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Debtor and Debtor in Possession

8 Proposed Reorganization Counsel for the
9 Debtor and Debtor in Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:
13 NEVADA CANCER INSTITUTE, a Nevada
14 nonprofit corporation,¹
15 Debtor.

Case No.: 11-
Chapter 11

**DECLARATION OF HEATHER H.
MURREN IN SUPPORT OF FIRST DAY
MOTIONS**

16
17
18
19 I, Heather H. Murren, declare as follows:

20 **I.**

21 **QUALIFICATIONS OF DECLARANT**

22 1. I am over eighteen years of age. I am a member of the board of directors (“Board”)
23 for Nevada Cancer Institute, a Nevada nonprofit corporation (the “Debtor”). I am a Founder of the
24 Debtor and previously served as the first President and Chief Executive Officer, from May 2002 to
25 May 2007, and also as interim President and Chief Executive Officer from October 2008 to March
26

27 ¹ The Debtor’s address and last four digits of its Federal Tax I.D. are: One Breakthrough Way,
28 Las Vegas, NV 89135 [EIN XX-XXX2553].

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1 2009. I have been a member of the Board since the founding of the Debtor in 2002, and served as
2 Chairman of the Board from May 2002 to July 2009. In each and all of these capacities, I have
3 served, and continue to serve, as an unpaid volunteer. Together with my family, I personally have
4 given substantial financial support to the Debtor in pursuit of its mission over the years.

5 2. I hold a Bachelor of Arts degree from Johns Hopkins University and am a
6 Chartered Financial Analyst. Prior to helping found the Debtor, I pursued a career as a securities
7 analyst for over ten years. In April 2002, I retired as a Managing Director, Global Securities
8 Research and Economics, of Merrill Lynch, where I was group head for the Global Consumer
9 Products Equity Research effort. In that position, I coordinated the efforts of Merrill Lynch's 16-
10 member global consumer products team, encompassing analysts in Pacific Asia, Australia,
11 Canada, Europe and the United States. Prior to Merrill Lynch, I was also employed in similar
12 capacities at Prudential Securities, JP Morgan Securities and Salomon Brothers.

13 3. During the course of my career as a securities analyst, I was recognized as a leader
14 in my field in major financial industry surveys for the quality of my work. For six consecutive
15 years, I was honored by being designated a member of The Institutional Investor's All-American
16 Research Team, and was recognized on multiple occasions for my work in the economic and
17 financial services community in the Greenwich Survey and the Wall Street Journal. In addition,
18 while at Merrill Lynch, I was profiled in Fortune magazine as one of Wall Street's "all-star"
19 analysts. From 2007 to 2008, I served on the board of directors for Mannkind Corporation, a
20 biotech company.

21 4. Aside from my professional career, I have been actively involved for many years in
22 philanthropic and other nonprofit activities. From 2006 to 2008, I served as a member of the
23 Board of Trustees of the Johns Hopkins University, and on its committees for audits and
24 insurance, academic affairs, and trusteeship, nominations and by-laws. I also have served as a
25 member of the Johns Hopkins University Zanvyl Krieger School of Arts and Sciences Advisory
26 Council and founder of the Jochebed Scholarship, which supports an undergraduate student in the
27 School of Arts and Sciences with a demonstrated career interest in improving the health and
28 medical care of underprivileged mothers and children.

1 5. Additionally, I have served as a volunteer translator for the Nevada Health Centers,
2 Inc., a nonprofit organization that provides healthcare to the Nevada community regardless of the
3 patient's ability to pay, and have held a gubernatorial appointment to the Nevada Academy of
4 Health.

5 6. In 2009, I was appointed by the United States Senate to serve on the Financial
6 Crisis Inquiry Commission, a 10-member Federal commission established to examine the
7 domestic and global causes of the financial crisis. The commission examined and held hearings
8 on more than 20 specific areas of inquiry, including the role of fraud and abuse in the financial
9 sector; state and federal regulatory enforcement; tax treatment of financial products; lending
10 practices and securitization; and corporate governance and executive compensation. The
11 commission reported its findings in January, 2011.

12 7. If called upon to testify, I could and would testify the matters set forth in this
13 Declaration based upon my personal knowledge.

14 **II.**

15 **NEVADA CANCER INSTITUTE**

16 8. Following my retirement from Merrill Lynch, I helped lead a campaign, together
17 with concerned citizens from throughout Nevada, the oncology community, academic leaders,
18 legislators, corporations, healthcare advocates, and cancer patients and their families, to establish a
19 premier cancer center in Nevada that would be dedicated to reducing the burden of cancer on the
20 people of Nevada, the nation and the world, through innovative and collaborative research,
21 education and research-linked patient care. The establishment and operation of the Debtor was the
22 product of that collective effort.

23 9. The Debtor maintains a state-of-the-art outpatient cancer treatment and research
24 facility in the Summerlin community of Las Vegas (the "Flagship Building"), where the Debtor
25 conducts its research activities and where patients are treated by physicians employed by the non-
26 debtor oncology medical group, Ruckdeschel Manno, Ltd. dba Nevada Cancer Institute Medical
27 Group (the "Medical Group," and together with the Debtor, "NVCI"). The physicians employed
28 by the Medical Group do not hold any equity interest in the Medical Group. The articles of

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1 incorporation for the Medical Group mirror those of a nonprofit entity. The Medical Group was
2 organized for the sole purpose of compliance with the corporate practice of medicine doctrine
3 under Nevada law, at the time it began providing patient care. Under that doctrine, the Debtor was
4 not permitted to directly employ physicians.

5 10. NVCi provides professional medical services, infusion therapy, radiation therapy,
6 diagnostic imaging, and related ancillary services, at the Flagship Building and at leased premises
7 located at the University Medical Center in central Las Vegas (“UMC”). The Flagship Building
8 houses its own diagnostic equipment including PET, CT, MRI, and digital mammography, and
9 provides a place for patients to obtain psychosocial and nutrition counseling, participate in a
10 survivorship clinic, and obtain pain management services.

11 11. The Debtor also owns a 184,000 square foot, state-of-the-art, biotech research
12 building situated across the street from the Flagship Building, the land situated under an office
13 building and parking lot adjacent to the Flagship Building (which structures are not owned by the
14 Debtor), a vacant lot adjacent to the Flagship Building, and approximately 19 acres of
15 undeveloped real estate, just outside the Summerlin community, which was granted to the Debtor
16 by an Act of Congress, for purposes of developing a nonprofit cancer institute.

17 12. In 2003, the Debtor was designated by the Nevada State Legislature as the Official
18 Cancer Institute for the State of Nevada.

19 **III.**

20 **THE BOARD**

21 13. The Debtor is governed by the Board, which is comprised of 11 distinguished
22 business and medical professionals, who volunteer their service without compensation. The
23 chairman of the Board is Michael Yackira, who is President and Chief Executive Officer of NV
24 Energy, Inc., a holding company that owns Nevada Power Company and Sierra Pacific Power
25 Company. A list of the members of the Board and their professional biographies are attached
26 hereto as Exhibit 1.

27 14. The Board and its committees (including its executive committee) meet frequently
28 to receive information, discuss, provide direction and take action with respect to the Debtor’s

1 affairs, including its operational and financial restructuring efforts. Year to date, the Board, its
2 executive committee and its other committees have met over 50 times, either in person or by
3 teleconference.

4 IV.

5 THE SEARCH FOR A STRATEGIC PARTNER

6 15. Like many nonprofit organizations across the country, and many providers of
7 medical services generally (not-for-profit and for-profit), the Debtor has been facing significant
8 financial pressures. These pressures have arisen from the protracted decline in the economy,
9 decreases in medical reimbursement rates from managed care payor entities, increases in
10 operational costs, decreases in the amount and availability of charitable donations, a reduction in
11 research funding opportunities and increased competition.

12 16. In or around the fall of 2009, the Debtor's management began discussing with the
13 Board potential strategies to address these trends, increase the Debtor's revenue and continue its
14 mission. These potential strategies included further development of the Debtor's facilities, a joint
15 venture with a strategic partner, or some other strategic transaction. In late 2009, the Board
16 determined that the Debtor should be assisted in this effort by a professional investment banking
17 firm with expertise in the health care field. The Debtor ultimately retained Cain Brothers, which
18 was recommended to the Board as just such a firm.

19 17. In early 2010, Cain Brothers began assisting the Debtor in identifying, evaluating
20 and negotiating potential strategic transactions. One aspect of this work was in evaluating and
21 reporting to the Board on the status and merits of certain potential transactions that had been
22 described to the Board from time-to-time by prior management. Another aspect of its work was
23 its commencement of an independent, comprehensive process to identify and negotiate with
24 parties that might be interested in a transaction with the Debtor.

25 18. The Cain Brothers process solicited expressions of interest from both national
26 cancer centers and local market participants in cancer treatment or related healthcare services.
27 Cain Brothers' efforts targeted at least 11 such entities. Some of these entities entered into non-
28 disclosure agreements and received confidential due diligence materials from the Debtor. Three

1 entities ultimately submitted written expressions of interest and/or term sheets to the Debtor, and a
2 fourth expressed interest for many months, but ultimately did not present any written expression of
3 interest of which I am aware.

4 19. Throughout 2010, and into early 2011, I observed that the parties expressing
5 interest in a transaction undertook a substantial amount of due diligence and actively engaged the
6 Debtor in negotiations aimed at reaching a mutually beneficial agreement. With the assistance of
7 Cain Brothers, the Debtor negotiated with these parties. I was personally involved in many of
8 these negotiations on behalf of the Debtor.

9 20. Unfortunately, none of these efforts resulted in an agreement, including because of
10 expressed concern that the land use restrictions to which the Debtor's real property is subject were
11 incompatible with the interested parties' business strategies, as those restrictions would not permit
12 the provision of certain additional health care services that currently are not offered by NVCI.

13 21. By March 2011, the Debtor was facing an acute liquidity shortfall and the prospect
14 that the Debtor would default under both its credit agreement and the indenture governing certain
15 outstanding public bonds. In response to these developments, the Debtor retained Alvarez &
16 Marsal Healthcare Industry Group, LLC ("A&M") to assess the Debtor's operations, develop a
17 business plan for stabilizing the Debtor's liquidity situation and therefore enabling continuity of
18 cancer treatment services to its patients, assist the Debtor's counsel in negotiating a forbearance
19 with its lenders, and assist the Debtor in developing a long-term restructuring.

20 22. In April 2011, after the Debtor and Cain Brothers mutually terminated their
21 investment banking relationship, the Debtor hired a new investment banking team with a specialty
22 in not-for-profit healthcare from J.P. Morgan Securities LLC ("JP Morgan"). JP Morgan assisted
23 with the preparation of a confidential information memorandum and identified 20 public and
24 private entities that it determined were most likely to be interested in a transaction with the
25 Debtor. The process conducted by JP Morgan was aimed not only at parties with a potential
26 interest in the Debtor's operations, but also parties with a potential interest in the Debtor's real
27 estate assets.

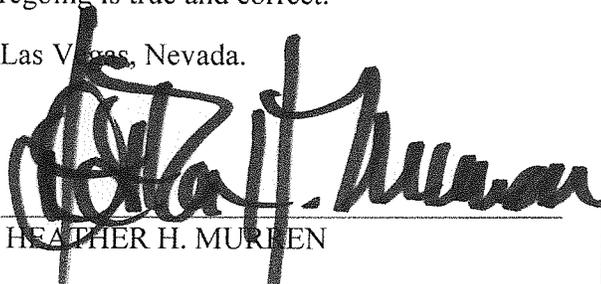
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1 effective upon the commencement of the Debtor's chapter 11 case. A copy of the Board
2 resolution approving the new employment agreement and making those appointments is attached
3 hereto as Exhibit 2.

4 27. The Debtor presently does not have a Chief Executive Officer or a Chief Operating
5 Officer, and has lost other key personnel over the past six to seven months. Mr. Pillari's
6 appointment as Chief Restructuring Officer and the appointment of the other members of his
7 A&M team to serve as officers of the Debtor will provide direction to the Debtor's personnel and
8 continue providing much-needed management support to an organization that has experienced the
9 loss of key personnel. The demonstrated expertise of Mr. Pillari and his team also will be valuable
10 in helping the Debtor to implement the sale to UCSD and the restructuring of the Debtor's
11 remaining assets.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed this 2nd day of December 2011 at Las Vegas, Nevada.

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17 HEATHER H. MURREN
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