UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:	
MRSC CO ASPEN HOUSE, LLC	Case No. 24-15323 JGR
EIN 82-6566700	Chapter 11
Debtor.	

MOTION FOR ENTRY OF ORDER: (I) APPROVING REAL ESTATE PURCHASE AND SALE AGREEMENT AND AUTHORIZING THE SALE OF REAL PROPERTY AND RELATED ASSETS UNDER 11 U.S.C. §§ 363(b) AND 363(m); (II) AUTHORIZING THE SALE OF REAL PROPERTY AND RELATED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, RIGHTS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO 11 U.S.C. § 363(f); (III) WAIVING THE 14 DAY STAY OF FED.R.BANKR.P.6004(h); AND (IV) GRANTING RELATED RELIEF

MRSC CO Aspen House, LLC ("Debtor" or "Seller"), Debtor-in-Possession in this Chapter 11 case, moves the Court for entry of an Order : (I) Approving Real Estate Purchase and Sale Agreement And Authorizing The Sale Of Real Property and Related Assets Under 11 U.S.C. §§ 363(b) And 363(m); (II) Authorizing The Sale Of Real Property and Related Assets Free And Clear Of All Liens, Claims, Rights, Encumbrances And Other Interests Pursuant To 11 U.S.C. § 363(f); (III) Waiving The 14 Day Stay Of Fed.R.Bankr.P.6004(h); And (IV) Granting Related Relief and in support hereof states as follows:

I. BACKGROUND

1. Debtor-in-Possession MRSC CO Aspen House, LLC previously derived income in the form of rent and other distributions from a tenant, Aspen House Equity, LLC ("Tenant"), who operated a senior memory care and living facility located in Loveland, Colorado. It filed its Voluntary Petition under Chapter 11 of the Bankruptcy Code on September 10, 2024 [Dkt. No. 1].

2. Prior to its bankruptcy, Debtor was formed as Delaware Statutory Trust. Pursuant to its Amended and Restated Trust Agreement, dated January 3, 2018, Debtor was to acquire "certain real property and associated assets known as Aspen House, a memory care facility generally located at 2212 and 2214 East 11th Street, Loveland, Colorado, 80537" (the "Property"). Debtor and the purchase of the Property were to be funded by various Investors and borrowed funds from lenders. On January 19, 2018, Debtor closed on the purchase of the Property, utilizing $5,367,472.09 of Investor funds for purchase of the same.

3. Unbeknownst to the Investors, however, the former manager of the Debtor and related entities, Gary Langendoen ("Langendoen"), converted the remainder of Investor funds as part of an improper loan to another entity. Additionally, Langendoen frequently transferred Debtor's funds to various other Langendoen-managed assisted living facilities, including ones in Arizona, without notifying the Investors.

4. In light of Langendoen's misdeeds and complete mismanagement of the Property, the Investors were not able to make required mortgage payments to 2212 Loveland Investment, LLC (the "Lender"), Debtor's lender on the Property. As such, Lender initiated foreclosure proceedings against the Property, which, in part, forced Debtor to seek bankruptcy relief to save its business and the operation of its nursing home thereon.

5. Debtor initially planned to file a Plan of Reorganization, which would have repaid the Lender and other creditors through ongoing operations of the memory care facility through Tenant on the Property. However, and unfortunately, Tenant's (and therefore, Debtor's) operations were severely impacted by two adverse events: (1) Tenant's bank account was hacked and funds of over $100,000.00 were stolen, which were not able to be recovered and (2) Tenant's main supplier of patients, Innovage, decided to terminate its contract with Tenant. In light of these issues, Tenant and Debtor were not able to continue operations of the memory care facility,

which has since closed.

6. As a result, Debtor has decided that the only feasible option to repay creditors, including Lender, is through sale of the Property and corresponding assets.

7. Accordingly, on March 19, 2025, Debtor and Lender entered into the Stipulation with 2212 Loveland Investment, LLC Regarding Resolution of Motion for Relief from Stay Pursuant to 11 U.S.C. § 362(d)(1) and Vacating Hearing (the "Stipulation") [Dkt. No. 87], which was approved by the Court on March 20, 2025 [Dkt. No. 88], which, in part, gave Debtor three months from the date of the Stipulation to market and sell the Property, and pay Lender in full from the sale.

8. Following the approval of the Stipulation, Debtor entertained multiple offers for purchase of the Property, without need to hire a broker for the same (though Debtor did consider the possibility of engaging one if necessary). Additionally, Debtor obtained an appraisal as to the Property done by Martin S. Kane, a Commercial Appraiser with East West Economics, dated March 2, 2025 (the "Appraisal"). Attached hereto as **Exhibit 1** is a true and correct copy of the Appraisal.

9. The Appraisal reflects a value of the Property as "Vacant Fee Simple," with no ongoing operations and residents, of $3,650,000.00. *See* Ex. 1 at p. 4.

10. While the Appraisal reflects higher values for the business if sold as a going concern, as the Property is no longer occupied and conducting business as a memory care facility, the Appraisal's value of $3,650,000.00 for the Property is operative for purposes of this Motion.

11. However, on March 19, 2025, Debtor, after soliciting offers for the Property, received a Letter of Intent to purchase the Property for $5,100,000.00.

12. Thereafter, consistent with the Letter of Intent, on April 25, 2025, Debtor entered into a Real Estate Purchase and Sale Agreement (the "Agreement") with 2212 East 11th Street, LLC (the "Buyer"), whereby the Buyer agreed to purchase the Property and corresponding assets for $5,100,100.00. Attached hereto as **Exhibit 2** is a true and correct copy of the Agreement.

13. The Debtor selected to enter into the Agreement with Buyer for numerous reasons. First, the consideration of $5,100,000.00 is well above what the Appraisal had previously shown that the Property would sell for as a vacant, non-operative property. Additionally, the offer from Buyer is a full price cash offer, to be paid by certified or bank check or federal funds wire transfer at Closing, such that Debtor does not believe that it can obtain a better financial offer. The price will also satisfy the entirety of Lender's claim in the previously claimed amount of $3,397,060.82 as of November 11, 2024 (additional interest, attorneys' fees and costs to be provided by the Lender). Thus, in Debtor's opinion and through exercise of business judgment, the Agreement with Buyer represents the best and most ideal option to purchase the Property and corresponding assets.

II. JURISDICTION AND AUTOMATIC REFERRAL TO BANKRUPTCY JUDGE

14. "The district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." § 157(a). A case or proceeding brought under or related to Title 11, United States Code, shall be referred automatically to the bankruptcy judges of this district. D.C.COLO.L.Civ.R. 84.1(a).

15. "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11." § 157(b)(1). "Core proceedings include … matters concerning the administration of the estate; … confirmations of plans; … orders approving the use … of property; … orders approving the sale of property; … and other proceedings affecting the liquidation of the assets of the estate." §157(b)(2)(A), (M), (N), (O).

III. SUMMARY OF THE AGREEMENT

16. The Agreement between Debtor as the Seller and the Buyer, as well as any corresponding exhibits, is attached as **Exhibit 2** to this motion. To the extent there is any discrepancy between the Agreement and this summary of the Agreement, the Agreement itself shall govern. This summary incorporated the capitalized defined terms of the Agreement.

17. A summary of the proposed sale is set out below:

Purchase Price	The Purchase Price is $5,100,000.00, subject to closing cost adjustments as stated in Section 9 of the Agreement.
Purchased Assets	The assets to be sold are comprised of the Property and corresponding assets (referred to collectively as the "Property") as follows (Section 1 of the Agreement): 1. Sale of Property (a) The Seller, for and in consideration of the Purchase Price (as hereinafter defined) to be paid and satisfied as hereinafter provided, and also in consideration of the mutual covenants and agreements of the parties hereinafter contained, shall sell and convey to the Buyer, and the Buyer shall purchase from the Seller, the Property, all in accordance with and subject to the terms of this Agreement. (b) As used herein, the term "Property" means the land identified as 2211 East 11th Street, Loveland, CO 80537, Larimer County, CO, as further described in Exhibit A (the "Land")[1], together with (i) all development rights and credits and air rights relating thereto, if any; (ii) all right,

[1] Pursuant to L.B.R. 6004-1(b)(1), legal description of the Property is included in the Agreement.

		title. and interest of Seller in and to any land lying in the bed of any street, road, highway or avenue, open or proposed, in front of or adjoining all or any part of the Land and all strips and gores. streets. alleys, easements, rights of way, public ways, or other rights appurtenant, adjacent or connected thereto; (iii) any other rights, privileges, appurtenances, hereditaments, easements, reversions and remainders pertaining thereto or used in connection therewith; (iv) all minerals and mineral rights, oil, gas and other hydrocarbon substances on, underlying or appurtenant to the Land, if any; (v) the water, water rights and water stocks appurtenant to the Land and owned by Seller; (vi) all buildings, structures and other improvements now or hereafter located on the Land (collectively, the "Improvements"); (vii) all furniture, furnishings, fixtures, equipment and other tangible personal property now or hereafter located at and/or used in connection with the Property or the Improvements (collectively, the "Personal Property"); (viii) any and all drawings, specifications, surveys, architectural, engineering, soils, seismic, geological and environmental reports, studies and certificates, and other technical descriptions relating to the Land or the Improvements (collectively, the "Plans") in the actual possession or control of Seller's current members, managers, officers directors, agents and representatives ("Seller's Representatives"); (ix) any and all third-party warranties, guaranties and indemnities relating to the Land, the Improvements or the Personal Property (collectively, the "Warranties"); and (x) all

	other property, real, personal or mixed, owned or held by the Seller which relates, in any way, to the foregoing.
Purchased Liabilities	Buyer, under the Agreement, does not expressly assume any liabilities, and expressly states that the Buyer shall have no successor liability, and any sale shall be free and clear of all liens, claims, and Encumbrances, as set forth in, required by, and construed under Sec. 7(b) of the Agreement.
Excluded Assets	The Agreement does not set forth that there are expressly excluded Assets and only lists which Assets Purchaser is obtaining in Section 1(a) and Section 1(b).
Excluded Liabilities and Other Terms and Conditions to Sale	The Agreement does not set forth that there are expressly excluded liabilities. However, the Agreement has requirements that sale of the Assets be free and clear. The proposed Sale Order also includes various proposed corresponding findings, including: (a) the sale is in good faith and represents fair value; (b) that the Buyer is entitled to the protections of Sec. 363(m); (c) that the transaction is not a fraudulent conveyance under applicable law; (d) that sale is not a sub rosa plan; and (e) that no executory contracts will be assumed or assigned as part of the sale.
Closing	The Closing Date is defined as follows, under Section 8(a) of the Agreement: (a) Subject to the terms of this Agreement, the closing with respect to the transfer of title to the Property the ("Closing" or "Closing Date") shall take place by delivery of all funds and deliverables to the Title Company or in such other manner as the Buyer and the Seller may agree, on such date as shall be mutually agreed by Seller and Buyer, and, in any event, no later than the first business day following the forty-fifth (45) day following the expiration of the Due Diligence Period (the

	"Outside Closing Date") For purposes of calculating the Outside Closing Date, the Due Diligence Period is the 30-day period commencing on the first business day following the date of the Agreement, or April 28, 2025. Accordingly, 30 days from that date falls on May 28, 2025. The Outside Closing Date is therefore 45 days from the expiration of the Due Diligence Period of May 28, 2025, or July 12, 2025.
Deposit	$100,000.00
Representations and Warranties	The Agreement includes various representations and warranties of Debtor and Buyer as set out in Section 10 and Section 11 of the Agreement. All of the representations or warranties shall survive or continue after the Closing.
Termination	The Agreement may be terminated in various circumstances as described in Section 21 of the Agreement and at various other places of the Agreement, including failure to close title to the Property, condemnation of the Property, destruction to the Property, and failure to obtain Bankruptcy Court approval. In certain instances, the Debtor may be able to retain the Deposit of $100,000.00 as liquidated damages.
Agreements with Management	The Agreement does not require any management agreements with Debtor, and it is anticipated that Buyer will obtain its own management to establish its own operations on the Property. Additionally, the Agreement requires that all executory contracts and unexpired leases with respect to the Property be deemed rejected as of the Closing Date.

18. The Closing shall occur at such time as agreed between Debtor and

Buyer, and in any event, no later than the Outside Closing Date of July 12, 2025, subject to the Court's approval of the Agreement. Additionally, as stated above, Debtor and the Lender have stipulated that, if the Property is not marketed and sold within three months from the date of the Stipulation (or June 20, 2025), the Lender shall be granted stay relief and shall have the right to re-start foreclosure proceedings, such that time is of the essence and the Debtor anticipates closing sooner upon Court approval, if possible.

19. At Closing, Debtor shall deliver the Property and corresponding assets to the Buyer free and clear of all debris and in its current condition, ordinary wear and tear excepted and shall deliver possession to the Property to the Buyer, free and clear of all rights and claims of tenants, occupants, guests and any other persons or entities.

20. At the Closing, Buyer shall deliver to the Debtor $5,100,000.00 less the $100,000.00 deposited in escrow prior to the Closing, and Debtor shall deliver all deliverables under Section 8(c) of the Agreement, including a Special Warranty Deed, Affidavit of Title, General Assignment and Bill of Sale in the form attached to the Agreement as Exhibit B, among other required documents to effectuate the terms of the sale.

21. As part of the Closing, the Section 9(b) of the Agreement also requires Debtor to pay all applicable conveyance fees, state and county transfer taxes, recordation taxes, sales taxes and all other similar taxes, fees and charges arising out of the consummation of the transaction contemplated by the Agreement, including all recording or filing fees with respect to the removal of any liens or encumbrances on the Property, the cost of Buyer's owner's title insurance policy with owner extended coverage, and one-half of any escrow fees or closing coordination fees charged by the Title Company. Additionally, Section 9(a) of the Agreement mandates that all real estate taxes, municipal water and sewer charges, utility charges, and other charges typically adjusted between a buyer and a seller at a commercial real estate closing in

the county of the Property will be adjusted between the Buyer and the Seller as of the Closing Date.

22. Finally, on or before the Closing Date, the Agreement requires that Debtor will have rejected any and all executory contracts or unexpired leases with respect to the Property. There is only one such unexpired lease—the lease for the use of the Property as a memory care facility as between Tenant and Debtor. Though Tenant has failed to pay rent for many months, such that the Lease may be terminated, out of an abundance of caution and to comply with the terms of the Agreement, Debtor, in conjunction with this Motion or shortly thereafter, will file a Motion to Reject the lease between Tenant and Debtor. The Debtor otherwise represents that no other executory contracts or unexpired leases exists.

23. After the Debtor receives the proceeds of the sale following Closing and any Closing Adjustments and Costs, it will place the same in the trust account of Allen Vellone Wolf Helfrich & Factor, P.C., with those funds to be held for distribution in accordance with a confirmed plan, turnover of the funds to a duly appointed trustee upon conversion of the case to Chapter 7, or such further order as is entered by the Court.

IV. LEGAL STANDARDS

24. "The [Debtor-in-Possession][2] after notice and a hearing, may … sell…, other than in the ordinary course of business, property of the estate." § 363(b)(1).

25. The "business judgment" test

> applies to determine whether a sale under § 363(b) should be approved. Under this standard, the [Debtor-in-Possession] seeking approval of the sale must show sound business reasons for the sale. In making this determination, courts consider evidence of any improper or bad motive, whether the price is fair and the negotiations or bidding occurred at arm's length, and whether the [Debtor-in-Possession] followed adequate procedures,

[2] 11 U.S.C. § 1107.

> including proper exposure to the market and accurate and reasonable notice to all parties in interest.

In re Allen, 607 F. App'x 840, 843 (10th Cir. 2015) (internal citations, quotations, and brackets omitted) (citing *In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir.1983)).

26. In evaluating such factors, the Court "should give deference to a trustee's judgment in pursuing a sale motion." *In re Saratoga & N. Creek Ry., LLC*, 635 B.R. 581, 607 (Bankr. D. Colo. 2022) (McNamara, J.) (quoting *In re Colorado Sun Oil Processing LLC*, No. BR 10-24424-SBB, 2011 WL 3585565, at *9 (Bankr. D. Colo. Aug. 12, 2011)).

> A Debtor may sell property "free and clear of any interest in such property … only if
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

§ 363(f)(1)–(5).

27. "The reversal or modification on appeal of an authorization under [Section 363(b)] of a sale … of property does not affect the validity of a sale … under such authorization to an entity that purchased … such property in good faith." § 363(m).

V. ARGUMENT

A. The Court Should Approve the Agreement And Authorize the Sale of the Property and Corresponding Assets to Buyer.

28. In this case, Debtor is replete with sound business reasons to sell the Property and corresponding assets to Buyer under the terms of the Agreement, including the $5,100,000.00 in consideration being offered by Buyer.

29. Again, the Appraisal reflects that the value of the Property, as vacant, is $3,650,000.00. Upon information and belief, the Lender has obtained its own appraisal, showing an even lower value. Thus, a sale at the amount of $5,100,000.00, which is above and beyond the applicable value stated by the Appraisal, is the best option for creditors, including the Lender, to realize any recovery in this case.

30. While the Debtor, through its own marketing efforts, only obtained one formal letter of intent, again, the $5,100,000.00 purchase price reflected by said Letter of Intent is well above the appraised value of the Property. Debtor does not anticipate receiving a better offer without the assistance of a broker, which will, of course, cost the Debtor's estate additional expense. As such, Debtor chose to immediately move forward with the offer from Buyer for sound business reasons, including that Buyer agreed to pay well above the appraised value for the Property in certified funds.

31. The solicitation of offers and negotiations after receiving the letters of intent from Buyer have all been conducted at arm's length, with all parties having professionals, like the undersigned lawyers and seasoned business executives involved in the negotiations. There is a complete absence of bad motives by any party involved. This fair process resulted in a fair price that far exceeds the liquidatable assets of the business, as shown in the Appraisal.

32. Moreover, this is not an insider transaction, as Debtor has no prior connection to Buyer or its ownership.

33. Debtor followed adequate procedures and exposed the Property to

multiple prospective buyers in the market (at one point even contacting a potential broker for sale of the Property, which was ultimately unnecessary), which led to the above-value letter of intent and Agreement with Buyer. This Motion is going out on notice so that anyone with a better offer for the Property can make it. Although, given the figures noted in the Appraisal, it would be surprising to the Debtor if a better suitor than Buyer was out there.

34. Here, there is one lien that attaches to the Property—that of the Lender in the amount of $3,397,060.82, with additional interest, attorneys' fees and cost calculations to be provided by the Lender. Accordingly, because the price at which the Debtor's Property and corresponding assets are to be sold, $5,100,000.00, is greater than the value of the liens on the Property, the Debtor may sell that property "free and clear of any interest in such property" under Section 363(f)(3).

B. Request for Waiver of 14-Day Stay Periods Under Fed. R. Bankr. P. 6004(h) and 6006(d).

35. In addition, by this Motion, the Debtor seeks a waiver of any stay of the effectiveness of the Sale Order approving the relief requested in this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

36. Due to the facts and circumstances of this case, as described herein, time is of the essence to obtain approval of the sale contemplated under the Agreement and consummate the sale of the Property and corresponding assets to the Buyer as soon as possible, in light of the fact that the Lender has only stipulated to allow the Debtor until June 20, 2025 to sell the Property. Moreover, the Agreement expressly provides that time is of the essence. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay period imposed by Bankruptcy Rules 6004(h) and 6006(d).

C. Buyer and Debtor Have Acted In Good Faith Under 11 U.S.C. § 363(m); Sale Not In Violation of 11 U.S.C. § 363(n).

37. Section 363(m) of the Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of Property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such Property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

38. Section 363 (n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. See 11 U.S.C. § 363(n). Although the Bankruptcy Code does not define "good faith," the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986), held that:

> [t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

Id. at 147 (citations omitted).

39. The Debtor, after reviewing multiple potential informal offers and potential engagement of a broker to sell the Property, obtained the Letter of Intent from the Buyer, which, in the Debtor's business judgment, including that of the undersigned firm, is the best offer for the Property in light of the figures contemplated by the Appraisal. Buyer and Debtor negotiated at arms' length for the sale resulting in the Agreement. Buyer and Debtor have acted in good faith, without collusion or

fraud of any kind, and in compliance with the *Abbotts Dairies* standards. Neither the Debtor nor Buyer has engaged in any conduct that would prevent the application of § 363(m) or otherwise implicate § 363(n) with respect to the consummation of the Sale or the transfer of the Property to the Buyer.

40. The Debtor thus requests that the Court find that the Buyer has purchased the Assets in good faith within the meaning of § 363(m) and is entitled to the protections of § 363(m) and (n).

VI. PRAYER FOR RELIEF

WHEREFORE, Debtor-in-Possession MRSC CO Aspen House, LLC respectfully requests that this Court grant this Motion by entering an Order, substantially in the form of the proposed Sale Order filed herewith: (i) approving the Agreement and authorizing the Sale of the Property to the Purchaser under § 363(b) and § 363(m); (ii) authorizing the sale of the Property free and clear of all liens, claims, rights, encumbrances and other interests under § 363(f); (iii) waiving the 14-day stay period imposed under Fed. R. Bankr. P. 6004(h) and 6006(d) in connection with the relief requested herein; and (iv) granting such other and further relief as is just and proper.

Dated this 8th day of May 2025.

Respectfully submitted,

/s/ Bailey C. Pompea

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