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November 13, 2020

*ADMITTED IN ILLINOIS
**ADMITTED IN KANSAS
***ADMITTED IN NEW JERSEY
**** ADMITTED IN TEXAS
***** ADMITTED IN ARKANSAS

Roxanne L. Rothchild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: The Riverview Nursing Facility, LLC
Case 14-RC-265356
Our File No. TVW-002

Dear Ms. Rothchild:

Pursuant to Section 102.6 of the Board's Rules and Regulations, we write to bring to the Board's attention pertinent and significant authorities that were issued after the Employer Riverview Nursing Facility, LLC ("Riverview") filed its Request for Review and Emergency Motion to Stay Mail Ballot Election. Specifically, on November 9, 2020 the Board issued its Decision on Review in *Aspirus Keweenaw*, 370 NLRB No. 45 (slip opinion) (Nov. 9, 2020), in which it Board set forth "the guidelines and parameters applicable to determining the propriety of a mail-ballot election" in light of the Covid-19 pandemic. *Id.*

The Board in *Aspirus* set forth six guidelines for Regional Directors to determine whether a representative election should be held by mail ballot. *Id.* The guidelines included consideration of the Agency's mandatory telework status, the trend in new confirmed Covid-19 cases in the county where the Employer's facility is located, whether the manual election site can be set up consistently with state and local health order, whether the employer commits to abide by the GC Memo 20-10 protocols, whether there is a current Covid-19 case at the facility, and other compelling considerations. *Id.*

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The Board also held that the guidelines should be applied retroactively “to all pending cases in whatever stage.” *Id.* In this case, the Acting Regional Director did not examine the guidelines set forth in *Aspirus* when he ordered a mail-ballot election in this case. When the guidelines are applied to the circumstances of this case, it is clear that a manual ballot election is the appropriate method of election, and that a mail ballot election may safely be conducted at Riverview’s facility.

Consequently, because the mail-ballot election in this case is currently ongoing and ballots are scheduled to be counted on **November 13, 2020**, Respondent respectfully requests that the Board immediately grant its emergency motion to stay the mail-ballot election as directed by the Acting Regional Director’s September 24, 2020 Decision and Direction of Election, and remand the case to the Acting Regional Director for reconsideration in light of the Board’s decision in *Aspirus*.

Respectfully submitted,

McMAHON BERGER P.C.

/s/ James N. Foster, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2020, a true and correct copy of the above document was filed via electronically on the Board's website with the following individual:

Roxanne L. Rothchild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

/s/ James N. Foster, Jr.

I further certify that on the 13th day of November, 2020, a true and correct copy of the above document was served via email, upon:

William B. Cowen
Acting Regional Director
National Labor Relations Board
Region 14
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/s/ James N. Foster, Jr.