

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**MOTION OF DEBTORS FOR ENTRY OF AN AGREED ORDER AUTHORIZING
(I) ASSUMPTION AND ASSIGNMENT OF THE TCF EQUIPMENT CONTRACT TO
NORTH MISSISSIPPI HEALTH SERVICES, INC, (II) PAYMENT OF AGREED CURE
AMOUNT, AND (III) RELATED RELIEF**

The above captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned jointly administered chapter 11 cases (these “**Chapter 11 Cases**”), hereby submit this motion (the “**Motion**”) for entry of an agreed order (the “**Agreed Order**”), in substantially the form filed contemporaneously herewith, authorizing the Debtors to assume and assign a certain contract with TCF Equipment Finance (“**TCF**”) to North Mississippi Health Services, Inc. (“**NMHS**”), as described below. In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
7. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

8. The statutory basis for the relief requested herein is section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”).

BACKGROUND

A. General Background

9. On August 24, 2018, (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Stephen N. Clapp, Chief Executive Officer of Curae Health, Inc., in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 49] and fully incorporated herein by reference. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

10. On August 29, 2018, the Court entered an order authorizing joint administration of these Chapter 11 Cases.

B. The TCF Contract

11. In the ordinary course of their business, Debtor Amory Regional Medical Center, Inc. (“**Amory**”) and Flex Financial entered into that certain Short Form Conditional Sale Agreement No. 2110028048, dated on or about October 31, 2017, pursuant to which Amory agreed to purchase certain equipment and services from Flex Financial (the “**Agreement**”). A true and correct copy of the Agreement is attached hereto as Exhibit A.

12. Flex Financial has assigned all its rights and interests with respect to the Agreement to TCF.

C. The Sale of Gilmore Medical Center

13. On August 31, 2018, the Debtors filed *Debtors' Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Docket No. 79] (the “**Sale Procedures Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to Gilmore Medical Center (the “**Gilmore Hospital**”).

14. On September 28, 2018, the Bankruptcy Court entered an order on the Sale Procedures Motion (the “**Sale Procedures Order**”) [Docket No. 260], approving, *inter alia*, the procedures for the assumption and assignment of executory contracts unexpired leases related to the sale of Gilmore Medical Center and the form Assumption and Assignment Notice and setting a sale hearing for November 27, 2018 (the “**Sale Hearing**”).

15. In accordance with the Sale Procedures Order, on October 29, 2018, the Debtors filed and served the *Notice of: (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* (the “**Assumption and Assignment Notice**”) [Docket No. 371].

16. In accordance with the Sale Procedures Order, on November 12, 2018, NMHS filed and served the *Notice of: (I) Stalking Horse Purchaser's Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of*

Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing (the “**Buyer Assumption and Assignment Notice**”) [Docket No. 446]. The Agreement was not included on Exhibit 1 to the Buyer Assumption and Assignment Notice as a contract that may be assumed and assigned to NMHS.

17. On November 30, 2018, the Court entered the *Order (I) Authorizing, Approving, and Directing the Sale of Substantially All of the Assets of Gilmore Medical Center to North Mississippi Health Services, Inc. Free and Clear of All Liens, Claims, and Encumbrances, and Other Interests; (II) Authorizing and Approving the Gilmore APA; (III) Approving the Debtors’ Marketing and Sale Process; and (IV) Granting Related Relief* [Docket No. 506] (the “**Sale Order**”), pursuant to which the Court approved the sale (the “**Sale**”) of the Debtors’ Assets, including the Premises, to NMHS.

18. The closing of the Sale occurred on December 31, 2018.

19. The Agreement was not assumed and assigned to NMHS in connection with the Sale of Gilmore Hospital and has not been rejected by the Debtors.

RELIEF REQUESTED

20. Debtors seek to assume and assign the Agreement to NMHS, effective as of January 1, 2019, and Debtors shall pay \$287.51 (the “**Agreed Cure Amount**”) pursuant to section 365 of the Bankruptcy Code. In addition to the Agreed Cure Amount paid to TCF, the Purchaser shall pay \$5,738.48 to cover post-closing obligations owed under the contract.

BASIS FOR RELIEF

21. Section 365 of the Bankruptcy Code permits a debtor-in-possession, with court approval, to assume or reject any executory contracts. *See, e.g., In re VisionAmerica, Inc.*, 2001 WL 1097741, at *3 (Bankr. W.D. Tenn. Sept. 12, 2001); *In re Beare Co.*, 177 B.R. 879, 882

(Bankr. W.D. Tenn. 1994); *In re Rovine Corp.*, 5 B.R. 402, 403 (Bankr. W.D. Tenn. 1980); 11 U.S.C. § 365(a).

22. “In order for it to be assumed, an executory contract must benefit a debtor’s bankruptcy estate . . . and the assumption of the contract must be an exercise of ‘reasonable business judgment.’” *In re Beare Co.*, 177 B.R. 879, 882 (Bankr. W.D. Tenn. 1994) (internal citations omitted); *Matter of Taylor*, 913 F.2d 102 (3rd Cir. 1990); *In re Global International Airways*, 35 B.R. 881 (Bankr. W.D. Mo. 1983). The business judgment test is not a strict standard, but merely requires a showing that either the assumption or rejection of a contract will benefit a debtor’s estate. *In re Bildisco*, 682 F.2d 72, 79 (3rd Cir. 1982), *aff’d sub nom. N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 104 S. Ct. 1118, 79 L. Ed. 2d 482 (1984); *In re Beare Co.*, 177 B.R. 879, 882 (Bankr. W.D. Tenn. 1994).

23. If a debtor-in-possession assumes and assigns an executory contract, the assignee “must perform the contract according to its terms, cure any defaults, and provide adequate assurance of future performance.” *In re Terrell*, 892 F.2d 469, 471 (6th Cir. 1989).

24. Here, assumption and assignment of the Agreement and payment of the Agreed Cure Amount is in the best interests of the Debtors and will benefit the Debtors’ estates. Following the closing of the Sale of Gilmore Hospital, Debtors continued to incur costs under the Agreement. Assumption and assignment of the Agreement to NMHS effective as of January 1, 2019 will relieve the Debtors’ estates of these post-closing costs. Moreover, NMHS, Debtors, and TCF have consented to the assumption and assignment of the Agreement and payment of the Agreed Cure Amount and post-sale payments as provided herein. Accordingly, assumption and assignment of the Agreement and payment of the Agreed Cure Amount is within the sound business judgment of the Debtors because doing so will benefit the Debtors’ estates.

WHEREFORE, the Debtors respectfully request that the Court enter the Agreed Order, substantially in the form filed contemporaneously herewith, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 2, 2019
Nashville, Tennessee

Respectfully submitted,

POLSINELLI PC

/s/ Michael Malone

Michael Malone
401 Commerce Street, Suite 900
Nashville, TN 37219
Telephone: (615) 259-1510
Facsimile: (615) 259-1573
mmalone@polsinelli.com

-and-

David E. Gordon (Admitted *Pro Hac Vice*)
Caryn E. Wang (Admitted *Pro Hac Vice*)
1201 West Peachtree Street NW, Suite 1100
Atlanta, Georgia
Telephone: (404) 253-6000
Facsimile: (404) 684-6060
dgordon@polsinelli.com
cewang@polsinelli.com

*Counsel to the Debtors and
Debtors in Possession*

Exhibit A

The Agreement

December 14, 2018

Amory Regional Medical Center

1105 Earl Frye Road
Amory, MS 38821-5500

To: Marc Nakagaw ("Customer")

Re: The Contract (#2110028048) referenced on Exhibit A annexed hereto, by and between Stryker and Customer, and the equipment, software and services, as applicable, which is the subject of such Contract ("Equipment").

STRYKER HEREBY GIVES NOTICE TO CUSTOMER THAT THE CONTRACT, AND ALL OF STRYKER'S RIGHTS AND INTERESTS WITH RESPECT TO THE CONTRACT, THE PAYMENTS DUE THEREUNDER AND THE EQUIPMENT, INCLUDING ANY SOFTWARE, HAVE BEEN SOLD, ASSIGNED AND TRANSFERRED TO TCF EQUIPMENT FINANCE (TCFEF).

Stryker hereby directs Customer to make all further payments of obligations payable under the Contract directly to TCFEF at the following address:

TCF Equipment Finance
PO Box 77077
Minneapolis, MN 55480-7777

(Or at such other address as TCFEF from time to time may notify Customer).

Stryker agrees that payment to TCFEF will relieve Customer of its obligation to make such payments to Stryker pursuant to the Contract and all such payments must be made to TCFEF until TCFEF advises Customer otherwise.

All notices and other correspondence to TCFEF (other than payments) shall be addressed to it at 1111 West San Marnan Drive, Suite A2 West, Waterloo, IA 50701 Attn: VP-Portfolio, or such other address as TCFEF may notify Customer from time to time.

YOU MAY RELY UPON A PHOTOCOPY OF THIS NOTIFICATION IN LIEU OF THE ORIGINAL.

Flex Financial, a division of Stryker Sales Corporation

By:  _____

Its: **Devon Ivy**
Controller



Short Form Conditional Sale Agreement No. 2110028048

Owner ("we" or "us"):
Flex Financial, a division of Stryker Sales Corporation
1901 Romance Road Parkway
Portage, MI 49002

Customer name and address ("You" and "Your"): Amory Regional Medical Center, Inc. dba Gilmore Memorial Hospital 1105 EARL FRYE BLVD AMORY, Mississippi 38821-5500	Equipment location: 1105 EARL FRYE BLVD, AMORY, Mississippi 38821-5500 Supplier: Stryker Sales Corporation, 6900 Optical Court, San Jose, CA 95138 Equipment description: see Exhibit A (and/or as described in invoice(s) or equipment list attached hereto and made a part hereof)
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Payment information

Number of payments	Payment frequency	Payment amount
60	Monthly	\$1,434.62 (First payment due 30 days after Agreement is commenced), (plus applicable sales/use taxes - see "Taxes" section below)

Terms and conditions:

- Purchase agreement/ acceptance/ payments:** You agree to purchase from us the Equipment and services, if any, described above and on any attached schedule (the "Equipment") in accordance with the terms of this Agreement (this "Agreement"). You shall be deemed to have accepted the Equipment for purchase under this Agreement on the date that is ten (10) days after the date it is shipped to you by the Supplier ("Acceptance Date") and, at our request, you shall confirm for us such acceptance in writing. No acceptance of any item of Equipment may be revoked by you. You agree to pay the Payments described above ("Payments") beginning on the Acceptance Date or any later date we designate and thereafter until all fully paid. Unless otherwise instructed by us in writing, all Payments and other amounts due hereunder shall be made to our address above. This Agreement is non-cancelable and may not be prepaid. Your obligations under this Agreement (your "Obligations") are absolute, unconditional, and are not subject to cancellation, defense, recoupment, reduction, setoff or counterclaim. If a Payment is not made when due, you will pay us a late charge of 5% of each Payment or \$10.00, whichever is greater, but only to the extent permitted by law. We may charge you a fee of \$55.00 for any check that is returned. You authorize us to adjust the Payments at any time if taxes included in the Payments differ from our estimate. You agree that the Payments were calculated by us based, in part, on a rate reported in the "Interest rate swaps" section of Federal Reserve Statistical Release H-15 and in the event the date the Equipment is delivered to you is more than 30 days after we send this Agreement to you, we may adjust the Payments once to compensate us, in good faith, for any increase in such rate.
- Ownership/security interest/laws/use/maintenance:** Upon acceptance of the Equipment by you, you shall hold title to and be the owner of the Equipment for all purposes including, without limitation, tax purposes. The purchase of the Equipment by you under this Agreement shall be "AS IS, WHERE IS", without representation or warranty of any kind from us, provided that this Agreement shall not impair any express warranties or indemnifications, written service agreements or other obligations of Stryker Corporation or any of its subsidiaries to you regarding the Equipment and we hereby assign all of our rights in any Equipment warranties to you. As security for all of your Obligations, you hereby grant to us a first priority security interest in all of your rights, title and interests in the Equipment, all replacements, additions, accessions, accessories and substitutions thereto or therefore and all proceeds and products thereof, including, without limitation, all proceeds of insurance. Upon timely payment of all amounts due hereunder (plus all applicable Taxes), our security interest in the Equipment shall terminate and you shall be the owner of the Equipment, free and clear of any interest created by us. You agree not to permit any lien, security interest (except ours), claim or encumbrance to be placed upon the Equipment. You shall comply with all applicable laws, rules and regulations and manufacturer's specifications and instructions concerning the operation, ownership, use and/or possession of the Equipment. You must, at your cost, keep the Equipment in good working condition. If Payments include maintenance and/or service costs, you agree that (i) no Assignee (as defined below) is responsible to provide the maintenance or service, (ii) you will make all maintenance and service related claims to the persons providing the maintenance, service or warranty, and (iii) any maintenance, warranty or service claims will not impact your Obligations. The Equipment cannot be moved from the location above without our prior written consent.
- Taxes:** You shall pay when and as due all sales, use, property, excise and other taxes, and all license and registration fees now or hereafter imposed by any governmental body or agency upon this Agreement or the ownership, use, or sale of the Equipment, together with all interest and penalties for their late payment or non-payment ("Taxes"). You shall indemnify and hold us harmless from any such Taxes. You shall prepare and file all tax returns relating to Taxes for which you are responsible hereunder. If we receive any tax bill pertaining to the Equipment from the appropriate taxing authority, we may, without obligation, pay such tax and if we pay such tax bill we will invoice you for the expense. Upon receipt of such invoice, you will promptly reimburse us for such expense.
- Assignment:** You agree not to transfer, sell, lease, assign, pledge or encumber the Equipment or any rights under this Agreement without our prior written consent, which consent shall not be unreasonably withheld, and if you do, even with our consent, you will still be fully responsible for all your Obligations. You shall provide us with at least 45 days' prior written notice of any change to your principal place of business, organization or incorporation. You agree that we may, without notice to you, sell, assign, or transfer ("Transfer") this Agreement to a third party (each, an "Assignee"), and each Assignee will have our Transferred rights, but none of our obligations, and such rights will not be subject to any claims, recoupment, defenses, or setoffs that you may have against us or any supplier even though an Assignee may continue to bill and collect all of your Obligations in the name of "Stryker Finance".
- Risk of loss, insurance and reimbursement:** Effective upon delivery to you, you shall bear all risk of Equipment loss or damage. If any such loss or damage occurs you still must satisfy all of your Obligations. You will (i) keep the Equipment insured against all risks of loss or damage for an amount equal to its replacement cost, (ii) list us as the insurance sole loss payee and (iii) give us written proof of the insurance. If you do not provide such insurance, we have the right, without obligation, to obtain such insurance and add an insurance fee (which may include a profit) to the amount due from you. You will obtain and maintain comprehensive public liability insurance naming us as an additional insured with coverages and amounts acceptable to us. To the extent not expressly prohibited by applicable law, you will reimburse and defend us, including each Assignee for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by us, including any Assignee, relating to the Equipment and which relate to or arise out of your act or omission or the act or omission of your agents or employees or others (excluding us) with access to the Equipment. The terms of this paragraph will continue after the termination of this Agreement.
- Default remedies:** You are in default under this Agreement if: a) you fail to pay a Payment or any other amount when due; or b) you breach any other obligation under this Agreement; or c) your principal owner or any guarantor of this Agreement dies; or d) you or any guarantor dissolves, ceases to do business as a going concern, becomes insolvent, bankrupt, merges, or is sold; or e) you or any guarantor fails to pay any other material obligation owed to us or any of our affiliates. Upon default, we may: a) declare the entire balance of unpaid Payments immediately due and payable; b) sue you for and receive the total amount due with future Payments discounted to the date of default at a rate of 3% per annum; c) charge you interest on all monies due at the rate of 18% per year or the highest rate


Agreement #2110028048

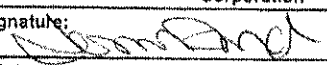
Short Form Conditional Sale Agreement No. 2110028048

permitted by applicable law from the date of default until paid; and/or d) require you to immediately return the Equipment to us or we may peaceably repossess it. Upon default, you will also pay all expenses including but not limited to reasonable attorneys' fees, legal costs, cost of storage and shipping incurred by us in the enforcement and attempted enforcement of any remedies under this Agreement. If the Equipment is returned or repossessed we will, if commercially reasonable, sell or otherwise dispose of the Equipment at terms we determine, at one or more public or private sales, with notice as required by law, and apply the net proceeds (after deducting any related expenses) to your Obligations. You remain liable for any deficiency with any excess being retained by us or applied as required by applicable law.

7. Miscellaneous: This Agreement shall be governed and construed in accordance with the laws of Michigan. You agree that the Equipment will only be used for business purposes and not for personal, family or household use. This Agreement may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement by you and when manually countersigned by us or attached to our original signature counterpart and/or in our possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. No security interest in this Agreement can be perfected by possession of any counterpart other than the counterpart bearing our original signature. You agree not to raise as a defense to the enforcement of this Agreement or any related documents hereto the fact that such documents were executed by electronic means. We may inspect the Equipment at any time prior to payment in full of your Obligations. No failure to act shall be deemed a waiver of any rights hereunder. If you fail to pay (within thirty days of Invoice date) any freight, sales tax or other amounts related to the Equipment which are not financed hereunder and are billed directly by us to you, such amounts shall be added to the Payments set forth above (plus interest or additional charges thereon) and you authorize us to adjust such Payments accordingly. If you are required to report the components of your payment obligations hereunder to certain state and/or federal agencies or public health coverage programs such as Medicare, Medicaid, SCHIP or others, and such amounts are not adequately disclosed in any attachment hereto, then Stryker Sales Corporation will, upon your written request, provide you with a detailed outline of the components of your payments which may include equipment, software, service and other related components. You acknowledge that you have not received any tax or accounting advice from us. You agree that you shall upon request from us, promptly provide to us a copy of your most recent annual financial statements and any of your other financial information (including interim financial statements) that we may request. You authorize us to share such information with our affiliates, subsidiaries and Assignees. This Agreement, any schedules hereto, any attachments to this Agreement or any schedules and any express warranties made by Stryker Sales Corporation constitute the entire agreement between the parties hereto regarding the Equipment and its use and possession and supersede all prior agreements and discussions regarding the Equipment and any prior course of conduct. You waive all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or this Agreement. There are no agreements, oral or written, between the parties which are contrary to the terms of this Agreement and such other documents. YOU AGREE THAT THIS IS A NON-CANCELLABLE AGREEMENT AND WAIVE TRIAL BY JURY.

I CERTIFY THAT I AM AUTHORIZED TO SIGN THIS AGREEMENT FOR CUSTOMER

Customer signature	
Signature: 	Date: 10/25/17
Print name: Marc Nakagawa	
Title: CFO	

Accepted by Flex Financial, a division of Stryker Sales Corporation	
Signature: 	Date: 10/25/17
Print name: Jenny David	
Title: Transaction Coordinator	

**Exhibit A to Short Form Conditional Sale Agreement Number 2110028048
Description of equipment**

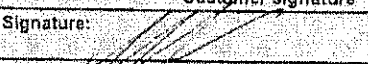
Customer name: Amory Regional Medical Center, Inc. dba Gilmore Memorial Hospital
Delivery address: 1105 EARL FRYE BLVD, AMORY, Mississippi 38821-5500

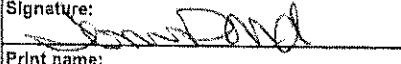
Part I - Equipment/service coverage (if applicable)

Model number	Equipment description	Quantity
0240-031-020	PKG,VISIONPRO 26" LED DISPLAY	3
0240-031-000	PKG,VISIONPRO SYNK 26" WIRELESS LED DISPLAY	2
0240-031-010	PKG,SYNK WIRELESS TRANSMITTER	3
0220-220-000	PKG,PRECISION LED LIGHT SOURCE	1
1288-210-122	CPO - 1288 CAMERA HEAD AND COUPLER KIT	2

Total equipment: \$73,939.33

Total financed amount: \$73,939.33 ✓

Customer signature	
Signature: 	Date: 10/25/17
Print name: Marc Nakagawa	
Title: CFO	

Accepted by Flex Financial, a division of Stryker Sales Corp.	
Signature: 	Date: 10/31/17
Print name: Jenny David	
Title: Transaction Coordinator	

Stryker Flex Financial

1901 Romence Road Parkway
Portage, MI 49024-3672

Amory Regional Medical Center
1105 Earl Frye Road
Amory, MS 38821-5500