

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

IN RE:

NEW BEGINNINGS CARE, LLC, *et al.*,

Debtors¹

Jointly Administered Under Case

No. 1:16-bk-10272-NWW

Chapter 11

**EXPEDITED JOINT APPLICATION FOR ORDER PURSUANT TO 11 U. S. C.
§§ 327(a) AND 328(a) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2014
AND 2016 AUTHORIZING EMPLOYMENT AND RETENTION OF OEM CAPITAL
CORP. AS INVESTMENT BANKER TO THE DEBTORS AND THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS**

NOTICE OF HEARING

Notice is hereby given:

That a hearing will be held in the Third Floor Courtroom A, Historic Post Office and Courthouse, 31 East 11th Street, Chattanooga, Tennessee 37402, on April 21, 2016, at 10:30 a.m., on this Motion.

If you do not want the court to grant the relief requested, you or your attorney must attend this hearing. If you do not attend the hearing, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

TO THE HONORABLE NICHOLAS W. WHITTENBURG,
UNITED STATES BANKRUPTCY JUDGE:

New Beginnings Care, LLC, *et. al.*, each a debtor-in-possession, and the Official Committee of Unsecured Creditors (the "Committee") hereby submit this Expedited Joint Application (the "Application") for entry of an order, substantially in the form attached hereto as Exhibit "A," pursuant to sections 327 and 328 of title 11 of the United States Code (the

¹¹¹ As used herein, the terms "**Debtors**" means all of the debtors-in-possession in the jointly administered cases referenced above.

“Bankruptcy Code”) and rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Debtors and the Committee to retain and employ OEM Capital, CORP. (“OEM”) as its investment banker. In support of this Application, the Debtors and the Committee rely on the Declaration of Norton W. Lazarus, president of OEM Capital Corp. (the “Lazarus Declaration”), a copy of which is attached hereto as Exhibit “B” and incorporated by reference herein. In further support of this Application, the Debtors and the Committee respectfully states as follows:

I.
STATUS OF THE CASE AND JURISDICTION

1. On January 22, 2016 (the “Petition Date”), the Debtors commenced this case by filing a voluntary petition for relief under Chapter 11 the Bankruptcy Code. The Debtors have continued in the possession of their properties and is operating and managing their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No request for a trustee or examiner has been made. On February 17, 2016, the Official Committee of Unsecured Creditors was formed. This Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested in this Application are Bankruptcy Code Sections 327(a) and 328(a) and Bankruptcy Rules 2014(a) and 2016(b).

II.
BACKGROUND

4. The Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors-in-possession pursuant to Sections 1107(a) and

1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner.

5. The Debtors' Chapter 11s were necessitated as the state of Georgia and been withholding \$76,000 per week starting in April, 2015, from Debtors' weekly Georgia Medicaid payments. In November, 2015, they started withholding an additional \$40,000 per week until the end of January, 2016, when Debtors are expected to pay the total outstanding balance of over \$3,000,000 to bring the bed taxes current in Georgia. Debtors' Accounts Receivable ("AR") lender, Gemino Healthcare Finance ("Gemino"), is not including Georgia Medicaid in the Debtors' borrowing base due to the outstanding bed taxes in the state. Debtors are having over \$464,000 withheld, and in months with 5 Tuesdays, Debtors are having over \$581,000 withheld. As a result of this, Debtors have over \$1,200,000 at any point in time that Gemino is not letting Debtors borrow on because of the outstanding bed taxes.

III. **RELIEF REQUESTED**

6. By this Application, the Debtors and the Committee jointly seek entry of an order authorizing Debtors to retain and employ OEM as their investment banker subject to further order of the Court and consistent with that certain engagement letter by OEM, dated April 15, 2016, (referred to herein as the "Agreement"), a copy of which is attached hereto as Exhibit "C" and incorporated by reference herein.²

A. OEM Qualifications

7. The Debtors and the Committee seek to retain OEM as their investment banker because OEM has extensive and varied experience in the healthcare and other industries.

² Capitalized terms used in this section and the Lazarus Declaration but not otherwise defined herein shall have the meanings set forth in the Agreement. The summary of the terms of the Agreement contained herein is provided for the benefit of the Court and parties in interest and, to the extent the summary set forth herein and the terms of the Agreement are inconsistent, the terms of the Agreement shall control.

8. Upon the Court's approval of OEM's retention as investment banker to the Debtors and the Committee, OEM is prepared to provide a range of strategic advisory services.

9. An experienced investment banker, OEM fulfills a critical need that complements the services offered by the Debtor's other restructuring professionals and advisors. In conjunction with its restructuring strategy, Debtors are currently working on a sale process whereby the Debtors will be marketing and selling its assets. For all of these processes, the Debtors believe that it requires the services of a capable and experienced investment banker such as OEM, which is uniquely positioned to assist the Debtors with the sale process and a successful conclusion of these cases.

B. Services to be Rendered

10. In addition to providing any additional investment banking services as the Debtors may request from time to time, OEM will assist in the evaluation of strategic alternatives and render investment banking and investment banking services to the Debtors and the Committee in connection with this Chapter 11 Case, including, without limitation:

- a. assisting the Debtors and the Committee in the development and distribution of selected information, documents and other materials, including, if appropriate, advising the Debtor in the preparation of an offering memorandum;
- b. assisting the Debtors and the Committee in evaluating indications of interest and proposals regarding any Transactions (as defined below) from current and/or potential lenders, equity investors, acquirers and/or strategic partners;
- c. assisting the Debtors and the Committee with the negotiation of any Transactions, including participating in negotiations with creditors and other parties involved in any Transactions;
- d. providing expert advice and testimony regarding financial matters related to any Transactions, if necessary; and
- e. attending meetings of the Debtors' offices, creditor groups, official committee and other interested parties, as the Debtors and OEM mutually agree.

C. Indemnification

11. The Agreement also contains standard indemnification language with respect to OEM's services. Accordingly, as part of this Application, the Debtors and the Committee request that the Court approve the indemnification provisions as set forth therein. The Debtors will not, however, indemnify OEM for any losses, claims, damages or liabilities incurred by OEM to the extent that a court of competent jurisdiction determines such losses, claims, damages or liabilities result from OEM's willful misconduct or negligence.

D. Professional Compensation

12. As set forth in the Agreement, the Debtors, the Committee and OEM agree to the following temporary compensation:

- a. Monthly Fees: OEM will receive a retainer fee of \$15,000 per month, for up to three (3) months, payable monthly in advance. These retainers are payable regardless of whether any transaction contemplated hereunder shall be consummated. This monthly fee will be paid on a current basis. However, should New Beginnings have insufficient liquid funds to make the payment, \$10,000 will be paid and the balance of \$5,000 will be deferred and paid out of the proceeds of the first Transaction³ in addition to any fee payable due to a Transaction.
- b. Transaction Fees: Upon completion of a Transaction, the Debtors shall pay OEM a cash fee equal at closing based on the following scale as applied to the aggregate consideration of each such transaction: (a) in the event that a facility is sold together with the property, one and one half percent (1.5%); (b) in the event that a facility is sold without property, three percent (3%).

13. OEM's strategic and financial expertise as well as its healthcare knowledge, financing skills, and restructuring capabilities, some or all of which may be required by the Debtors during the term of OEM's engagement, were all important factors in determining the Fee Structure. The Debtors believe that the ultimate benefit of OEM's services hereunder cannot be measured by reference to the number of hours to be expended by OEM's professionals in the performance of such services. Indeed, the Debtors and OEM have agreed upon the Fee Structure

³ A "Transaction" is any transaction or series of related transactions that constitute the disposition to one or more third parties under the Bankruptcy Code.

anticipating that a substantial commitment of professional time and effort will be required of OEM and its professionals in connection with this Chapter 11 Case and in light of the fact that (a) such commitment may foreclose other opportunities for OEM and (b) the actual time and commitment required of OEM and its professionals to perform its services under the Agreement may vary substantially from week to week and month to month, creating “peak load” issues for OEM.

14. The Fee Structure is consistent with OEM’s normal and customary billing practices for comparably sized and complex cases, both in-and out-of-court, involving the services to be provided in this Chapter 11 Case. OEM and the Debtors believe that the Fee Structure is both reasonable and market-based and designed to compensate OEM fairly for its work and to cover fixed and routine overhead expenses. Further, because the Debtors are seeking to retain OEM under sections 327(a) and 328(a) of the Bankruptcy Code, the Debtors believe that OEM’s compensation should not be subject to any additional standard of review under section 330 of the Bankruptcy Code.

15. OEM will maintain records in support of any actual and necessary costs and expenses incurred in connection with the rendering of its services in these cases.

C. OEM’s Disinterestedness

16. OEM has reviewed its electronic database and, to the best of its knowledge and except to the extent disclosed in the Lazarus Declaration, OEM (a) is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, (b) does not hold or represent an interest adverse to the Debtors’ estate and (c) has no connection to the Debtors, its creditors or its related parties. OEM will periodically review its files during the pendency of this Chapter 11 Case to ensure that no conflicts or other disqualifying circumstances exist or arise. To the extent that OEM discovers any new relevant facts or relationships bearing on the matters described

herein during the period of OEM's retention, OEM will use reasonable efforts to file promptly a supplemental declaration.

D. Basis for Relief

i. Section 328 of the Bankruptcy Code Permits the Employment and Retention of OEM on Terms Substantially Similar to Those in the Agreement.

17. The Debtors seek approval of the Agreement and the Fee Structure contained therein pursuant to Section 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtors “with the court’s approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis” 11 U.S.C. § 328(a). Accordingly, Section 328 permits the compensation of professionals, including investment bankers and investment bankers, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum (In re Nat’l Gypsum Co.)*:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtors or committee).

See In re National Gypsum Co., 123 F.3d 861, 862 (5th Cir. 1997) (internal citations omitted).

18. Furthermore, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, certain modifications were made to Bankruptcy Code Section 328(a), which now provides as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.

See 11 U.S.C. § 328(a) (emphasis added). Bankruptcy Code Section 328(a), as amended, now makes clear that debtors may retain, subject to bankruptcy court approval, a professional on a fixed-fee basis such as the Fee Structure with OEM as proposed by the Debtors herein.

19. Further, consistent with its ordinary practice and the practice of investment bankers and investment bankers in other chapter 11 cases whose fee arrangements are typically not hours-based, OEM does not ordinarily maintain contemporaneous time records or provide or conform to a schedule of hourly rates for its professionals.

20. The Fee Structure appropriately reflects the nature and scope of services to be provided by OEM and OEM's substantial experience with respect to restructuring, investment banking, and investment banking services, going concern valuation and expert testimony services, and is consistent with the fee structures typically utilized by OEM and other leading investment bankers, who do not bill their clients on an hourly basis.

21. Similar fixed and contingency fee arrangements in other chapter 11 cases have been routinely approved and implemented by courts in various jurisdictions. *See, e.g., In re Alco Stores, Inc.*, No. 14-34941 (Bankr. N.D. Tex. 2014) (authorizing retention of Houlihan Lokey with compensation subject to standard of review set forth in Section 328(a)); *In re Hingham Campus, LLC and Linden Ponds, Inc.*, No. 11-33912 (SGJ) (Bankr. N.D. Tex. July 28, 2011) (authorizing retention of Houlihan Lokey with compensation subject to standard of review set forth in Section 328(a)); *In re FLYi, Inc.*, No. 05-20011 (MFW) (Bankr. D. Del. Jan. 17, 2006) (order authorizing retention of Miller Buckfire & Co., LLC on substantially the same terms); *In*

re Foamex Int'l, Inc., No. 05-12685 (PJW) (Bankr. D. Del. Oct. 17, 2005) (order authorizing retention of Miller Buckfire & Co., LLC on substantially the same terms); *In re Oakwood Homes Corp.*, No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) (order authorizing retention of Miller Buckfire & Co., LLC on similar terms); *In re Kaiser Aluminum Corp.*, No. 02-10429 (JKF) (Bankr. D. Del. Mar. 19, 2002) (authorizing retention of Lazard Freres & Co. LLC and subjecting compensation to same standard of review);

ii. The Retention of OEM Is Critical to the Debtors' Success.

22. Denial of the relief requested herein will deprive the Debtors of the assistance of a highly qualified investment banking and financial advisory firm and, certainly, would result in an unjust disadvantage to the Debtors, the Committee, and all parties in interest.

IV.
NOTICE

23. Notice of this Application has been given via electronic transmission and/or U.S. Mail, First Class to the Master Service List including the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Eastern District of Tennessee; (b) the Office of the Tennessee Attorney General; (c) the Office of the United States Attorney General; (d) Tennessee Department of State Health Services; The Debtors submit that no other or further notice need be given.

No Prior Request

25. No prior request for the relief sought in this Application has been made to this Court or any other court.

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto (a) granting this Application, (b) authorizing the Debtors to retain and employ OEM Capital Corp. in this proceeding as

investment banker, and (c) granting such other and further relief as appropriate.

Dated: April 18, 2016.

SCARBOROUGH & FULTON

By: /s/ David J. Fulton

David J. Fulton, #6102
Attorney for Creditor
701 Market Street, Suite 1000
Chattanooga, TN 37402
(423) 648-1880
(423) 648-1881 (facsimile)
djf@sfglegal.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically, this 18th day of April, 2016. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. The below listed parties will be served today by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

David Holesinger on behalf of U.S. Trustee United States Trustee
david.holesinger@usdoj.gov

Kimberly C. Swafford on behalf of U.S. Trustee United States Trustee
kim.c.swafford@usdoj.gov

United States Trustee
Ustpreion08.cn.ecf@usdoj.gov

Whitney W. Groff on behalf of Creditor Georgia Department of Community Health
ecfmail@aclawllp.com

Jeffrey W. Maddux on behalf of Creditor Gemino Healthcare Finance, LLC
jmaddux@chamblisslaw.com,

Jerrold D. Farinash on behalf of Attorney Jerrold D. Farinash
jdf@fandhlawfirm.com

Attorney Leah Eisenberg
leah.eisenberg@arentfox.com

Attorney Robert Hirsh
Robert.Hirsh@arentfox.com

David Holesinger on behalf of U.S. Trustee United States Trustee
david.holesinger@usdoj.gov

Kimberly C. Swafford on behalf of U.S. Trustee United States Trustee
kim.c.swafford@usdoj.gov

Internal Revenue Service
Kenya Bufford
Kenya.Bufford@irs.gov

30 largest unsecured creditors

/s/ David J. Fulton

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

IN RE: NEW BEGINNINGS CARE, LLC, <i>et al.</i> , DEBTORS. ¹	Jointly Administered Under Case No. 1:16-bk-10272-NWW Chapter 11
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**ORDER UNDER 11 U.S.C. §§ 327 AND 328 AUTHORIZING RETENTION AND
EMPLOYMENT OF OEM CAPITAL CORP. AS INVESTMENT BANKER TO THE
DEBTORS AND THE COMMITTEE OF UNSECURED CREDITORS**

Upon the joint application (the “Application”)² of the above-captioned debtors and debtors-in-possession (collectively the “Debtors”), for entry of an order to employ and retain OEM Capital Corp. (“OEM”) as investment banker to the Debtors and the Committee on the terms set forth in the Agreement, and upon consideration of the Lazarus Declaration in support of the Application; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§

¹ As issued herein, the term “Debtors” means all of the debtors-in-possession in the jointly administered cases referenced above.

² Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings provided in the Application.

157 and 1334; and consideration of the Application 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 Application having been provided to the necessary parties, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Application (the “Hearing”); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the record of the Hearing, and all of the proceedings had before the Court; and it appearing that OEM neither holds nor represents any interest adverse to the Debtors’ estate; and it appearing that OEM is a “disinterested person,” as that term is defined in Bankruptcy Code section 101(14); and it appearing that the relief requested in the Application is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and as required by Section 327(a) of the Bankruptcy Code; and notice of the Application having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, that the Application is granted; and it is further

ORDERED, that Debtors and the Committee shall be, and are hereby, authorized to employ and retain OEM in accordance with the terms and conditions set in forth the Agreement; and it is further

ORDERED, that OEM will file fee applications for interim and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in Section 330 and 331 of the Bankruptcy Code; provided, however, that OEM shall be compensated and reimbursed pursuant to Section 328(a) of the Bankruptcy Code in accordance with the terms of the Agreement, and subject to the procedures set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and

Procedure of the United States Bankruptcy Court for the Eastern District of Tennessee (the “Local Rules”) and any other applicable orders of this Court; provided, further, that OEM’s fees and expenses shall not be evaluated under the standard set forth in Section 330 of the Bankruptcy Code; and it is further

ORDERED, that, notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, orders of this Court or any guidelines regarding submission and approval of fee applications, in light of services to be provided by OEM and the structure of OEM’s compensation pursuant to the Agreement, OEM and its professionals shall be excused from maintaining time records in connection with the services to be rendered pursuant to the Agreement; and it is further

ORDERED, that in the event OEM seeks reimbursement from the Debtors for attorneys’ fees and expenses pursuant to the Application and the Agreement, the invoices and supporting time records for the attorneys’ fees and expenses shall be included in OEM’s own applications, both interim and final, and these invoices and time records shall be subject to the United States Trustee Guidelines and the approval of the Bankruptcy Court pursuant to Sections 330 and 331 of the Bankruptcy Code, and without regard to whether such attorneys’ services satisfy Section 330(a)(3)(C) of the Bankruptcy Code; and it is further

ORDERED, that the indemnification provisions of the Agreement are approved; and it is further

ORDERED, that if, before the entry of an order closing this Chapter 11 Case, any Indemnified Party (as defined in the Agreement) believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtor’s indemnification, contribution and/or reimbursement obligations under the Agreement, including without limitation the advancement

of defense costs, such Indemnified Party must file an application therefore in this Court, and the Debtors may not pay any such amounts to the Indemnified Party before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Indemnified Parties for indemnification, contribution or reimbursement, and is not a provision limiting the duration of the Debtor's obligation to indemnify Indemnified Parties; and it is further

ORDERED, that no party may bring against any Indemnified Party any suit, proceeding or other action relating in any way to the Debtors or this Chapter 11 Case in any court located in any jurisdiction without an application to and order of this Court; and it is further

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

ORDERED, that to the extent that this Order is inconsistent with the Application or the Agreement, the terms of this Order shall govern; and it is further

ORDERED, that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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Prepared by:

SCARBOROUGH & FULTON

By: /s/ David J. Fulton
David J. Fulton, #006102
Attorney for Debtors
701 Market Street, Suite 1000
Chattanooga, Tennessee 37402
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EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

IN RE: NEW BEGINNINGS CARE, LLC, <i>et al.</i> , Debtors ¹	Jointly Administered Under Case No. 1:16-bk-10272-NWW Chapter 11
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**DECLARATION OF NORTON W. LAZRUS IN SUPPORT OF THE
DEBTORS' AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
JOINT APPLICATION FOR ORDER AUTHORIZING THE EMPLOYMENT
AND RETENTION OF OEM CAPITAL CORP. AS INVESTMENT
BANKER TO THE DEBTORS AND THE COMMITTEE.**

I, Norton W. Lazarus, being duly sworn, state the following under penalty of perjury:

1. I am the president of OEM Capital, Inc. (“OEM”) and am duly authorized to make this Declaration on behalf of OEM. The facts set forth in this Declaration are personally known to me and, if called as a witness, I could and would testify thereto,

2. This Declaration is submitted in support of the application (“Application”) of the above-captioned Debtors in this Chapter 11 Case for authorization of the employment and retention of OEM as investment banker to the Debtors and the Official Committee of Unsecured Creditors at the expense of the Debtors’ estate.

3. This Declaration is also submitted pursuant to Sections 327(a) and 328(a) of Title 11 of Chapter 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

¹ As used herein, the terms “Debtors” means all of the debtors-in-possession in the jointly administered cases referenced above.

4. OEM is a financial advisory firm with experience in transactions including distressed transactions for clients in manufacturing, distribution and service businesses focusing on small to medium sized entities.

5. OEM is most qualified to expeditiously and professionally handle the services required of it in connection with the Debtors' bankruptcy proceedings. This is based on OEM's 31 year experience in its principal business of financial advisory and investment banking. During this period, it has initiated and completed over 75 transactions for clients in manufacturing, healthcare, distribution and service businesses with a focus on small to medium sized entities.

6. The services to be rendered by OEM shall include advice and assistance (1) with respect to its options to reorganize its financial affairs, including but not limited to a potential sale of some or substantially all of the assets of the Debtors' businesses; (2) in the event that it is necessary, the refinancing of the company and 3) such other services as the Debtors, the Committee and OEM shall from time to time reasonably agree upon.

7. OEM has agreed to provide investment banking and financial advisory services to the Debtors in the above-captioned chapter 11 cases pursuant to the terms and conditions of the engagement letter agreement between the Debtors and OEM (the "Agreement"), a copy of which is attached as Exhibit "C" to the Application.

8. To the best of my knowledge, information and belief after reasonable inquiry, other than as disclosed in this Declaration, neither I, the OEM Group, nor any of our professionals or employees participating in or connected with OEM's engagement with the Debtors: (i) is related to the Debtors or any other party in interest herein, the United States Trustee for the Eastern District of Tennessee or anyone employed in the United States Trustee's Office for this District; (ii) has any connection with or holds or represents any interest adverse to

the Debtors, its estate, its creditors or any other Interested Party or their respective attorneys in the matters on which OEM is proposed to be retained; or (iii) has advised any Interested Party, except for the Debtor, in connection with this Chapter 11 Case. In addition, OEM does not believe that any relationship that the OEM Group or any of our professionals or employees participating in or connected with OEM's engagement with the Debtors may have with any Interested Party in connection with any unrelated matter will interfere with or impair OEM's representation of the Debtors in this Chapter 11 Case.

9. To the extent OEM discovers any facts bearing on the matters described herein during the period of OEM's retention, OEM undertakes to amend and supplement the information contained in this Affidavit to disclose such facts.

10. Based on all of the foregoing, OEM is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, in that OEM:

- a. is not a creditor, an equity security holder or insider of the Debtors;
- b. is not and was not, within two (2) years before the date of the filing of the petition, a director, officer, or employee of the Debtors or the Committee; and
- c. does not have an interest materially adverse to the interest of the Debtors' estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interested in, the Debtors, or for any other reason.

11. No agreement presently exists to share with any other person or firm any compensation received by OEM for its services in this Chapter 11 Case. If any such agreement is entered into, OEM undertakes to amend and supplement this Affidavit to disclose the terms of any such agreement.

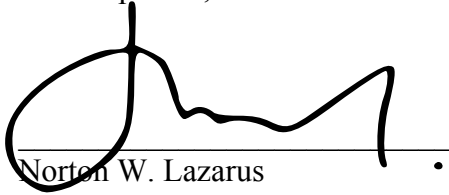
12. No promises have been received by OEM, or by any employee thereof, as to compensation in connection with this Chapter 11 Case other than in accordance with the provisions of the Bankruptcy Code.

13. OEM understands that the Debtors have retained certain professionals and may retain additional professionals during the term of the engagement and agrees to work cooperatively with such professionals to integrate any respective work conducted by the professionals on behalf of the Debtors.

14. I am generally familiar with the Bankruptcy Code and the Bankruptcy Rules, and OEM will comply with them, subject to the Orders of this Court.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Date: April 15, 2016



Norton W. Lazarus

EXHIBIT C

OEM Capital Corp.

205 East 42nd Street, 20th Floor
New York, NY 10017

Norton W. Lazarus
nwl@oemcapitalcorp.com

Telephone (212) 983-9500
Facsimile (212) 983-9018

April 15, 2016

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701 Market Street, Suite 1000
Chattanooga, TN 37402

*Counsel to the Unsecured Creditors
Committee of New Beginnings Care, LLC*

Counsel to New Beginnings Care, LLC

Gentlemen:

This letter authorizes OEM Capital Corp. (“OEM”) to act as investment banker to New Beginnings Care, LLC and affiliated entities (hereafter together referred to as “New Beginnings”), subject to the conditions set forth below. Specifically, OEM will advise New Beginnings on the sale of substantially all of the leased care facilities (the “Facilities”) of New Beginnings in accordance with bidding procedures to be established in the Chapter 11 case currently pending in The United States Bankruptcy Court for the Eastern District of Tennessee at Chattanooga (the “Transaction”). The rented buildings at which the Facilities are located are referred to, in each case, as the Properties.

OEM shall act as exclusive investment banker to New Beginnings, subject to the following conditions:

1. OEM will develop and maintain a continuing familiarity with the financial situation and operating plans of New Beginnings in order to fulfill its role as investment banker. In that connection, New Beginnings shall furnish to OEM current and historical financial and other information regarding the business of New Beginnings to permit the rendering of such advice to New Beginnings. New Beginnings shall use its best efforts to ensure that the information furnished to OEM is accurate and complete at the time it is furnished and to advise OEM during the period of this agreement of all developments materially affecting New Beginnings in connection with the activities of OEM hereunder. OEM agrees to keep confidential all material non-public information provided to it by New Beginnings. Moreover, OEM will assist New Beginnings in preparing a formal descriptive presentation of the business and sale plans of New Beginnings, which may be delivered to The Bankruptcy Court with the prior approval of New Beginnings. OEM will not, however, hold any discussion or make any such disclosures without prior approval by New Beginnings. On termination of this letter agreement, OEM shall return all confidential source documents in OEM’s possession to New Beginnings, should New Beginnings so request.

OEM Capital Corp.

Robert Hirsh, Esq.
David Fulton, Esq.
April 15, 2016

2. New Beginnings agrees to retain OEM as its exclusive investment banker in respect of the Transaction, subject to the provisions of paragraph 6 below. OEM will receive a retainer fee of \$15,000 per month, payable monthly in advance. These retainers are payable regardless of whether any transaction contemplated hereunder shall be consummated. This monthly fee will be paid on a current basis. However, should New Beginnings have insufficient liquid funds to make the payment, \$10,000 will be paid and the balance of \$5,000 will be deferred and paid out of the proceeds of the first Transaction in addition to any fee payable under paragraph 3 below. To the extent that the New Beginnings does not have sufficient funds to make the current payment, any deficiency shall be paid from the gross proceeds of any sale payable under paragraph 3 below.

Nothing contained herein shall require that New Beginnings consent to a specific transaction and New Beginnings shall have the right in its sole discretion to reject any transaction regardless of the terms thereof. During the period that OEM is acting on behalf of New Beginnings as provided herein, New Beginnings agrees to refer to OEM all inquiries, referrals or offers from other parties regarding any proposed transaction of the kind herein contemplated.

3. Should any Transaction be consummated (i) during the period of this agreement, or (ii) within twelve (12) months after the end of the period of this agreement during which time OEM has commenced or participated in the transaction, New Beginnings agrees to pay OEM a cash fee (the "Transaction Fee") at closing based on the following scale as applied to the aggregate consideration of each such transaction:

A. In the event that a Facility is sold together with the Property, one and one half percent (1.5%).

B. In the event that a Facility is sold without the Property, three percent (3%).

The Transaction Fee shall be due and paid upon the closing of a Transaction in which case the Transaction Fee will be paid out of the proceeds of the closing. Accordingly, any motion for approval of a sale pursuant to Section 363 of the Bankruptcy Code shall also include a motion for payment of OEM's fees and expenses. In the event of a sale under paragraph 3(A) above, the definition of Transaction will include the Property; the Transaction fee will be calculated on the aggregate consideration of both the Facility and the Property. New Beginnings will withhold sufficient funds from the proceeds of the Transaction in order to make the payment under this paragraph 3.

4. Reasonable out-of-pocket expenses directly incurred by OEM in connection with this agreement shall be reimbursed to OEM by New Beginnings. New Beginnings will maintain a deposit of \$10,000 with OEM, which will be applied against OEM's last invoice. OEM will obtain prior written approval from New Beginnings to incur any sums covered under this paragraph in excess of \$1,000.

OEM Capital Corp.

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5. New Beginnings agrees to indemnify and defend OEM and its partners, officers, directors, principals, associates, employees and agents against all losses, claims, damages or liabilities arising out of any actions taken or omitted to be taken by OEM in the performance of this agreement, and the reimbursement of any legal or other expenses reasonably incurred therein provided, however, that such indemnity shall not apply to claims arising out of the gross negligence or willful misconduct of OEM or its representatives. New Beginnings shall have the right to assume the defense of any claim or cause of action which is covered by its indemnification obligations hereunder. New Beginnings shall also have the right to compromise or settle any such claim or cause of action.
6. Either party may terminate the agreement hereunder at any time on written notice to the other party. Thereupon, except for paragraphs 3, 4 and 5, which shall continue in full force and effect, this agreement shall terminate and neither party shall have any other liability to the other.
7. No fee payable to any other investment banker or financial advisor by New Beginnings, or any other company, or institution, or person, shall reduce or otherwise affect the fee or fees payable hereunder by New Beginnings to OEM.
8. This agreement shall be construed under and be governed by the laws of the State of New York, subject to the entry of an order of the United States Bankruptcy Court for the Eastern District of Tennessee at Chattanooga, approving the retention of OEM pursuant to the terms hereof.

If the above correctly sets forth the understanding between OEM and New Beginnings, please request the entry of an order of the United States Bankruptcy Court for the Eastern District of Tennessee at Chattanooga, on the entry of which this letter shall constitute a binding agreement upon New Beginnings and OEM.

Yours very truly,

OEM CAPITAL CORP.

By: 

Norton W. Lazarus, President •