

So Ordered.

Signed this 20 day of December, 2019.



Robert E. Littlefield, Jr.
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

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| In re: | : | |
| GOOD SAMARITAN LUTHERAN HEALTH CARE CENTER, INC. d/b/a BETHLEHEM COMMONS CARE CENTER, et al.¹, | : | Case No. 19-12215 (REL) |
| Debtors. | : | Chapter 11 (Main Case) |
| | : | Case No. 19-12216 (REL) |
| | : | |
| | : | Jointly Administered |

ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF OMNI AGENT SOLUTIONS AS CLAIMS AND NOTICING AGENT EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE

In consideration of the Motion,² of the above-captioned Debtors for entry of an order, pursuant to 28 U.S.C. § 156(c), authorizing the retention and employment of Omni Agent Solutions (“**Omni**”) as claims and noticing agent for the Debtors pursuant to the Service Agreement attached hereto as Exhibit A, *nunc pro tunc* to the Petition Date; and upon the First Day Declaration; and the Court being satisfied, based on the representations made in the Motion

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Good Samaritan Lutheran Health Care Center, Inc. d/b/a Bethlehem Commons Care Center (0663) and Kenwood Manor, Inc. (8178).

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

and the Declaration of Paul H. Deutch submitted in support thereof that Omni is (i)“disinterested” as such term is defined in section 101(14) of the Bankruptcy Code; and (ii) represents no interest adverse to the Debtors’ estates with respect to the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors and other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted to the extent provided herein; and it is further

ORDERED, that to the extent the Motion is inconsistent with this Order, this Order shall govern; and it is further

ORDERED, that the Debtors are authorized to retain Omni *nunc pro tunc* to the Petition Date, and Omni is authorized and directed to perform noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and all related tasks, as described in the Motion (the “**Claims and Noticing Services**”) and under the terms of the Services Agreement; and it is further

ORDERED, that Omni shall serve as the custodian of court records and shall be designated as the authorized repository of all proofs of claim filed in the Chapter 11 Cases, and is

authorized and directed to maintain an official claims register for the Debtors and to provide the Clerk's Office with a certified duplicate thereof upon the request of the Clerk's Office; and it is further

ORDERED, that Omni is authorized and directed to obtain a post office box or address for the receipt of proofs of claim; and it is further

ORDERED, that Omni is authorized and directed to take such other action to comply with all duties set forth in the Motion and the Services Agreement; and it is further

ORDERED, that the Debtors are authorized to compensate Omni in accordance with the applicable terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Omni and the rates charged for each, and to reimburse Omni for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Omni to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses; and it is further

ORDERED, that if any dispute arises relating to the Services Agreement or Omni's monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if a resolution is not achieved, the parties may seek resolution of the dispute by the Court.

ORDERED, that Omni shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for Debtors, counsel for any official committee appointed in these Chapter 11 Cases, counsel to Amalgamated Bank, counsel to The Lutheran

Care Network, and any party-in-interest who specifically requests service of the monthly invoices; and it is further

ORDERED, that the parties-in-interest shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved through agreement of the parties-in-interest; and it is further

ORDERED, that, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Omni under this Order shall be an administrative expense of the Debtors' estates; and it is further

ORDERED, that, notwithstanding the indemnification language contained in Omni's retention agreement, Omni is not entitled to any indemnification from the Debtors.

ORDERED, that in the event Omni is unable to provide the services set out in this Order, Omni is directed to notify the Clerk and counsel for the Debtors immediately, and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and counsel for the Debtors; and it is further

ORDERED, that the Debtors and Omni are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED, that, notwithstanding any term in the Services Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from, or related to, the implementation of this Order; and it is further

ORDERED, that Omni shall not cease providing noticing and claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court; and it is further

ORDERED, that in the event of any inconsistency between the Services Agreement, the Motion, and the Order, the Order shall govern; and it is further

ORDERED, that Omni shall comply with all of the protocols of the Clerk's Office, including causing all certificates of service with respect to documents filed by Omni to be filed with seven (7) business days of the filing, and providing weekly reporting to the Clerk's Office updating the claims register and official mailing list.

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EXHIBIT A

OMNI AGENT SOLUTIONS
5955 De Soto Avenue, Suite 100
Woodland Hills, CA 91367
818-906-8300

November 26, 2019

Tom Roemke, Board Secretary
Good Samaritan Lutheran
Health Care Center, Inc.
c/o Stradley Ronon Stevens & Young, LLP
2005 Market St., Suite 2600
Philadelphia, PA 19103
Attn: Brian P. Seaman, Esq.

Re: Omni Management Group Retention letter

Mr. Roemke:

This letter (the "Agreement") will acknowledge that you have requested Omni Agent Solutions ("Omni") to provide services to Good Samaritan Lutheran Health Care Center, Inc. d/b/a Bethlehem Commons Care Center and Kenwood Manor, Inc. (collectively, the "Companies") in preparation of, and in connection with, the Companies' potential joint chapter 11 filings. Omni will make itself available to the Companies, *as requested*, for the purposes of assisting the Companies with pre- and post-petition case administration matters including data entry, preparation and management of a consolidated creditor matrix, preparation of schedules of assets and liabilities and statements of financial affairs, claims management, noticing, plan solicitation and tabulation, distribution, the development and maintenance of a virtual data room, the development and maintenance of an informational website, and any other services as may be requested by the Companies.

The services to be rendered by Omni will be billed at rates ranging from \$25.00 to \$155.00 per hour as per the attached rate sheet. Rates are adjusted annually on January 2nd of each year and are subject to increases not to exceed ten (10%) percent per annum. Increases greater than ten (10%) percent per annum will be discussed with you, and be subject to your prior approval, before becoming effective.

For all such services rendered, we require a \$10,000 retainer. All charges will be on a portal to portal basis plus out-of-pocket expenses. Omni shall be compensated on a monthly basis for those services performed by Omni during the preceding calendar month. Invoices are payable within 7 days of receipt by the Companies.

Each of Omni and the Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the

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other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

The parties understand that the software programs and other materials furnished by Omni pursuant to this Agreement and/or developed during the course of this Agreement by Omni are the sole property of Omni. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Companies agree not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement. The Companies further agree that any ideas, concepts, know-how or techniques relating to data processing or Omni's performance of its services developed during the course of its Agreement by Omni shall be the exclusive property of Omni. Upon the Companies' request at any time or times while this Agreement is in effect, Omni shall immediately deliver to the Companies and/or the Companies' retained professionals, at the Companies' expense, any or all of the non-proprietary data and records held by Omni pursuant to this Agreement, in the form requested by the Companies.

To the fullest extent permitted by applicable law, the Companies shall indemnify and hold harmless Omni and its members, directors, officers, employees, representatives, affiliates, consultants, subcontractors and agents (collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, judgments, liabilities and expenses, whether direct or indirect (including, without limitation, counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to Omni's performance hereunder. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Parties. Omni and the Companies shall notify each other in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that either party becomes aware of with respect to the services provided under and pursuant to the Agreement. The Companies' indemnification of Omni hereunder shall exclude Losses resulting from Omni's gross negligence or willful misconduct. The Companies' indemnification obligations hereunder shall survive the termination of this Agreement.

Except as expressly provided herein, Omni's liability to the Companies for any Losses, unless due to Omni's gross negligence or willful misconduct, shall be limited to the total amount paid by the Companies for the portion of the particular work that gave rise to the alleged Loss. In no event shall Omni's liability to the Companies for any

Losses arising out of this Agreement exceed the total amount actually paid to

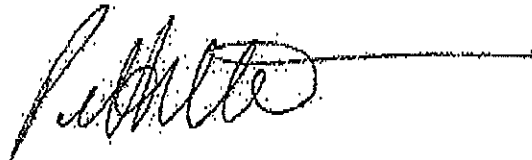
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Omni for services provided under and pursuant to this Agreement. In no event shall Omni be liable for any indirect, special or consequential damages (such as loss of anticipated profits or other economic loss) in connection with or arising out of the services provided under and pursuant to this Agreement.

This Agreement is terminable at will by the parties hereto upon thirty (30) days written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party. In the event that this Agreement is terminated, regardless of the reason for such termination, Omni shall cooperate with the Companies to maintain an orderly transfer of all records, data and information and record keeping functions, and shall provide all necessary staff, services and assistance required for an orderly transfer. The Companies agree to pay for such services in accordance with Omni's then existing prices for such services.

Please acknowledge the above by signing and returning a copy of this letter. Should you have any questions regarding the above, please do not hesitate to call me.

Sincerely,



Paul H. Deutch
Senior Vice President

**GOOD SAMARITAN LUTHERAN
HEALTH CARE CENTER, INC. AND
KENWOOD MANOR, INC.**

Date: 11/26/19

By: Tom Roemke
Tom Roemke
Board Secretary