discontinue clinical services being provided by the Westerly Hospital for 2 years after the Closing as more fully set forth in Section 10.1 of the APA. Furthermore, if L&M's targeted goal of a 3% operating margin on a roll-up basis of the Westerly Hospital and Related Entities is achieved, a commitment to augment services;
9. A commitment to inject \$6.5 million of working capital into the Westerly Hospital during the first 2 years after Closing to fund the turnaround plan (subject to final review by Buyer) that the Mastership has begun to bring the Hospital to a state of profitability;
10. Consistent with the commitments to continue the mission of the Hospital and maintain it as an acute care, community hospital, a commitment during the first 5 years after Closing, to make or incur contractual obligations to make \$30 million in capital expenditures including without limitation, investment in technology, equipment, and/or expanded services;

11. A commitment to offer employment, commencing on the Closing Date to all union and non-union clinical, trade and services personnel of the Sellers (excluding certain management personnel and general and administrative support services personnel) and, a further commitment to maintain certain minimum staffing levels per adjusted average occupied bed;
12. A commitment to assume physician contracts and to strengthen the Westerly Hospital's relationship with the physician community (subject to Buyer's due diligence review, including but not limited to, compliance with law, inclusive of current review being undertaken by the United States Department of Health and Human Services, Office of Inspector General and the United States Attorney);
13. A commitment to expedite the Rhode Island Hospital Conversion Act and Change in Effective Control process;
14. During the critical period between the Sale Hearing and the completion of the Hospital Conversion Act process, a commitment pursuant to the Interim Advisory Agreement to loan monies to the Hospital to cover operational losses subject to Section 10.8 of the APA. In turn, at Closing, the loan will be forgiven, providing additional value to the Mastership Estate. In addition, pursuant to the Interim Advisory Agreement, Buyer will provide consulting and administrative services to the Sellers at Buyer's cost to maintain the viability of the Assets until the Closing;  
and
15. A commitment to fund the lease obligations (approximately \$68,000 per month) for the North Stonington Health Center up and until Closing subject to the Special Master deeming such payments necessary in his discretion.

L&M's bid, as above-referenced, was tested during an intensive, competitive bid process. The Special Master and his advisers have diligently and in good faith marketed the Assets to secure the highest and best offer or offers therefor. The culmination of that process, and the fourth and final phase of the Mastership Transaction Process commenced with a hearing to determine the highest and best proposal for the acquisition, strategic partnership and/or repositioning of the Westerly Hospital and Related Entities.

On August 28, 2012, this Court conducted such a hearing as consistent with the Sales Procedures Order. At that hearing, L&M and the Special Master presented an amendment to the APA, a copy of which is attached hereto as *Exhibit B* (the APA and the amendment thereto are collectively referenced hereinafter as the "APA"). The amendment to the APA modifies such by, amongst other things, providing for the redemption of the Bonds at or before the Closing and for the satisfaction or assumption of the obligations of the Westerly Hospital and Related Entities to the Washington Trust Company. The APA proposed by Buyer was offered in good faith, from arm's-length bargaining positions without collusion or fraud by the parties so that Buyer is a good faith purchaser.

The Special Master has given due and proper notice of the proposed sale of the Assets to all parties required to receive notice, including without limitation, to each secured party, all holders of Liens and Liabilities of record with respect to the Assets, all of the counterparties to the Material Contracts, all municipalities and licensing agencies, the United States Department of Justice (the "DOJ"), the United States Department of Health and Human Services, Office of the Inspector General (the "OIG"), and any governmental unit having a claim against Westerly Hospital and Related Entities or the Assets, including without limitation the Pension Benefits Guaranty Corporation (the "PBGC") and the Rhode Island Department of Health (the "RIDOH")

and all entities reasonably known to have expressed an interest in a transaction with respect to the Assets during the past twelve (12) months.

A reasonable opportunity to object or be heard with respect to the Mastership Transaction Process and the relief contemplated thereby, and the rights of third parties to submit higher or otherwise better offers for the Assets, has been afforded to all interested parties and entities.

Under all the circumstances presented, (i) all actions contemplated in the APA; (ii) consummation of all acts contemplated in this Order; (iii) the transfer of the Assets by the Special Master to Buyer; and (iv) the receipt by the Special Master of the Purchase Price are in the best interests of The Westerly Hospital and the Related Entities and their respective estates, creditors, and interest holders.

It is accordingly hereby

**ORDERED**

1. Subject to Paragraph 2 below, this Court has jurisdiction over these proceedings and all Mastership Assets. The Special Master has provided adequate notice of the relief sought with respect to the sale of the Assets and the relief requested in the Mastership Transaction Process Order and the Sales Procedures Order. Adequate notice and an opportunity to be heard with respect to the Mastership Transaction Process was proper, timely, adequate and sufficient, and reasonably calculated to give actual notice of the relief contemplated hereby, as appropriate under the circumstances, and no further notice is required. Reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice. In addition, supplemental notice has been provided to the PBGC, the RIDOH, the Internal Revenue Service, the Centers for Medicare and Medicaid Services, Peter F. Neronha, as

United States Attorney, and the United States Department of Health and Human Services, Office of Inspector General, and Gary Donahue of the United States Bankruptcy Trustee's Office.

2. As set forth in the Sales Procedures Order, the Special Master shall be required to seek approval of the United States Bankruptcy Court for the District of Rhode Island in *In Re North Stonington Health Center, Inc.*, B.K. No. 12-11508 (the "Bankruptcy Court") with respect to the necessary authority and approval for the conveyance and transfer of the assets of North Stonington Health Center, Inc. to Buyer. In accord therewith, the Order does not approve the sale of any real or personal property subject to the jurisdiction of the Bankruptcy Court, but is a conditional approval of such sale subject to approval of the Bankruptcy Court so long as that court has jurisdiction over such assets. In turn, the Stipulation read into the record on August 28, 2012, withdrawing North Stonington Properties LLC's Objection and waiving appellate rights is incorporated herein. See Transcript of Stipulation attached hereto as *Exhibit C*. No such approval shall be required to convey Assets of any or all other Sellers to the Buyer pursuant to this Order and the APA.

3. As set forth herein, the Special Master is hereby authorized to sell the Assets as pursuant to the terms of the APA attached hereto and incorporated herein as *Exhibit A and Exhibit B*. The consideration for the sale of such Assets, in large part, is contained in Section 1.6 of the APA and in the particular the Covenants of Buyer set forth at Article 10 of the APA and outlined above (hereinafter, the "Buyer Commitments"). The Buyer Commitments, in addition to the other obligations, covenants and representations set forth in the APA, are guaranteed by the parent company Lawrence & Memorial Hospital Corporation and said guaranty is incorporated into this Order. Moreover, the APA provides that the Buyer agrees to be bound by a mechanism for enforcement of the Buyer Commitments, as reasonably acceptable

to the Buyer and as ordered by the Court. Accordingly, the Buyer Commitments are to be enforced as follows:

- a. Beginning on the first anniversary of the Closing of the transactions contemplated by the APA and on each of the following four (4) anniversaries thereof, Buyer shall file, in a form reasonable acceptable to the RIDOH, a written annual report and supporting documentation, concerning progress toward achieving, and compliance with, the Buyer Commitments (the "Annual Report").
- b. The RIDOH shall coordinate as appropriate with the Rhode Island Attorney General ("RIAG"), the Rhode Island Secretary of Health and Human Services, the Rhode Island Office of Health Insurance Commissioner, and the Office of the Lieutenant Governor regarding the review of said Annual Reports.
- c. In the event the RIDOH alleges a violation of the Buyer Commitments, the RIDOH may seek appropriate relief for enforcement of the applicable Buyer Commitments pursuant to RIGL 23-17-8.
- d. The Mastership Proceeding, upon final report and recommendation of the Special Master shall be stayed; provided, however, if after exhaustion of the administrative procedures set forth above there remain unresolved disputes regarding enforcement of the Buyer's Commitments, the stay shall be lifted and any such remaining disputes shall be submitted to the Mastership Court for adjudication; and, provided, further, if no such disputes are submitted to the Mastership



Court within six (6) months following the fifth anniversary of the Closing, the stay of the Mastership stay shall expire and the Mastership shall terminate.

4. Schedule 10.6 of the APA, the commitments negotiated by and between United Nurses and Allied Professionals and L&M, and the dispute resolution provisions thereof are expressly incorporated herein.

5. The Court hereby finds and holds that effective upon the Closing, the Assets shall be transferred to Buyer pursuant to the APA, as amended hereby, free and clear of all Liens, including, without limitation, any and all encumbrances, pledges, mortgages, deeds of trust, security interest, claims, leases, charges, options, rights of first refusal, puts, calls, easements, servitudes, proxies, covenants, hypothecations, voting trusts, or agreements and transfer restrictions under any agreement, against or with respect to tangible or intangible property or rights, whether imposed by agreement, understanding, law, equity, or otherwise save for and excepting only those liens expressly assumed by Buyer pursuant to the terms of the APA. In addition, said Assets shall be sold to Buyer pursuant to the APA free and clear of all Liabilities, including, without limitation, all causes of action, obligations, demands, guarantees, rights, restrictions, remedies, claims, and matters of any kind and nature whatsoever, whether at law or in equity, including, without limitation, free and clear of any rights or claims based on theories of transferee or success for liability under any applicable law, statute, rule, regulation, common law or equitable principle including, without limitation, ERISA and the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder, and the codes of any Governmental Authorities including, without limitation, the PBGC, the RIDOH, the Internal Revenue Service, state and local taxing authorities, Government Reimbursement Programs, and

any Governmental Authority, whether arising before or after the commencement of the Mastership Proceedings herein and whether imposed by agreement, understanding, law, equity, regulation, custom or otherwise, save and excepting only those liabilities expressly assumed by Buyer in writing under the APA. This Court shall retain jurisdiction to resolve any controversy and claim arising out of or relating to the APA, or the breach thereof, and over any claims against Buyer that are not Assumed Liabilities as defined in the APA. In accordance therewith, the Special Master, effective upon the Closing, shall transfer all right, title and interest in and to the real property in which The Westerly Hospital and the Related Entities have right, title and interest, together with all appurtenances and rights thereto, and all right, title and interest in the leasehold interest to leased real property, which interest, shall be sold, assigned and transferred to Buyer free and clear of any and all mortgages, deeds of trust, security interests, mechanics or other liens, liabilities or encumbrances subject only to Assumed Liabilities. Furthermore, and as consistent therewith, the accounts receivable being acquired by Buyer represent and constitute *bona fide* claims owing to the Westerly Hospital and Related Entities for services actually performed and for goods and supplies actually provided in the amounts indicated on the Financial Statements (as that term is defined in the APA) with no known set-offs, deductions, compromises or reductions (other than reasonable allowances for bad debts and contractual allowances in an amount consistent with historical policies and procedures of the Westerly Hospital and Related Entities). Consistent herewith, the Owned Intellectual Property is deemed an Asset under the APA and the Special Master shall transfer and assign to Buyer all of the right, title and interest of the Westerly Hospital and Related Entities in and to the Owned Intellectual Property under the terms set forth in this Order and the APA. Notwithstanding, all liens, claims and encumbrances not assumed pursuant to the terms of the APA, shall attach to the proceeds of

the sale of the Assets as pursuant to Paragraphs 6, 9 and 10, herein, in the same order of priority existing as of the Closing.

6. The claims of the PBGC and the United States by and through the United States' Attorney and the Department of Health and Human Services, Office of the Inspector General, once proven and/or resolved, shall attach to the proceeds of the transaction approved hereby. Moreover, the claims of the Rhode Island Division of Taxation, once proven and/or resolved, shall attach to said proceeds in the priority ordered by this Court. Finally, the claims reserved by the Washington Trust Company relative to the leasehold obligations of the North Stonington Health Center, Inc., as guaranteed, if proven, shall attach to such proceeds with the collateral for such claims being subject to the limits of Washington Trust Company's first priority security interest in accounts receivable with the parties reserving all rights in regard thereto, including whether the obligations under said guaranty are secured.

7. In accordance with the terms of the amendment to the APA attached hereto as *Exhibit B*, the Special Master is hereby authorized on behalf of the Hospital, to provide such notice and take such other action as is reasonably necessary to cause the redemption of the Bond Debt pursuant to the Loan and Trust Agreement including such action necessary for the Hospital to cause a settlement payment to be made to the Bond Trustee for satisfaction and redemption of the Bond Debt pursuant to the Loan and Trust Agreement and constituting a settlement payment pursuant to 11 U.S.C. Sections 101(51A) and 546(e).

8. As of the Effective Date of the APA, if the Buyer accepts automatic assignment of the Hospital's Medicare provider agreement under 42 C.F.R. ss 489.18, the Medicare provider agreement will be governed exclusively by the Medicare statute, regulations, policies and procedures, and without regard to other laws or further orders of this Court. These include, but are not limited to, adjustment of all payments to the Buyer, as the owner of Medicare provider agreement, to account for all prior

overpayments and underpayments, including those relating to the pre-sale periods. The Buyer may, however, in its sole discretion, elect to reject the otherwise automatic assignment of the Hospital's Medicare provider agreement as of the Effective Date of the APA pursuant to the Medicare statute, regulations, policies and procedures including, among other things, Section 3210.5A of the CMS State Operations Manual by filing with the CMS Regional Office ("RO"), a notice of its refusal to accept such assignment in writing at least 45 calendar days prior to the Effective Date and the Buyer may file an application for an "initial enrollment" in Medicare, effective as of the date on all applicable requirements for such enrollment are satisfied. Notwithstanding the foregoing or anything in this Order, Petition to Sell, or APA to the contrary, the Medicare provider agreement shall not be considered an "asset" that may be sold or transferred, and in particular may not be sold or transferred "free and clear" of any liens or liabilities.

9. Based upon the sale and marketing efforts conducted by the Special Master as consistent with this Court's Orders and this Court's findings that the Special Master satisfied the phased requirements of the Mastership Transaction Process Order, this Court finds that the sale of the Assets to Buyer, upon the terms and conditions of the APA, as amended by this Order, is commercially reasonable, the sales price and the terms set forth therein are fair and reasonable, the sale is made in good faith, Buyer is a *bona fide* good faith purchaser, and that such sale is in the best interest of all creditors of The Westerly Hospital and the Related Entities wherever located. Furthermore, this Court also finds based upon a review of the file materials and the testimony of representatives of L&M that this sale will provide the Westerly Hospital and the Related Entities with the benefit of years of expertise and sound business and financial practices of a highly experienced management team.

10. The Special Master is hereby authorized to execute and deliver immediately, the Interim Advisory Agreement. The Special Master shall report to the Court with regard to the

Interim Advisory Agreement within seven (7) days of the entry of the Sale Order. Notwithstanding the foregoing or any other provision of this Order or the APA, the Special Master shall file a separate petition with this Court, with notice to creditors and other parties in interest, and an opportunity for a hearing thereon, in connection with any request to borrow funds from the Buyer pursuant to the APA or otherwise. Any such petition shall provide detail regarding the amount of any proposed borrowing, the proposed terms, the proposed collateral, describe whether liens of creditors would be impaired by the proposed borrowing, and the adequate protection proposed for those creditors. All rights and defenses of creditors with respect to such a petition, including without limitation all rights to adequate protection, are reserved. At the Closing, the Special master is authorized to execute and deliver a Special Master's Deed(s), an Assignment and Assumption Agreement, an Assignment and Undertaking Agreement, a Special Master's Bill of Sale, an Assignment of Intellectual Property, and such other deliverables as set forth in Section 2 of the APA, conveying all of his right, title and interest as Special Master in and to the Assets, free and clear of all interest, claims, Liens and Liabilities, as set forth in Paragraph 3 above. Notwithstanding, any such interest, claims, Liens and Liabilities shall attach to the sale proceeds resulting from the sale of Assets in the same order of priority that is currently existing in such Liens or Liabilities. The Special Master shall report to the Court regarding the Closing and then submit to the Court, a proposed schedule for the determination of claims, after this Court's determination of Closing costs and Seller's transaction expenses to be paid by the Buyer pursuant to Sections 1.6(b)(vi), 3.28, and 13.7 of the APA, as well as the proceedings anticipated by Section 1.7 of the APA. Procedures to be recommended by the Special Master and ultimately established by this Court shall allow for the Court-approved distribution of the proceeds of the sale of the Assets to those claims, liens, and encumbrances

which transfer and attach to the sale proceeds pursuant to the terms of this Order in the same order of priority.

11. All parties asserting a claim, interest, lien or encumbrance against the Assets are hereby directed to execute and deliver to the Special Master within seven (7) days of his written request, mortgage or discharges, lien discharges, UCC financing termination statements and any and all other documents as necessary to evidence the discharge of such interest, claims, liens or encumbrances against the Assets, effective upon the Closing, as the Special Master may determine in his sole discretion to be necessary. All such documents shall be held by the Special Master in escrow pending the occurrence of the Closing Date and shall be released to the Buyer and/or filed and recorded as directed by the Buyer solely at and in connection with the Closing (absent which such documents shall be null and void of be of no force and effect). The execution and delivery of the same shall be without prejudice to or waiver or any and all rights, claims and interests of such parties against the proceeds from the sale of the Assets and such claims, liens and encumbrances shall transfer and attach to sale proceeds in the same order of priority. If any person or entity that has filed a financing statement or other documents or agreements evidencing a Lien or Liability on the Assets shall not have delivered, in proper form for filing, termination statements, instruments of satisfaction, releases, and other documents to the Special Master after seven (7) days of his written request in accordance with this paragraph, then the Special Master shall be and hereby is authorized to, at the Closing, execute such termination statements, instruments of satisfaction, releases, and other documents on behalf of the person or entity and to file the same with any appropriate registry or public filing office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Assets free and clear of Liens and Liabilities shall be self-executing, effective upon

Closing and notwithstanding the failure of Buyer, the Special Master, or any other party to execute, file, or obtain releases, termination statements, assignment consents, or other instruments to effectuate, consummate, and/or implement the provisions hereof or the APA with respect to the sale of the Assets and the assumption and assignment of the Assumed Contracts, all Liens and Liabilities on the Assets shall be and hereby are deemed to be divested, terminated, and discharged effective upon Closing.

12. The execution, delivery and performance of the APA by the Special Master and all other agreements referenced herein, or ancillary hereto, to which The Westerly Hospital and the Related Entities are a party, and the consummation of the transactions contemplated herein, are within the Special Master's authority and power subject to this Court's approval as pursuant to the Orders entered by this Court. Other than the express approval of this Court contained herein, the Special Master does not require any approval or consent of, or filing with, any Governmental Authority or agency bearing on the validity of the APA which is required by laws and regulations of any such Governmental Authority or agency. The APA does not conflict with, require consent under, or result in any breach or contravention of, or the creation of any lien, charge, or encumbrance under, any indenture, agreement, lease, instrument, or understanding to which such Seller is a party or by which it is bound or any of its assets is subject. The APA does not violate in any material respect the statute, law, ordinance, rule or regulation of any Governmental Authority to which such Seller or its respective assets may be subject. The APA does not violate in any material respect any judgment, decree, order, writ or injunction of any court or any Governmental Authority to which the Seller or its respective assets may be subject.

13. L&M shall have no liability for any obligations by and between The Westerly Hospital and the Related Entities (defined in the APA as "Intercompany Obligations") and no such liability shall be assumed by L&M under the APA or this Order.

14. The Special Master is authorized to request that as part of the Hospital conversion process that the Buyer become the successor beneficiary to the Westerly Hospital and the Related Entities under that certain Charles A. Morgan Trust and the Louise D. Hoxsey Trust f/b/o Foundation Fund for a Hospital in Westerly, Rhode Island (the "Hoxsey Trust"). Moreover, that the Hoxsey Trust shall be dissolved with the funds being held in endowment for the Hospital under the ownership of the Buyer with the same restrictions as set forth in the Hoxsey Trust being placed upon the endowed funds.

15. Except as expressly permitted by the APA and this Order, all persons or entities holding or asserting any Lien or Liability of any kind or nature with respect to the Assets or business formerly conducted by The Westerly Hospital and the Related Entities shall be, and hereby are, barred from asserting such Lien or Liability against L&M, its successors and assigns, or the Assets, including without limitation, the claims of the DOJ, OIG, PBGC, RIAG and RIDOH.

16. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding, against L&M or its successors and assigns with respect to any Lien, Liability, encumbrance or claim. Without limiting the generality of the foregoing, except as expressly permitted by the APA and this Order, L&M shall have no liability for any claim against The Westerly Hospital and the Related Entities or its directors, officers, or shareholders.



17. Except as expressly provided in the APA, the consummation of the APA shall not subject L&M to any Liability whatsoever with respect to the operation of the Business of The Westerly Hospital and the Related Entities in any form or manner whatsoever, including, without limitation, by reason of any theory of successor or transferee liability, de facto merger, or substantial continuity, whether known or unknown and whether asserted or unasserted as of the Closing.

18. The Real Property which The Westerly Hospital and the Related Entities holds right, title and interest is exempt from property taxes as of the effective date of this Order in accord with the Rhode Island General Laws regarding non-profit corporations and all Liens or Liabilities relating thereto are hereby void ab initio. Notwithstanding, the Mastership shall continue to pay real property taxes with regard to 45 East Avenue and 11 Wells Street, Unit 6, up to the date of Closing.

19. At the election of the Buyer, the Special Master shall deliver the assets of the Non-Mastership Estate Related Entities to Buyer pursuant to the terms of this Order and as such, upon delivery of those assets in accordance herewith those entities shall be consolidated within the instant Special Mastership proceeding and any such entities shall be included in the definition of the term "The Westerly Hospital and the Related Entities" as such term is used in the APA and this Order.

20. With regard to the Westerly Hospital Foundation, Inc. and the Westerly Hospital Auxiliary Inc., those entities shall continue to function under the supervision of the Mastership from the entry hereof until Closing. Any donations received by those entities shall be segregated and shall only be utilized for the purposes identified by donors or to further the Hospital's community mission. Upon Closing, delivery of the assets of those entities to the Buyer as

provided in Paragraph 19 shall be accomplished, at the election of Buyer, by amendment, in a form reasonably satisfactory to Buyer, of their respective Articles of Incorporation and Bylaws thereby substituting LMW Healthcare, Inc. as the sole corporate member of each entity. Donated funds held by any of the Non-Mastership Estate Related Entities and transferred to L&M shall remain subject to any and all restrictions pertaining to such donated funds; specifically, that such funds be used only for the stated intent of the donor and for sole benefit of the Hospital.

21. Notwithstanding that the Assets are being sold free and clear of any and all Liens, Liabilities, claims, and encumbrances, the Special Master shall continue to take appropriate action to complete a “distressed termination” pursuant to Section 4041(c) of ERISA and reasonably cooperate with the PBGC in effectuating the termination of the Pension Plan pursuant thereto.

22. The Court finds and holds that the Hospital is duly licensed as a general acute-care hospital pursuant to the applicable laws of the State of Rhode Island. The pharmacies, laboratories and all other ancillary departments located at the Hospital that operate for the benefit of the Hospital and that are required to be specially licensed, are duly licensed by the RIDOH or other appropriate licensing agency.

23. The consideration provided by Buyer for the Assets under the APA is fair and reasonable, and the result of an open and competitive sales process and the marketing efforts described in the Petition, the Mastership Process Order, the Sales Procedure Order, and those conducted by the Special Master after the filing of the Petition and in accordance with the Sales Procedure Order and the Mastership Process Order culminated in a purchase price negotiated in

good faith and at arm's length that may not be avoided, nor may costs or damages be imposed or awarded under any applicable law relating to bidder collusion.

24. The failure specifically to include or refer to any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

25. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by the Special Master on behalf of The Westerly Hospital and the Related Entities and L&M, and in accordance with the terms of the APA, without further order of the Court so long as such modification is not material; provided that terms in the APA with respect to the Bonds and the Bank Debt of the Sellers shall not be amended without the consent of the Bond Trustee and/or Washington Trust Company. The failure specifically to include or refer to any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the APA be authorized and approved in its entirety.

26. This Order shall be effective, and the parties may consummate the transactions contemplated by the APA, immediately upon entry. The Special Master is hereby authorized, empowered, and directed, and, upon entry of this Order, shall have all the authority necessary, subject to the terms of this Order, perform such ministerial acts as may be required to effectuate and implement the APA and any transaction contemplated thereby. The Special Master shall cooperate with and take all actions reasonably requested by Buyer to effectuate the APA consistent with the terms of this Order and any transaction contemplated thereby.

27. All of the transactions and actions contemplated by this Order are properly authorized under applicable law and all Orders previously entered by this Court in this

Mastership proceeding. The terms and provisions of the APA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Buyer its successors and assigns and any affected third parties, including all counter-parties to the Assumed Contracts notwithstanding dismissal of this Mastership Case or the filing of bankruptcy proceeding or similar insolvency proceeding by or against any of the Sellers. The Special Master irrevocably waives any right to seek any material modification of this Order without the prior written consent of L&M, and no such consent shall be implied by any other action, inaction, or acquiescence by L&M, so long as L&M is not in default of the APA or the terms of this Order. The stay provisions of this Order Appointing Permanent Master entered on January 17, 2012 are hereby lifted and modified to the extent necessary to implement the terms and conditions of the APA and the provisions of this Order.

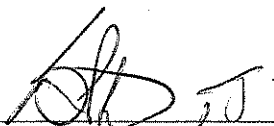
28. This Court shall retain jurisdiction over the parties to the APA with respect to any matters related to or arising under the APA or under this Order and specifically retains jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and any agreements executed in connection therewith in all respects, including but not limited to, retaining jurisdiction (a) to compel delivery of the Assets to Buyer; (b) to resolve any disputes arising under or related to the APA, except as otherwise provided therein; (c) to protect the Buyer, or the Assets, from and against any Liens, Liabilities, encumbrances or claims; and (d) to interpret, implement, and enforce the provisions of this Order.

29. All acts, doings, and disbursements to date of said Special Master are hereby approved, confirmed and ratified.

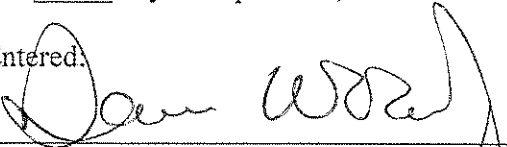
30. Notwithstanding anything stated herein to the contrary, the transactions contemplated by the APA are subject to all of the provisions of the Hospital Conversions Act ("HCA") and the Health Care Facility Licensing Act of Rhode Island ("HCFLA"), and all regulations promulgated under said acts, including without limitation, approval by the RIDOH and RIAG pursuant to the HCA, and a favorable recommendation by the Health Services Council and approval by the Director of RIDOH pursuant to HCFLA, all of which recommendations and approvals must be obtained prior to Closing.

ENTERED as an Order of this Court this 10<sup>th</sup> day of September, 2012


Per Order:

  
\_\_\_\_\_  
J.

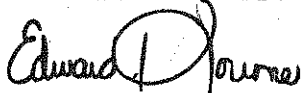
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\_\_\_\_\_  
9-10-12 Clerk

Submitted by:

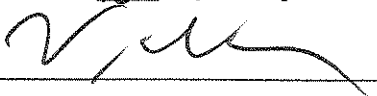
  
\_\_\_\_\_  
W. Mark Russo (#3937) Permanent Special Master  
for Westerly Hospital Health Care, Inc.,  
The Westerly Hospital, Atlantic Medical Group, Inc.,  
Ocean Myst MSO, LLC, Women's Health of Westerly,  
LLC, and North Stonington Health Center, Inc.,  
and not in his individual capacity  
Ferrucci Russo P.C.  
55 Pine Street, 4<sup>th</sup> Fl.  
Providence, RI 02903  
Telephone: (401) 455-1000  
Facsimile: (401) 455-7778  
Dated: September 6, 2012

TRUE COPY ATTEST

  
EDWARD MORRONE, CLERK  
WASHINGTON COUNTY SUPERIOR COURT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the within was served via e-mail upon the following that is referenced in Schedule A attached hereto on this 10 day of September, 2012:

  
\_\_\_\_\_

k:\w\westerly hospital\pleadings\sale order redline 09-06-12.docx

## **EXHIBIT B**

AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT TO ASSET PURCHASE AGREEMENT (this "Amendment") is entered into as of August \_\_, 2012 by and among LMW Healthcare, Inc., LMW Physicians, Inc., and W. Mark Russo, Esq. solely in his capacity as the Court-appointed Special Master for Westerly Hospital Healthcare, Inc., The Westerly Hospital, Atlantic Medical Group, Inc., Ocean Myst, MSO, LLC, Women's Health of Westerly, LLC and North Stonington Health Center, Inc.

WHEREAS, the Parties entered into that certain Asset Purchase Agreement dated as of June 20, 2012 (the "Purchase Agreement");

WHEREAS, pursuant to the Purchase Agreement, Sellers have agreed to sell to Buyer, and Buyer has agreed to purchase from Sellers, the Hospital and substantially all of Sellers' assets used to operate the Hospital and the Business.

WHEREAS, the Parties desire to amend the Purchase Agreement to address certain matters that have arisen since the execution of the Purchase Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Purchase Agreement as follows:

Each capitalized term used herein, but not otherwise defined shall have the same meaning as ascribed to such term in the Purchase Agreement.

1. The following definitions set forth in the Purchase Agreement are amended and restated in their entirety:

"Bank Debt of Sellers" shall mean the principal, interest, reasonable fees and expenses owed to Washington Trust Company ("WTC") (including reasonable professional fees) and other charges with respect to the secured loan obligations more specifically set out in the June 25, 2012 "*Order Allowing Claim of Washington Trust Company and Granting Related Relief*" entered by the Mastership Court.

"Bond Debt of Sellers" shall mean the principal, interest, reasonable fees and expenses of the Bond Trustee (including reasonable professional fees) and other charges with respect to the Bonds, determined pursuant to the Loan and Trust Agreement and the May 31, 2012 "*Order Allowing Revenue Bond Claims and Granting Related Relief*" entered by the Mastership Court.

2. The following definitions are added to the Purchase Agreement:

"Bonds" means those certain Rhode Island Health and Educational Building Corporation Hospital Financing Revenue Bonds (The Westerly Hospital Issue) Series 1994 issued for the benefit of the Hospital pursuant to the Loan and Trust Agreement.

"Bond Trustee" means U.S. Bank National Association, as successor trustee under the Loan and Trust Agreement with respect to the Bonds, its successors and assigns.

"Loan and Trust Agreement" means that certain Loan and Trust Agreement dated as of January 15, 1994 by and among the Rhode Island Health and Educational Building Corporation, the Bond Trustee and the Hospital.

3. Section 1.2 (h) of the Purchase Agreement is amended by striking the reference in that Section to "Section 1.2(b)" and replacing it with a reference to "Section 1.4(b)."

4. Section 1.3 of the Purchase Agreement is amended by adding the following sentence at the end of the current text:

Buyer is not acquiring any cash, cash equivalents, funds or securities held or controlled by the Bond Trustee under the Loan and Trust Agreement from time to time; provided such monies shall be applied in accordance with the Loan and Trust Agreement including as contemplated by Section 1.6(b)(i) of this Agreement.

5. Section 1.6(b)(i) of the Purchase Agreement shall be deleted in its entirety and replaced with the following:

(i) Twenty Two Million, Sixty-Nine Thousand, Six Hundred and Sixty-Six Dollars (\$22,069,666.00) shall be satisfied at Closing by (a) Buyer's assumption of Liabilities more specifically set forth in Schedule 1.4(b), provided: (b) as to the Bank Debt of the Sellers Buyer may elect to either: (i) assume the Bank Debt of Sellers on terms mutually agreeable to WTC and the Buyer or (ii) fund the Sellers' satisfaction of the Bank Debt of Sellers on or before Closing and (c) Buyer's payment to the Bond Trustee at Closing of sufficient Available Monies (as defined in the Loan and Trust Agreement) to, together with any cash, cash equivalents funds or securities then held by the Bond Trustee under the Loan and Trust Agreement, redeem the Bonds then outstanding and otherwise satisfy in full in cash the Bond Debt of Sellers pursuant to the Loan and Trust Agreement (as opposed to assuming said Liabilities itself);

6. Section 2.2 of the Purchase Agreement is amended by deleting the word "and" in subsection (l), deleting the period at the end of subsection (m), inserting a semicolon at the end of subsection (m), and adding the following subsection (n) after subsection (m):



(n) The Hospital shall deliver to the Bond Trustee such documents, provide such notice and take such other action as is reasonably necessary to cause the redemption of the Bonds and discharge of the Loan and Trust Agreement, including without limitation, written directions to the Bond Trustee to send a notice to bondholders to redeem the Bonds on or before the Closing Date (the "Redemption Date"), which notice shall be mailed no more the sixty(60) nor fewer than thirty (30) days prior to the Redemption Date and which shall otherwise comply with the terms and conditions of the Bonds and the Loan and Trust Agreement.

7. Section 2.3(j) of the Purchase Agreement shall be deleted in its entirety and replaced with the following:

(j) such other documents as may be reasonably requested by any Seller, and, to the extent relating to the assumption of the Bank Debt of the Sellers, by WTC, and to the extent relating to the redemption of the Bonds and/or discharge of the Loan and Trust Agreement, by the Bond Trustee.

8. Section 13.1 of the Purchase Agreement is amended by adding the following sentence at the end of subsection (b):

Notwithstanding the foregoing, no amendment contemplated by this Section 13.1 shall be made with respect to the Bank Debt of the Seller absent the prior written consent of WTC.

Notwithstanding the foregoing, no amendment contemplated by this Section 13.1 shall be made with respect to the Bonds absent the prior written consent of the Bond Trustee.

9. This Amendment shall be effective as of the date hereof and except as expressly provided herein, the terms and conditions of the Purchase Agreement shall remain in full force and effect and unmodified. This Amendment may be executed in counterparts, all of which together shall constitute one binding Agreement. The exchange of copies of this Amendment and of executed signature pages by facsimile transmission or by email transmission in portable digital format, or similar format, shall constitute effective execution and delivery of such instrument(s) as to the parties and may be used in lieu of the original Agreement or amendment for all purposes. Signatures of the parties transmitted by facsimile or by email in portable digital format, or similar format, shall be deemed to be their original signatures for all purposes.

[SIGNATURE PAGES FOLLOW]

THE UNDERSIGNED each hereby execute this Amendment as of the date first written above.

**BUYER:**

LMW Healthcare, Inc., a Rhode Island nonprofit Corporation

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

LMW Physicians, Inc., a Rhode Island nonprofit Corporation

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

**SELLERS:**

**WESTERLY HOSPITAL HEALTHCARE, INC.**

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

**THE WESTERLY HOSPITAL**

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

**ATLANTIC MEDICAL GROUP, INC.**

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

OCEAN MYST, MSO LLC

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

WOMEN'S HEALTH OF WESTERLY, LLC

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

NORTH STONINGTON HEALTH CENTER, INC.

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