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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In the Matter of: : Case No. 10-35561 MS  
ALLIED HEALTH CARE SERVICES, INC. : Chapter 7 Proceeding  
Hon. Morris Stern  
Debtor. : (Hearing Date: 10/12/10)

**APPLICATION FOR ENTRY OF ORDER AUTHORIZING  
THE TRUSTEE TO ENTER INTO AN INTERIM USE  
AGREEMENT WITH ATHOME MEDICAL, INC.**

TO THE HONORABLE MORRIS STERN,  
UNITED STATES BANKRUPTCY JUDGE:

The Application of Eric R. Perkins, Chapter 7 Trustee for Debtor, Allied Health Care Services, Inc. ("Debtor"), by and through his counsel, Hellring Lindeman Goldstein & Siegal LLP, respectfully represents as follows:

**BACKGROUND**

1. On August 17, 2010, an Involuntary Petition for Relief under Chapter 7 of the Bankruptcy Code was filed against the Debtor.

2. Contemporaneous with the filing, the Petitioning Creditors moved for the appointment of an Interim Chapter 7 Trustee.

3. On September 8, 2010, an Order was entered directing the United States Trustee to appoint an Interim Trustee.

4. On September 10, 2010, an Order for Relief was entered by the Court.

5. On September 10, 2010, Eric R. Perkins was appointed Interim Chapter 7 Trustee ("Trustee") by the United States Trustee for Region 3 and is duly qualified and acting.

**NATURE OF DEBTOR'S BUSINESS AND CUSTODY OF RECORDS**

6. The Debtor was engaged in the business of the supply of medical equipment and supplies to the general public with offices and facilities located at 89 Main Street, Orange, New Jersey and

Route 59, Monsey, New York. The Debtor did not diagnose or treat customers or patients, but merely provided equipment and supplies prescribed by a physician or medical care person.

7. On September 16, 2010, the Trustee entered into an Agreement with AtHome Medical, Inc. ("AtHome") of Morris Plains, New Jersey, for AtHome to assume custody of the Debtor's active and inactive customer/patient files. An Order approving said Agreement was entered by the Court on said date.

8. While most of the Debtor's physical assets are located in its facilities in Orange, New Jersey and Monsey, New York, certain assets -- consisting of residential ventilators, respirators, and oxygen tanks ("Residential Equipment") -- are currently maintained at the homes of approximately 35 customers.

9. The Trustee and AtHome have entered into an Interim Use Agreement ("Agreement") subject to approval by the Court, annexed hereto as Exhibit "A". The effective date of the Agreement is September 10, 2010, the date AtHome commenced providing service and maintenance to the Residential Equipment. Pursuant to the Agreement, AtHome has agreed to maintain and service the Residential Equipment in consideration for the sum of \$5,000 per month payable in advance to the Trustee and the right to bill the

customers for the use and maintenance of the Residential Equipment. The Agreement is terminable on notice.

10. The Agreement with AtHome benefits the Estate because it will relieve the Estate of any responsibility to provide any service and/or maintenance to the Debtor's customers using Residential Equipment. It also ensures that the Residential Equipment will be properly serviced and maintained.

11. The Trustee plans ultimately to offer the Residential Equipment and/or the residential customer relationship for sale pursuant to 11 U.S.C. §363 to AtHome or other bidders after appropriate notice and opportunity to bid. The preservation of the Residential Equipment and customer arrangements is therefore of importance to the Estate. Meanwhile, the entry of the Agreement will maintain the status quo.

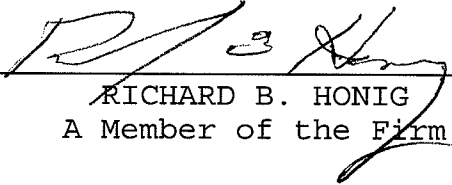
**NOTICE**

12. Since a list of creditors has not been filed in the case by the Debtor or Petitioning Creditors and is currently being compiled by the Trustee, notice of this Application is being submitted to the United States Trustee, counsel for the Petitioning Creditors, and other parties who have filed a Notice of Appearance in the case.

WHEREFORE, the Trustee respectfully prays for entry of an  
Order approving the Interim Use Agreement with AtHome.

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP  
Attorneys for Eric R. Perkins,  
Chapter 7 Trustee

By: \_\_\_\_\_

  
RICHARD B. HONIG  
A Member of the Firm

Dated: September 22, 2010

# **EXHIBIT "A"**

**INTERIM USE AGREEMENT**

THIS INTERIM USE AGREEMENT is entered into between AtHome Medical, Inc., a New Jersey corporation, whose address is 200 The American Road, Morris Plains, New Jersey 07950-2449 (hereinafter "LICENSEE") and ERIC R. PERKINS, Chapter 7 Trustee for Allied Health Care Services, Inc. ("the Debtor") (hereinafter "the TRUSTEE"). Collectively LICENSEE and the TRUSTEE are referred to as "the Parties."

**Background**

On August 17, 2010, an involuntary petition was filed against the Debtor in the United States Bankruptcy Court for the District of New Jersey pursuant to Chapter 7 of the United States Bankruptcy Code, Case No. 10-35561 MS. The Bankruptcy Court thereafter, on September 10, 2010 entered an order for relief, creating an estate ("the Estate"), and a further order appointing TRUSTEE as Chapter 7 trustee for the Debtor's Estate.

Pending disposition of the Estate, and further orders of the Bankruptcy Court, and in order to effectuate the continuity of care for customers currently using Debtor's Equipment, and in order to effectuate an appropriate liquidation of the Debtor's assets, the Trustee desires to keep certain equipment of the Estate in use and in good repair;

LICENSEE desires to use certain of the Estate's equipment, as more fully described below, and to maintain it in good repair or in as good condition as it is received; and

LICENSEE and the Trustee have previously entered into that certain Agreement for the Transfer and Custody of Records dated September 16, 2010.

\* \* \*

NOW THEREFORE, in consideration of the premises and the mutual covenants set forth below, and subject to the approval of the Bankruptcy Court, the LICENSEE and the TRUSTEE agree as follows:

1. Use of Equipment. During the term of this Interim Use Agreement, LICENSEE shall have the exclusive right to possess and use all of the medical equipment owned by the Estate which is currently in use by customers of the Debtor in their homes

(hereinafter "the EQUIPMENT"). The LICENSEE and TRUSTEE shall cooperate in developing a list better identifying the EQUIPMENT, which shall be annexed to this Interim Use Agreement as Attachment "A".

2. Payment. LICENSEE shall pay to the Trustee \$5,000 per month, in advance, for the right to use the EQUIPMENT (hereinafter the "Use Fee"). The first Use Fee for the period effective September 10, 2010 through October 9, 2010 shall be paid immediately to the Trustee. The Trustee shall hold said payment in escrow subject to approval of this Agreement by the Bankruptcy Court.

3. Repair, maintenance, storage, insurance, and other responsibilities of the LICENSEE. At all times during the term of this Agreement, LICENSEE shall:

- a. keep the EQUIPMENT in good operating order, ordinary wear and tear excepted, if the EQUIPMENT is received in good operating order, or in the condition in which it is received;
- b. perform all maintenance necessary or desirable to keep the EQUIPMENT in good operating order or in the condition in which it is received;
- c. if the EQUIPMENT is going to be removed or no longer located in the home of one of the Debtor's customers, then LICENSEE will return the EQUIPMENT to a suitable storage facility designated by the TRUSTEE and operated by the TRUSTEE, for the EQUIPMENT;
- d. keep the EQUIPMENT insured against loss, theft, or damage in such amounts as the Trustee shall reasonably request;
- e. neither cause, permit or suffer the creation of any lien, claim, encumbrance or transfer of any interest in the EQUIPMENT;
- f. subject to receipt of accurate records from the Debtor or TRUSTEE, LICENSEE shall maintain accurate records concerning the location and utilization of the EQUIPMENT (it is recognized by both parties that there may not be accurate records maintained by the Debtor, prior to LICENSEE's involvement, and therefore, LICENSEE shall use its best efforts to maintain accurate records);



- g. allow the Trustee or any potential purchasers of the EQUIPMENT to inspect it on reasonable notice and subject to all state and federal laws of patient confidentiality; and
- h. execute such instruments for filing, recording or notice to customers as will, in the Trustee's reasonable judgment, give notice of the Estate's ownership in the EQUIPMENT.

4. Commencement. The LICENSEE shall commence use of the EQUIPMENT immediately upon the Bankruptcy Court's approval of this Agreement, nunc pro tunc to September 10, 2010, the date of the Trustee's appointment.

5. Termination. This Agreement shall terminate upon the earliest to occur of (i) an order of the Bankruptcy Court disapproving this Agreement or (ii) upon notice from the Trustee or a purchaser of the EQUIPMENT from the Trustee pursuant to a bankruptcy court approved sale, which shall take effect ten (10) business days after notice is given (or such later date as set forth in the Notice). Upon termination, LICENSEE shall return to the TRUSTEE (or the purchaser of the EQUIPMENT, as the case may be), all items of the EQUIPMENT in good operating order, or in the condition in which it was received by LICENSEE.

6. Conditions. The conditions of this Agreement are:

a. The Trustee shall promptly apply to the United States Bankruptcy Court having jurisdiction of the Debtor's Estate for approval of this agreement, nunc pro tunc to September 10, 2010, the date of the Trustee's appointment;

b. LICENSEE shall cooperate in providing any affidavit or certifications necessary under the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court to permit the Bankruptcy Court to act upon the application for approval of this agreement;

c. As part of the application to the bankruptcy court, the LICENSEE shall confirm and certify that its does not hold any "interest" in the Debtor or the Estate and that LICENSEE does not have, or have released and waived, any claims against the Debtor or the Estate; and

d. LICENSEE shall be in compliance with all terms, conditions of this Agreement and its representations and

warranties shall remain true and correct.

7. Warranties by the LICENSEE. The LICENSEE hereby represents and warrants that:

a. This agreement has been duly authorized by the LICENSEE, and, subject only to the approval of the Bankruptcy Court, shall be binding and enforceable against the LICENSEE;

b. The LICENSEE is accredited as a durable medical equipment company by the Joint Commission and lawfully permitted to possess and use the EQUIPMENT; holds all licenses (if any) necessary or appropriate to provide services involving the use of the EQUIPMENT; and provides services only through appropriately qualified and trained professionals, including respiratory care practitioners licensed by the New Jersey State Board of Respiratory Care;

c. The LICENSEE has not created and will not create any liens, claims or encumbrances against the EQUIPMENT, or cause, permit or suffer any transfer of any interest in the EQUIPMENT.

8. "As is," "where is" condition of the EQUIPMENT. The Trustee has had no connection with the EQUIPMENT and is without knowledge or information concerning its condition. Accordingly, the LICENSEE accepts the EQUIPMENT in its existing condition, "AS IS," and "WHERE IS," and without any warranties, express or implied, as to its condition. LICENSEE expressly understands and acknowledges that all warranties, express or implied, are DISCLAIMED. (Trustee will, however, make available to the LICENSEE such rights, if any, as the Trustee holds against manufacturers or suppliers of the EQUIPMENT.) Likewise, the LICENSEE has had no connection with the EQUIPMENT and is without knowledge or information concerning its condition. Accordingly, LICENSEE will return the EQUIPMENT in the same condition in which it is received by the LICENSEE.

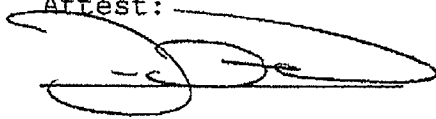
9. LICENSEE's use of the Equipment. It is understood and acknowledged that the LICENSEE will use the Equipment in its existing operations and that the Trustee shall have no right to control or supervise LICENSEE or any responsibilities in respect to such operations. LICENSEE shall have the right to bill customers and/or responsible third party payers, for the use of the EQUIPMENT, and any proceeds of use of the EQUIPMENT shall be the exclusive property of the LICENSEE. TRUSTEE is not assuming any liability for acts or omissions of LICENSEE and is not

assuming any liability for medical issues occasioned by or arising from or related to customers serviced by LICENSEE.

10. Miscellaneous.

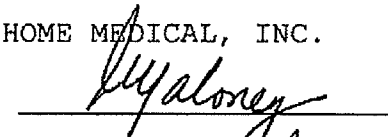
- a. This Agreement shall be governed by the laws of the State of New Jersey and any applicable federal laws.
- b. The rights, benefits, duties and obligations of LICENSEE shall inure to the benefit of, and be binding upon, any successors and/or assigns of LICENSEE.
- c. This Agreement may be executed in counterparts.

Attest:




AT-HOME MEDICAL, INC.

By:



As its Vice President  
there unto duly authorized

Attest:

  
ERIC PERRINS, Chapter 7  
Trustee for Allied Health  
Care Services, Inc.