

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re:

USA GYMNASTICS,

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**OBJECTION OF NATIONAL CASUALTY COMPANY AND OTHER JOINING  
INSURERS TO DEBTOR’S MOTION FOR ORDER APPROVING  
THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION PROCEDURES**

National Casualty Company (“NCC”), an insurance company that issued certain policies of Commercial General Liability insurance to the Debtor, by and through its undersigned counsel, and other joining insurers, including Virginia Surety Company, Inc. f/k/a Combined Specialty Insurance Company (and other insurers filing separate joinders (collectively referred to herein as the “insurers”)) hereby submit this objection (the “Objection”) to the Debtor’s Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures [D.I. 931] (the “Disclosure Statement Approval Motion”).<sup>1</sup> Pursuant to the Disclosure Statement Approval Motion, the Debtor seeks to approve its Disclosure Statement [D.I. 930] (the “Disclosure Statement”) as

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<sup>1</sup> While NCC and other insurers are (and remain) prepared to object to the terms of the only Disclosure Statement that has ever been filed with the Court, this Objection is primarily directed to a revised version of the Plan and Disclosure Statement sent to the insurers on April 10, 2020. While the Plan and Disclosure Statement sent to the insurers on April 10, 2020 has never been filed, the insurers were told by the Debtor to work off those versions.

containing “adequate information” in order to solicit votes on the Debtor’s First Amended Plan [D.I. 928] (the “Plan”).<sup>2</sup> In support of this Objection, NCC respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. Without any prior notice to its insurance companies, the Debtor submitted to the Court for approval a proposed “either/or” Plan to its creditors. Notwithstanding that the originally filed Disclosure Statement and Plan did not accurately reflect a settlement reached with the insurers, and notwithstanding public statements by counsel for some of the abuse survivors since then that the Settlement Election proposed by the Debtor in the Plan would be flatly rejected, the Debtor’s insurers have nonetheless been working diligently to provide comments and attempt to reach agreement with the Debtor on fundamental terms that would be necessary for solicitation of a meaningful Settlement Election, including but not limited to the scope of injunctive protection, the scope of a buyback of the Debtor’s insurance policies, and scope of releases (including necessary releases from USOPC and other Protected Parties).

2. The insurers believe that progress has been made. First, subject to acceptance and approval of all additional material terms and conditions as described herein, in proposed Plan revisions and other settlement documents, the insurers acknowledge that \$220,750,000 (two-hundred twenty million, seven hundred fifty thousand dollars) remains available to fund the Insurance Settlement Amount, which in turn would fund the Trust for the benefit of the Abuse Claimants.<sup>3</sup> Second, some of the necessary changes reflecting the material preconditions to

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

<sup>3</sup> The Disclosure Statement proposes that the Insurance Settlement Amount is \$219,750,000. For purposes of this acknowledgement the referenced insurers are National Casualty Company, Virginia Surety Company, Inc. f/k/a Combined Specialty Insurance Company, ACE American Insurance Company, Great American Assurance Company, TIG Insurance Company and National Union Fire Insurance Company of Pittsburgh, P.A.

funding the Insurance Settlement Amount have been incorporated into a new draft disclosure statement and plan circulated by the Debtor, which has not been filed. Third, at the Debtor's request, the insurers have also provided the Debtor with a proposed form of buy-back and settlement agreement which still await comments from the Debtor and USOPC. Accordingly, while the Debtor has not yet responded to the insurer's most recent turn of additional comments and proposed plan language, all of which will need to be incorporated into any Plan and Disclosure Statement ultimately approved for solicitation, the insurers believe that the Debtor has made positive steps toward a viable Settlement Election. Significantly, the Debtor has (i) revised the definition of Abuse Claim, which clarifies the scope of the Channeling Injunction, (ii) proposed an alternative form of the Protected Party Release and (iii) agreed to other material changes.

3. To be sure, there remain open issues between the insurers and the Debtor with respect to a settlement including a conflict between language in the Disclosure Statement that proposes a waiver of the Debtor's alleged Insurance Reimbursement Claims upon approval of the Settlement Election (Plan at 17.1), yet at the same time demands payment of the Insurance Reimbursement Claim (and the insurers' continuing liability therefore) as an express provision of the Settlement Election, all notwithstanding the debtor's proposed allocation of \$4.750 million to itself from the Insurance Settlement Payment for reimbursement of those costs.<sup>4</sup> Plan at 9.2.

4. As of the date of the filing of this objection, the Debtor has not responded to the insurers' most recent comments on the Plan which need to be incorporated in to the Plan (so it can accommodate a settlement) and Disclosure Statement. Nor has a new plan or disclosure statement been filed. Accordingly, all of those matters remain open. If, however, the Debtor accepts the

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<sup>4</sup> Late on the evening of June 1, 2020, the Debtor filed a motion for summary judgment against various insurers seeking payment of all fees and expenses incurred by the Debtor, the Committee and others in the bankruptcy case. The insurers will be opposing the motion in due course.

insurers' additional comments, many of the material terms that will be vital to a Settlement Election will be in place. While the Debtor has previously objected that some of the comments from the insurers are Plan objections, the insurers believe the Debtor's position to be misplaced. If a Disclosure Statement that is allegedly based on a settlement is to contain sufficient information to solicit voting on a Plan, the Plan has to contain material terms to reasonably assure the viability of the Settlement Election. Accordingly, the insurers believe the Plan and Disclosure Statement need to be conformed to reflect the proposed changes from the insurers. Assuming the Debtor makes the changes proposed by the insurers – many of which were proposed to the Debtor in mid-March – the insurers believe the Plan could be solicited with a meaningful Settlement Election. The settlement itself will be subject to separate settlement agreements with each of the insurers, typical of settlements of this complexity, but the agreements can be included in a plan supplement served prior to voting.

5. A copy of the most recent Plan revisions proposed by the insurers (which will need to be incorporated into the Disclosure Statement) is attached hereto as **Exhibit A**. The insurers have also prepared a bullet point list of other shortcomings for reference. A copy of that list is attached as **Exhibit B**.

#### **POSITIVE DEVELOPMENTS TOWARD A SETTLEMENT**

6. As noted above, since filing its original Plan (Dkt. 905), First Amended Plan (Dkt. 928) and Disclosure Statement (Dkt. 930), the Debtor has made several positive steps toward a viable Settlement Election. For example, the Debtor has expanded the definition of "Abuse Claims" to include claims against Protected Parties (including USOPC) for which USAG is alleged to be responsible. Rather than Abuse Claims being limited to claims against USAG, this expanded definition will allow the Channeling Injunction and releases to protect the Protected Parties from

all claims for which USAG is also alleged to be responsible. This expanded definition will also make clear that the Future Claims Representative (“FCR”) is representing the interests of *all* future claimants who might assert claims in the future against USAG, USOPC, the Settling Insurers and all other Protected Parties, provided that the order appointing the FCR (Dkt. 516) is amended to reflect this.

7. Another positive step toward a viable settlement is the Debtor’s agreement to add a Protected Party Release (the form of which may still be in dispute), by which each Protected Party shall – in exchange for its treatment as a Protected Party and in consideration of the Channeling Injunction – be deemed to grant to each Settling Insurer and its Related Persons a full and complete general release of all claims or causes of action that such a Protected Party had, has or may have against any Settling Insurer with respect to any of its insurance policies relating to or arising out of or with respect to any and all Channeled Claims, and consent to the insurance policy buy-back. This is a vital step toward settlement as the Settling Insurers will not contribute their respective portions of the Settlement Payment without obtaining a release (and consent to the buyback of insurance policies) from anyone who is, or may claim to be, an additional insured under the Settling Insurers’ insurance policies. The proposed release language the insurers have requested is as follows:

PROTECTED PARTY RELEASE. IN CONSIDERATION OF THE CHANNELING INJUNCTION AND THEIR RESPECTIVE TREATMENT AS A PROTECTED PARTY UNDER THE TERMS OF THIS PLAN, ON THE EFFECTIVE DATE OF THE PLAN, EACH AND EVERY PROTECTED PARTY SHALL GRANT, AND SHALL BE DEEMED TO HAVE GRANTED, TO EACH SETTLING INSURER AND ITS RELATED PERSONS A FULL AND COMPLETE GENERAL RELEASE OF ALL CLAIMS OR CAUSES OF ACTION WHATSOEVER, KNOWN OR UNKNOWN, THAT SUCH PROTECTED PARTY HAD, HAS, OR MAY HAVE HAD AGAINST SUCH SETTLING INSURER (OR ITS RELATED PERSONS) OR WITH RESPECT TO ANY CGL INSURANCE POLICY, OTHER INSURANCE POLICY, OR NON-DEBTOR CGL SETTLING INSURER COVERED PERSON POLICY ISSUED BY ANY SETTLING INSURER OR OTHER INSURER RELATING TO OR ARISING OUT OF

OR WITH REPECT TO ANY AND ALL CHANNELED CLAIMS. THIS PROTECTED PARTY RELEASE SHALL BE IN FULL FORCE AND EFFECT UPON THE EFFECTIVE DATE OF THE PLAN AND WITHOUT REGARD TO WHETHER EACH PROTECTED PARTY EXECUTES AND DELIVERS A SEPARATE RELEASE OF ALL SUCH CLAIMS TO EACH SETTLING INSURER AND SHALL CONSTITUTE THEIR CONSENT TO SALE OF THE CGL INSURANCE POLICIES BACK TO THE SETTLING INSURERS.

8. Because a settlement of this nature is a complex matter, each of the insurers has also indicated that it will require a separate settlement agreement to be agreed upon and executed by USAG and USOPC describing all terms on which the insurers have agreed to settle. Because those agreements will require Court approval, and will need to be disclosed to all parties prior to any Voting Deadline, those agreements will be submitted as part of a Plan Supplement prior to the voting deadline. In the meantime, however, an exemplar of the proposed Insurance Settlement and Buy-back Agreement has been provided to the Debtor and USOPC and is attached hereto as **Exhibit C**.

9. Further, because USOPC either is, or has asserted that it is, an additional insured under the CGL Insurance Policies issued to the Debtor, the insurers have also attempted to negotiate the scope of release that USOPC will provide in the Insurance Settlement and Buy-back Agreements and under the Plan. Proposed language has been provided to the Debtor and USOPC. That language remains under review by the Debtor and USOPC. The proposed language in the Insurance Settlement and Buy-back agreement is:

In consideration of the Channeling Injunction and [Settling Insurers'] payment of its share of the USOPC contribution to the Trust under the Plan, USOPC releases all of its rights to, and interests in, (a) the USAG Policies and (b) defense and indemnity insurance coverage for past, present and future known and unknown Abuse Claims under any USOPC Policy or any other Policy issued by [Settling Insurers] that allegedly applies to Abuse Claims, but only to the extent that the Abuse Claimant has provided a release to USOPC pursuant to Section 11.1 of the Plan. For purposes of effecting this settlement, USOPC consents to the sale of the USAG Policies to [Settling Insurers]. Except as provided in this paragraph, USOPC's rights and interests in the USOPC Policies are not affected and will continue to be those provided by the terms and conditions of the USOPC Policies and applicable law.

The proposed Plan language is as follows:

NOTWITHSTANDING ANY OTHER PROVISION OF THIS PLAN, USOPC'S RELEASE OF ANY RIGHTS AND INTERESTS IN DEFENSE AND INDEMNITY COVERAGE (INCLUDING BY POLICY BUY-BACK) FOR PAST, PRESENT, OR FUTURE, KNOWN OR UNKNOWN, ABUSE CLAIMS UNDER ANY CGL INSURANCE POLICY, OTHER INSURANCE POLICY, OR NON-DEBTOR CGL SETTling INSURER COVERED PERSON POLICY IS A RELEASE ONLY TO THE EXTENT THAT THE ABUSE CLAIMANT HAS PROVIDED A RELEASE TO USOPC PURSUANT TO SECTION 11.1 OF THE PLAN.

10. In addition to the insurers' revised plan provisions that will need to be incorporated into the Disclosure Statement, the insurers also provided comments to the Debtor regarding certain provisions of the Disclosure Statement itself which the insurers understand the Debtor is willing to include. For example, the insurers requested that the Debtor include a more fulsome discussion of the insurance and insurance risks associated with the Litigation Election. In particular, the insurers requested that the Debtor include a description of (i) the assertions and defenses of the insurers to coverage, (ii) the defenses that would likely be raised to any litigated Abuse Claims and (iii) the limitations of insurance coverage even if an Abuse Claimant were to obtain a judgment against the Debtor. In the April 10, 2020 revised version of the disclosure statement that the Debtor shared with the insurers, the Debtor included more information. Some of the insurers have since provided to the Debtor some additional minor changes and corrections to that section of the disclosure statement, but the insurers do not yet know if the Debtor has accepted those minor revisions. The insurers believe these are all positive steps toward soliciting a plan that includes a viable Settlement Election. That is not to say all issues are resolved.

#### **OBJECTIONABLE PROVISIONS NOT PART OF ANY SETTLEMENT**

11. In addition to the shortcomings in the Disclosure Statement and Plan that undermine the ability to effectuate a settlement, the Debtor has added provisions into the Plan that

are simply counter to, and anathema to, any settlement proposal made by any Insurer. With respect to NCC for example, the Debtor has proposed that the Class 7 Personal Injury Claim will be permitted to litigate her claim to judgment with any recovery, if any at all, to be paid by the applicable Insurer. In this way, the Debtor has proposed an additional unagreed carve out – beyond that proposed in any settlement discussions with its insurers. NCC has not agreed that the Personal Injury Claim should potentially (and involuntarily) increase the insurers’ exposure beyond the terms on which anyone premised a global settlement. A policy buy-back is intended to resolve and terminate coverage under the policy. In other words, NCC has never offered, and does not agree, to the separate treatment of the Personal Injury Claim over and above the amount of the NCC’s respective portion of the Insurance Settlement Payment. Any recovery for the Personal Injury Claim will have to be satisfied out of the global amount of funds the insurers have proposed to make available as part of the Insurance Settlement Payment. NCC is not agreeing – in the context of a global settlement – to carve out the Personal Injury Claim for still more consideration. Accordingly, the Debtor’s proposed (unilateral) carve out violates the global nature of any proposed settlement with NCC. Nonetheless, NCC has been speaking with the Debtor and its professionals, and remains committed to trying to work through this issue with the Debtor in a mutually agreeable fashion.

12. Another unilateral addition by the Debtor – one unacceptable to all insurers – is the Debtor’s disclosure in the original disclosure statement (and maintained in the revised version distributed to some parties on April 10, 2020), that the insurers will “continue to reimburse the Debtor for on-going Insurance Reimbursement Claims in the ordinary course through the Effective Date,” and further that “to the extent any such amounts are outstanding on the Effective Date . . . the Outstanding Amount shall be paid by the applicable CGL Settling Insurer in addition to the



CGL Settling Insurer's portion of the Insurance Settlement Amount." These provisions were included as part of the Settlement Election portions of the Disclosure Statement and Plan, and expressly conflict with section 17.1 of the Plan, which releases such claims upon approval of the Settlement Election. To be clear, no insurer has agreed to pay additional amounts toward alleged Insurance Reimbursement Claims as part of any proposed settlement. A disclosure statement that suggests anything to the contrary is misleading. These provisions must be stricken as part of the Disclosure Statement and Plan.

13. Further, the Debtor proposes and discloses that it intends to allocate the \$219,750,000.00 Insurance Settlement Amount as follows: \$215,000,000 for payment of Abuse Claims, and allocate the remaining \$4,750,000 of the Insurance Settlement Amount to pay itself for the alleged Insurance Reimbursement Claims. The insurers have had no involvement in the proposed allocation and take no position on the allocation, which will be subject to court approval. The Disclosure Statement should state that whether the Court approves the Debtor's proposed allocation, the Insurance Settlement Amount will be fixed at the total \$219,750,000 contribution, but with the insurers' obligation to pay such amount being conditioned on the insurers obtaining the protections such insurers require as part of a settlement.

14. The Settling Insurer Injunction set forth at 12.3 of the Plan is given by any and all "Claimants," as proposed by the Debtor. Because everyone who must provide the release set forth in that section may not be a "Claimant," however, the release must be given by all "Persons." For example, it is not clear that all Protected Parties have filed claims; nor is it clear that anyone who might be barred from contribution and indemnification claims has filed a claim. Accordingly, the release cannot be limited to being given by "Claimants."

15. These issues, as well as language provided to the Debtor in March, 2020 and in additional revisions over a week ago, as well as the the summary of issues set forth on **Exhibit B** require continuing evaluation by the Debtor and the insurers, so that a structure that accommodates settlement with each of the insurers can be incorporated into the Plan and properly described in the Disclosure Statement, and so a viable Settlement Election can be solicited.

16. Soliciting the Plan based on the original Disclosure Statement would be a waste of time, money and effort, as it does not describe any settlement that might actually be approved by the insurers. The insurers believe, however, that significant progress has been on terms of a possible settlement in the April 10, 2020 plan and disclosure statement versions, but additional changes are necessary as noted in **Exhibit A** attached hereto.

17. For these reasons, the Disclosure Statement on file should not be approved because it fails to provide adequate information as required by section 1125 of the Bankruptcy Code and proposes to solicit a plan that does not reflect the terms insurers will require in order to provide a meaningful Settlement Election option to Abuse Claimants. The April 10, 2020 version of the Disclosure Statement and Plan – not yet filed – coupled with additional revisions proposed by the Insurers, could result in a Disclosure Statement that could be approved so that solicitation of a Settlement Election could be presented to the creditors.

### **ARGUMENT**

18. The Court should deny the Disclosure Statement Approval Motion because the only Disclosure Statement currently on file (i) does not contain adequate information as required by section 1125 of the Bankruptcy Code, and (ii) describes a Settlement Election that is not acceptable to the insurers. As such, the Settlement Election in the Plan, in the currently filed form, is not acceptable because the insurers have not agreed to the settlement described. The Insurers believe, however, that the Debtor has made positive steps since filing the original Plan and Disclosure

Statement that, with additional modifications, could result in a Disclosure Statement that could be approved and a Plan that would contain a viable settlement option.

**I. The As-Filed Disclosure Statement Cannot be Approved Because it Does Not Contain Adequate Information**

**A. Applicable Legal Standards.**

19. It is well-settled that a debtor may only solicit votes to accept or reject a chapter 11 plan after the Court has approved the debtor's written disclosure statement for that plan as containing "adequate information." 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines "adequate information" as follows:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to . . . a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a)(1).

20. The determination of the adequacy of a disclosure statement under 11 U.S.C. § 1125 is a matter for the bankruptcy court's discretion on a case-by-case basis. *Matter of Snyder*, 56 B.R. 1007, 1009 (N.D. Ind. 1986). However, the disclosure statement must contain "sufficient information to allow informed judgments by the creditors." *Id.* at 1012.

21. In submitting a disclosure statement, debtors "have a duty to provide 'adequate information,' defined as 'information of a kind, and in sufficient detail as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor ... to make an informed judgment about the plan....'" *In re Scott*, 172 F.3d 959, 967 (7th Cir. 1999) (quoting 11 U.S.C. § 1125(a)(1)). Although courts assess adequacy on a case-by-case basis, every disclosure

statement must contain “simple and clear language delineating the consequences of the proposed plan on [creditors’] claims and the possible . . . alternatives so that [creditors] can intelligently accept or reject the Plan.” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988); *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) (“[T]he importance of full and honest disclosure cannot be overstated.”). In essence, a disclosure statement “must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991); *see also* 11 COLLIER ON BANKRUPTCY ¶ 1125.03[1] (courts should “consider the needs of the claims or interest of the class as a whole and not the needs of the most sophisticated or least sophisticated members of a particular class”).

22. In determining whether a disclosure statement satisfies section 1125 of the Bankruptcy Code, courts consider whether it provides creditors with the necessary information regarding the following:

- the events which led to the filing of a bankruptcy petition;
- the relationship of the debtor with its affiliates;
- a description of the available assets and their value;
- the anticipated future of the company;
- the source of information stated in the disclosure statement;
- the present condition of the debtor while in chapter 11;
- claims asserted against the debtor;
- the estimated return to creditors under a chapter 7 liquidation;
- the chapter 11 plan or a summary thereof;
- financial information, valuations, and projections relevant to the creditors’ decision to accept or reject the chapter 11 plan;
- information relevant to the risks posed to creditors under the plan;
- the actual or projected realizable value from recovery of preferential or otherwise avoidable transfers;
- litigation likely to arise in a non-bankruptcy context; and
- tax attributes of the debtor.

*See In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996).

**B. The As-Filed Disclosure Statement Fails to Provide Adequate Information About Critical Agreements That Have Not Yet Been Reached, and About What is Necessary to Reach Those Agreements.**

23. When it filed the Plan and Disclosure Statement without notice to the insurers, the Debtor filed a Disclosure Statement and Plan that contained terms with which the insurers do not agree. As such, the Plan and Disclosure Statement did not contain a viable Settlement Election option. By definition then, the Disclosure Statement neither contains adequate information nor contains accurate information about the proposed Settlement Election. As indicated above, however, in the intervening months, the insurers and the Debtor have worked to try to come to terms on a plan and disclosure statement that would allow for solicitation of a viable Settlement Election. The insurers have worked with the Debtor, USOPC and the mediators in an effort to develop a plan and disclosure statement that can be solicited, but additional progress is necessary.

24. The insurers have provided numerous comments to the Debtor in an effort to reach consensus on a Plan that can be meaningfully solicited and includes a Settlement Election. The insurers have also worked with USOPC to arrive at acceptable release language and obtain USOPC's consent to the buyback of the USAG insurance policies pursuant to which USOPC is, or purports to be, an additional insured.

25. In sum, notwithstanding the fatal shortcomings of the original Plan and Disclosure Statement – the Debtor and insurers having been working (and are continuing to work) to develop a plan and disclosure statement that can be approved and solicited.

26. Clearly, however, the original Plan and Disclosure Statement cannot be approved. Courts routinely hold that, if a plan is not confirmable as a matter of law, the related disclosure statement should not be approved. *See, e.g., In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (“Courts have recognized that if it appears there is a defect that makes a plan inherently or patently unconfirmable, the Court may consider and resolve that issue at the

disclosure stage before requiring the parties to proceed with solicitation of acceptances and rejections and a contested confirmation hearing.”); *In re Quigley Co., Inc.*, 377 B.R. 110, 115–16 (Bankr. S.D.N.Y. 2007) (if a plan is “patently unconfirmable on its face” then solicitation of votes on the plan would be futile); *In re CRIIMI MAE, Inc.*, 251 B.R. 796, 799 (Bankr. D. Md. 2000) (“It is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed.”).

27. The Third Circuit explained the rationale for withholding approval of a disclosure statement in such circumstances as follows:

[T]he court’s equitable powers under 11 U.S.C. § 105 surely enable it to control its own docket and thus, a court should not proceed with the time-consuming and expensive proposition of hearings on a disclosure statement and plan when the plan may not be confirmable because it does not comply with confirmation requirements.

*In re Am. Capital Equip.*, 688 F.3d at 154 (citations omitted); *see also In re Franklin Indus. Complex*, 386 B.R. 5, 10–11 (Bankr. N.D.N.Y. 2008); *In re Pecht*, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986).

28. A plan is considered “patently unconfirmable” if (i) confirmation defects cannot be overcome by creditor voting results and (ii) those defects concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing. *In re Am. Capital Equip.*, 688 F.3d at 154–55 (citing *In re Monroe Well Serv. Inc.*, 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987)). In such circumstances, the related disclosure statement may not be approved. To do otherwise would be to impose upon a debtor’s estate the costs and expenses associated with an unnecessary solicitation and allow the debtor to waste further the time and resources of its creditors and this Court. *See In re Pecht*, 57 B.R. at 139 (declining to subject estate to expense of soliciting votes for unconfirmable plan); *In re Valrico Square Ltd. P’ship*, 113 B.R. 794, 796 (Bankr. S.D.

Fla. 1990) (“Soliciting votes and seeking court approval on a clearly fruitless venture is a waste of the time of the Court and the parties.”).

29. Here, given that the original Disclosure Statement and Plan attempted to describe a settlement structure that was not agreed upon, and sought to solicit votes on it, the Debtor would be better served further adjourning the hearing on the Disclosure Statement and working further with the insurers to flesh out remaining issues based on the April 10, 2020 version of the plan and disclosure statement. Since the Plan and Disclosure Statement were filed in February, the insurers have been doing exactly that.

30. Again, the insurers believe significant and positive steps have been taken by the Debtor to address the insurers’ concerns. And the insurers are hopeful that, with additional effort on some open issues, the Debtor can approve a disclosure statement and solicit a plan with a meaningful Settlement Election option.

#### **PLAN ISSUES THAT SHOULD BE DISCLOSED**

31. Since the Debtor first filed its Plan and Disclosure Statement, the insurers have provided the Debtor with acceptable language relative to the proposed insurance neutrality provisions contained in the Plan in the event the Plan is confirmed as a litigation plan. The insurers have asserted that Section 15.1 of the Plan must be expanded to reflect complete insurance neutrality. The language proposed has been provided to make the neutrality language consistent with the decision of the Third Circuit in *Combustion Engineering*, 391 F.3d 190, 218 (3d. Cir. 2004).

32. Likewise, Section 15.4 should be expanded to confirm that the rights of insurers are not being affected whatsoever in the context of confirmation of the Plan as a Litigation Plan. The insurers have provided the Debtor with language to include in this section. Moreover, Section

15.8 of the Plan should be revised to make clear that “Nothing in the Plan, any Plan Document or Confirmation Order creates a right of direct action not otherwise permitted by applicable non-bankruptcy law or the applicable Insurance Policy.”

33. At a minimum, the Disclosure Statement should disclose that the insurers have not agreed to the insurance neutrality provisions of the Plan.

### **OBJECTION TO SOLICITATION PROVISIONS**

34. The insurers also propose that notice of the Disclosure Statement, Plan and Releases must be provided to all known Protected Parties. The insurers believe that some of the numerous Protected Parties have not filed claims against the Debtor. It is imperative, however, that the Protected Parties receive notice of the Disclosure Statement and Plan along with an explanation that, in consideration of the channeling injunction and their respective treatment as Protected Parties under the Plan, they will be deemed to grant releases to the Settling Insurers and all other Protected Parties. To give effect to the deemed release, specific, clear and explanatory language should be sent to all Protected Parties and/or their counsel as part of any solicitation of the Plan. The explanation should advise them of their status as Protected Parties, the existence of the Channeling Injunction, their protection from Abuse Claims, their release of coverage under the Debtor’s insurance policies, and their consent to sale of the insurance policies pursuant to the Insurance Settlement and Buyback Agreements, and their right to object to the same.

### **RESERVATION OF RIGHTS**

35. The objections set forth herein are not intended, nor should they be construed, to represent all of the objections the insurers may have to any chapter 11 plan or plans the Debtor has filed or may file. The insurers reserve all of their rights with respect thereto.



**CONCLUSION**

**WHEREFORE**, NCC and the certain joining insurers respectfully request that the Court enter an order: (i) denying the Disclosure Statement Approval Motion or, in the alternative, requiring the Debtor to further amend the Disclosure Statement and Plan to reflect a viable settlement structure from the insurers' perspective; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: June 10, 2020

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Pursuant to the ECF Administrative Policies and Procedures Manual (Attorney) for the United States Bankruptcy Court for the Southern District of Indiana, undersigned counsel represent the other named Insurers and are authorized to represent that each of their clients consents to the request for relief indicated in this **OBJECTION OF NATIONAL CASUALTY COMPANY AND OTHER JOINING INSURERS TO DEBTOR'S MOTION FOR ORDER APPROVING THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION PROCEDURES** and that National Casualty Company counsel may electronically file their signatures.

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## Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION  
PROPOSED BY USA GYMNASTICS**

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Dated: February 21, 2020

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

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1.1	Contingent Upon Settlement Election. For the avoidance of doubt, and as set forth in Section 13.1 of this Trust Agreement, the Trust described herein shall be created only if: (1) the Abuse Claimants vote to accept the Plan, (2) the Abuse Claimants vote to select the Settlement Election, (3) the Bankruptcy Court confirms the Plan, and (4) the Reorganized Debtor and the Trustee execute this Trust Agreement. If any of these conditions are not met, the terms of this Trust Agreement shall have no effect whatsoever. ....	2
1.2	Creation and Name. The Debtor hereby creates a trust known as “The USA Gymnastics Settlement Election Trust” as the Trust provided by the Settlement Election under the Plan. ....	2

1.3	Purpose. The Trust is established for the benefit of the Abuse Claimants and Future Claimants and shall assume all liability for the Channeled Claims. The Trust shall receive and distribute the Trust Assets (defined below) to Abuse Claimants and Future Claimants in accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order. ....	2
1.4	Irrevocability. The Trust is irrevocable. The Reorganized Debtor shall not alter, amend, revoke, or terminate the Trust. The Reorganized Debtor shall have no power or authority to direct the Trustee to return any of the Trust Assets to the Reorganized Debtor. The Trustee shall nevertheless have the power to amend this Trust Agreement for the purpose of conforming the Trust Agreement to the provisions of the Plan and the Confirmation Order, subject to approval by the Bankruptcy Court.....	2
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2.2	Future Claimant Reserve. The Trust shall establish a Future Claimant Reserve funded with five percent (5%) of the Plan Payment (\$10,750,000.00). ....	2
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2.3	Transfer Of Trust Assets. Following: (a) the Bankruptcy Court’s entry of the Confirmation Order in form and substance reasonably acceptable to the Debtor; and (b) the Trustee’s and Reorganized Debtor’s execution of this Trust Agreement, the Reorganized Debtor and the Settling Insurers shall irrevocably and absolutely transfer, grant, assign, convey, set over, and deliver to the Trustee all of their rights, titles, and interests in and to the Trust Assets to be held in trust. The Trustee hereby agrees to accept and hold the Trust Assets in trust for the Abuse Claimants and Future Claimants.....	3

2.4	Trustee's Right To And Title And Interest In Trust Assets. Upon the transfer of the Trust Assets, the Trustee shall succeed to all of the Debtor's, the Estate's, the Reorganized Debtor's, the Settling Insurers', and the Participating Parties' rights, titles, and interests, if any, in and to the Trust Assets, and the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, and the Participating Parties shall have no further rights, titles, or interests in, or with respect to, the Trust Assets.....	3
2.5	No Tax On Transfers To Trust. Pursuant to Section 1146(a) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Trust Agreement, including any deeds, bills of sale, or assignments executed in connection with any disposition of assets contemplated by this Trust Agreement, the Plan, and the Confirmation Order and any transfer to the Trust, shall not be subject to any stamp tax, real estate transfer tax, excise tax, sales tax, use tax, or other similar tax. ....	3
2.6	Spendthrift Provision. To the fullest extent permitted by law, the Trust Assets shall not, in whole or in part, be subject to any legal or equitable claims of creditors of any Abuse Claimant, Future Claimant, Channeled Claimant, or others, and the Trust Assets shall not be subjected to any legal process or any voluntary or involuntary attempts to transfer, assign, pledge, encumber, or otherwise alienate such Trust Assets, except as may be ordered by the Bankruptcy Court.....	3
2.7	Payment Obligations. Pursuant to Sections 9.3.3 and 10.7 of the Plan, the Trust shall (1) pay all unpaid Allowed Professional Claims of the Survivors' Committee's Professionals within seven days after the later of the Effective Date or the Bankruptcy Court's order on such Claims; (2) pay and reimburse the Debtor, the Estate, or the Reorganized Debtor, as the case may be, for the costs and expenses of publication of the notices of insurance settlement and plan confirmation within seven days after the Effective Date; and (3) defend, indemnify, and hold harmless certain Protected Parties as set forth in Section 10.7 of the Plan. These payments shall be deducted from Available Trust Assets (defined below). ....	3
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2.	Loaning or encumbering the Trust Assets, or issuing a guaranty with recourse to the Trust Assets. ....	4

3.	Conducting any trade or business using or affecting the Trust Assets. ....	5
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4.1	Trust Assets Available For Abuse Claims. The Trust shall make distributions to Holders of Allowed Abuse Claims from the Trust Assets minus the amounts contained in the Future Claimant Reserve (the “Available Trust Assets”). As of the date of this Trust Agreement, there is \$206,375,000.00 of Available Trust Assets; provided, however, that, the Future Claimant Reserve may expire pursuant to Section 2.2.1 of this Trust Agreement and the terms of the Plan and the Confirmation Order, at which time the remaining amounts contained in the Future Claimant Reserve may become Available Trust Assets. ....	5
4.2	Allocation Method. <u>The presumption is that</u> Distributions to Holders of Allowed Abuse Claims <u>will be</u> allocated based upon the location where Abuse Claimants allege Sexual Abuse occurred <u>as set forth in the Disclosure Statement</u> . Holders of Allowed Abuse Claims <u>were</u> classified into Subclasses 6A, 6B, 6C, and 6D for this purpose <u>so as to provide them notice of their anticipated Distribution and the Subclasses were</u> then allocated percentages of Available Trust Assets for Pro Rata distributions to members of each Subclass. <u>The Trustee will have the discretion to revise this allocation as he or she deems appropriate in individual cases.</u> .....	5
4.2.1.	Subclass 6A (Elite Gymnasts). Claimants are classified into Subclass 6A if they allege Sexual Abuse at the Olympics, the National Team Training Center, or a National Team event, such as the Olympic Team Trials or the World Championships. Subclass 6A is allocated 40% of Available Trust Assets for distribution (\$82,550,000.00). ....	5
4.2.2.	Subclass 6B (Non-Elite Gymnasts). Claimants are classified into Subclass 6B if they allege Sexual Abuse at an event sanctioned by the Debtor, such as the National Championships or the U.S. Classic, as well as events held at Twistars. Subclass 6B excludes all Claimants who otherwise qualify for treatment under Subclass 6A. Subclass 6B is allocated 35% of Available Trust Assets for distribution (\$72,231,250.00). ....	5
4.2.3.	Subclass 6C (Other Claimants). Claimants are classified into Subclass 6C if they do not qualify for treatment under Subclass 6A or Subclass 6B, such as Claimants who allege Sexual Abuse solely at Michigan State University. Subclass 6C is allocated 24% of Available Trust Assets for distribution (\$49,530,000.00). ....	5
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	committed against a third party, such as a spouse or family member. Subclass 6D is allocated 1% of Available Trust Assets for distribution (\$2,063,750.00).	5
4.2.5.	Late-Filed Abuse Claims. There are seven (7) Abuse Claims that were filed after the deadline for submitting Abuse Claims in the Case. The Trustee <u>will</u> treat late-filed Abuse Claims <u>including any additional Late-Filed Abuse Claims filed through the Effective Date of the Plan</u> as timely <u>and</u> each late-filed Abuse Claim shall be classified in Subclass 6A, 6B, 6C, or 6D, as appropriate.	5
4.2.6.	Duplicative Abuse Claims. There are thirty three (33) Abuse Claims that are duplicative of Abuse Claims already classified within Subclasses 6A, 6B, 6C, and 6D. These duplicative Abuse Claims shall receive no distribution from the Trust.	6
4.3	Pro Rata Distributions To Abuse Claimants. Distributions to Holders of Allowed Abuse Claims shall be Pro Rata based upon the Available Trust Assets allocated to each Subclass. Members of each Subclass holding Allowed Abuse Claims shall take equal shares of the Available Trust Assets allocated to their Subclass.	6
4.4	Release & Dismissal Of Litigation. Before the Trust may make any distribution to any Abuse Claimant, such Abuse Claimant shall execute and deliver to the Trust a full and complete release of the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, all Participating Parties, and all known or unknown parties who may claim coverage under any Insurance Policy issued to the Debtor, including the Non-Debtor CGL Settling Insurer Covered Persons, in form and substance acceptable to the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, of any and all Claims arising from or relating to Abuse Claims or Future Claims. In addition, within ten (10) days after receiving any payment from the Trust, an Abuse Claimant shall dismiss with prejudice any lawsuit that such Abuse Claimant had brought against the Debtor, any Participating Party, and any Non-Debtor CGL Settling Insurer Covered Person, <u>and shall promptly deliver evidence of such dismissal, with prejudice, to the Settlement Election Trustee. The Settlement Election Trustee shall provide copies of such dismissal orders to any Protected Party that requests a copy.</u>	6
4.5	Attorneys' Fees And Costs. Pursuant to Section 11.3 of the Plan, the fees and expenses of attorneys representing Abuse Claimants who receive payment from the Trust will be borne exclusively by such Abuse Claimants based on applicable state law and individual arrangements made between such Abuse Claimants and their respective attorneys. The Trust, the Trustee, and the other parties listed in Section 11.3 of the Plan shall have no liability for any such fees and expenses, and any Claims for such fees and expenses shall be disallowed.	6
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- 5.1 Submission Of Future Claims And Eligibility For Distribution. A Future Claimant must file a Claim with the Trustee on or before the fifth (5th) anniversary of the Plan's Effective Date. The Claim shall be entitled to a distribution exclusively from the Future Claimant Reserve and no other Trust Assets, provided funds remain in the Future Claimant Reserve, only if the Trustee, in consultation with the FCR, determines that the Holder of such Claim has proven by a preponderance of the evidence that such Holder meets the definition of a Future Claimant and such Holder's Claim meets the definition of a Sexual Abuse Claim. .... 6
- 5.2 Allocation Method. If the requirements of Section 5.1 of this Trust Agreement are satisfied, the Trustee, in his sole discretion, may allocate a distribution to a Future Claimant from funds remaining in the Future Claimant Reserve. In determining the amount of a Future Claimant's distribution, the Trustee shall consider the distribution the Future Claimant would receive if treated as an Abuse Claimant and classified into a Subclass of Abuse Claimants as specified in Section 4.2 of this Trust Agreement; provided, however, that the Trustee is not bound by such a comparison and may approve distributions to Future Claimants in lesser or greater amounts in light of the amount of funds remaining in the Future Claimant Reserve..... 6
- 5.3 Release And Dismissal Of Litigation. Before the Trust may make any distribution to any Future Claimant, such Future Claimant shall execute and deliver to the Trust a full and complete release of the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, all Participating Parties, and all known or unknown parties who may claim coverage under any Insurance Policy issued to the Debtor, including the Non-Debtor CGL Settling Insurer Covered Persons, in form and substance acceptable to the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, of any and all Claims arising from or relating to Abuse Claims or Future Claims. In addition, within ten (10) days after receiving any payment from the Trust, a Future Claimant shall dismiss with prejudice any lawsuit that such Future Claimant had brought against the Debtor, any Participating Party, and any Non-Debtor CGL Settling Insurer Covered Person, and shall promptly deliver evidence of such dismissal, with prejudice, to the Trustee. The Trustee shall provide copies of such dismissal orders to any Protected Party that requests a copy. ..... 7
- 5.4 Attorneys' Fees And Costs. Pursuant to Section 11.3 of the Plan, the fees and expenses of attorneys representing Future Claimants who receive payment from the Trust will be borne exclusively by such Future Claimants based on applicable state law and individual arrangements made between such Future Claimants and their respective attorneys. The Trust, the Trustee, and the other parties listed in Section 11.3 of the Plan shall have no liability for any such fees and expenses, and any Claims for such fees and expenses shall be disallowed. .... 7
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- 6.1 When Termination Shall Occur. The Trustee shall terminate the Trust after the Trust Assets are fully and completely distributed in accordance with this Trust Agreement, the Plan, and the Confirmation Order, and after the Trustee has fully and completely performed all other duties set forth in this Trust Agreement, the Plan, and the Confirmation Order. The Trust Assets shall be deemed totally distributed when the amount remaining in the Trust is less than \$50,000..... 7
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- 6.3 Termination Procedures. After termination of the Trust and solely for the purpose of liquidating and winding up its affairs, the Trustee shall retain the books, records, documents, and files that were delivered to or created by the Trustee. The Trustee, at his discretion, may destroy all such books, records, documents and files at any time following the later of: (a) one year following the final distribution of the Trust Assets; and (b) the date until which applicable law requires the Trustee to retain such books, records, documents, and files; provided, however, the Trustee shall not destroy any books, records, documents, or files relating to the Trust without giving the Reorganized Debtor, the Participating Parties, the Settling Insurers, Abuse Claimants, other Channeled Claimants, and the FCR reasonable prior written notice thereof. .... 7

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- 7.1 Limitations On Liability. Neither the Trustee nor any of his Professionals whose employment is approved by the Bankruptcy Court shall be liable for any good faith act or omission within the scope of their duties under this Trust Agreement, the Plan, and the Confirmation Order, and may only be liable for willful misconduct and fraud. No recourse shall ever be had, directly or indirectly, against the Trustee personally or against any of the Trustee's Court-approved Professionals personally, by legal or equitable proceedings of any kind, for any good faith act or omission within the scope of their duties under this Trust Agreement, the Plan, and the Confirmation Order. Any claims arising out of such acts or omissions shall be enforceable only against, and satisfied only out of, the Trust Assets. The foregoing does not limit the liability of the Trustee and his Court-approved Professionals for their willful misconduct or fraud. .... 8
- 7.2 Advice Of Professionals. The Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his Court-approved Professionals and shall not be liable for any good faith act or omission in accordance with the advice or opinions provided by such Professionals. Notwithstanding the foregoing, the Trustee shall be under no obligation to consult

	with his Court-approved Professionals, and his determination not to do so shall not result in the imposition of liability on the Trustee, unless such determination is based on the Trustee's willful misconduct or fraud.....	8
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Settling Insurers, the FCR, and the Survivors' Committee (unless the Survivors' Committee has been dissolved), shall designate a successor Trustee, subject to the approval of the Bankruptcy Court, after notice and a hearing. Upon the Bankruptcy Court's approval of any successor Trustee, all rights and obligations of the prior Trustee shall vest in the successor Trustee, and the successor Trustee shall be substituted for the prior Trustee as a matter of law, including in any action or proceeding brought by the prior Trustee. The Bankruptcy Court may enter such orders as are necessary to effect the appointment of the successor Trustee.....	9
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	meaning of Section 468B of the Internal Revenue Code and the Treasury Regulations. The Debtor is the “transferor” within the meaning of Treasury Regulation Section 1.468B-1(d)(1). The Trustee shall be classified as the “administrator” within the meaning of Treasury Regulation Section 1.468B-2(k)(3). It is further intended that the transfers to the Trust will satisfy the “all events test” and the “economic performance” requirements of Section 461(h)(1) of the Internal Revenue Code and Treasury Regulation Section 1.461-1(a)(2). ....	10
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12.2	Rights Of Beneficiaries. Abuse Claimants, Future Claimants, and any other Channeled Claimants shall have no title to, right to, possession of, management of, or control over the Trust Assets, or any right to call for a partition or division of the Trust Assets. Title to all of the Trust Assets shall be vested in the Trust and the Trustee, and the sole interest of any Claimants in the Trust Assets shall be the rights and benefits given to such Claimants under this Trust Agreement, the Plan,	

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13.5	Entirety Of Trust Agreement. This Trust Agreement, along with the Plan, the Confirmation Order, and any other Plan Documents or Trust Documents, constitutes the full and complete understanding of the Parties regarding the Trust Agreement's subject matter and supersedes any prior understanding or agreement, whether oral or in writing. ....	11
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Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly in favor of or against any party. It is specifically acknowledged and understood that this Trust Agreement has not been submitted to, nor reviewed or approved by, the Internal Revenue Service or the taxing authorities of any State or locality of the United States of America. .... 12

- 13.9 Applicable Law. Except to the extent that federal law (including the Bankruptcy Code and the Internal Revenue Code) is applicable, the rights and obligations arising under this Trust Agreement and any other Trust Document shall be governed by and construed and enforced in accordance with the laws of the State of Indiana without giving effect to the principles of conflicts of laws. .... 12

## TABLE OF EXHIBITS

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**EXHIBIT B** – Participating Parties

**EXHIBIT C** – Settling Insurers

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**EXHIBIT E** – List of Known Other Insurance Policies, if any, issued by the Settling Insurers as to which Other Insurance Coverage for Abuse Claims is being bought back by Settling Insurers

**EXHIBIT F** – List of Known CGL Policies being bought back by the Settling Insurers

**EXHIBIT GE** – Insurance Buy-Back Agreement for each Settling Insurer (to be provided in a plan supplement)-



USA Gymnastics (“**USAG**” or the “**Debtor**”) proposes the following Plan pursuant to the provisions of chapter 11 of the Bankruptcy Code. The Debtor will separately file the Disclosure Statement for the First Amended Chapter 11 Plan of Reorganization Proposed by USA Gymnastics (the “**Disclosure Statement**”).

Subject to the provisions of Section 1127 of the Bankruptcy Code, the Debtor reserves the right to amend, alter, or modify the Plan one or more times before confirmation and/or substantial consummation.

## **INTRODUCTORY ARTICLES**

### **ARTICLE I. DEFINITIONS**

For the purposes of the Plan, all capitalized terms not otherwise defined in the Plan shall have the meanings ascribed to them below or in the Bankruptcy Code or Bankruptcy Rules, as applicable:

#### **1.1 General Definitions.**

“105 Order” means the Agreed Stipulation And Order Pursuant To 11 U.S.C. §105 Enjoining The Continued Prosecution Of Certain Pre-Petition Lawsuits [Dkt. 426], entered by the Bankruptcy Court on April 22, 2019.

“Abuse Claims” means Sexual Abuse Claims and Non-Sexual Abuse Claims.

“Abuse Claimant” means the Holder of an Abuse Claim.

“Administrative Claim” means a claim for costs and expenses of administration that is allowable and entitled to priority under Sections 503, 507(a)(2), or 507(b) of the Bankruptcy Code, including any post-petition tax claims, any actual and necessary expenses of preserving the Estate, any actual and necessary expenses of operating the business of the Debtor, all Professional Claims, and any fees or charges assessed against the Estate under 28 U.S.C. § 1930.

“Administrative Claimant” means the Holder of an Administrative Claim.

“Allowance Date” means, with respect to a Claim, the date such Claim becomes Allowed.

“Allowed” means, (a) any Claim against the Debtor that has been listed by the Debtor in the Schedules, as such Schedules may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and which is not disputed or contingent, and for which no contrary proof of claim has been filed; (b) any timely filed Claim as to which no objection to allowance has been interposed in accordance with Section 16.2 hereof or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder; or (c) any Claim expressly allowed by a Final Order or hereunder.

“Assets” means, collectively, any and all property of the Debtor or the Estate, respectively, of every kind and character, wherever located, whether real or personal, tangible or intangible, and specifically including Cash and Causes of Action.

“Avoidance Rights” means those rights that may be asserted by the Debtor, as debtor in possession, to avoid and recover transfers, liens, or obligations, described in Sections 544, 545, 546, 547, 548, 549, 550, 551, 552, and 553 of the Bankruptcy Code, and any other actions provided for under applicable law that allow a debtor in possession or trustee to avoid certain transfers.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and codified in Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Indiana.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure promulgated under 28 U.S.C. § 2075, as amended, and the local rules and general orders of the Bankruptcy Court, as applicable to the Chapter 11 Case, together with all amendments and modifications thereto.

“Bar Date” means April 29, 2019, the date set by the Bar Date Order for the filing of Sexual Abuse Claims and General Unsecured Claims.

“Bar Date Order” means the Order Approving Debtor’s Motion For Order Establishing Deadlines For Filing Proofs Of Claim And Approving Form And Manner Of Notice Thereof [Dkt. 301], entered by the Bankruptcy Court on February 25, 2019, as modified by the Order Granting Debtor’s Motion For Clarification Of Bar Date Order [Dkt. 417], entered by the Bankruptcy Court on April 16, 2019.

“Business Day” means any day other than Saturday, Sunday, or a “legal holiday”, as that term is defined in Bankruptcy Rule 9006(a).

“Cash” means cash, cash equivalents, bank deposits, and negotiable instruments payable on demand.

“Causes of Action” means any and all Claims, demands, rights, actions, causes of action, and suits of the Debtor or the Estate, of any kind or character whatsoever, known or unknown, suspected or unsuspected, matured or unmatured, whether arising prior to, on, or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, including (a) rights of setoff, counterclaim, or recoupment, and Claims on contracts or for breaches of duties imposed by law; (b) the right to object to Claims; (c) Claims pursuant to Section 362 of the Bankruptcy Code; (d) such Claims and defenses as fraud, negligence, breach of fiduciary duty, corporate waste, unlawful dividends, mistake, duress, and usury; (e) all Avoidance Rights; (f) all Claims in or related to the Insurance Adversary Proceeding; (g) Insurance Reimbursement Claims; (h) Claims for tax refunds; and (i) any other Claims which may be asserted against third parties or insiders.

“CGL Insurance Coverage” means any insurance that is available under any CGL Insurance Policy, whether known or unknown to the Debtor, that provides indemnification to: (a) the Debtor or any Person that is a Related Person to the Debtor for any reason or that provides reimbursement for any costs and expenses incurred by the Debtor or any Related Person; or (b) a Participating Party or any Person that is a Related Person to a Participating Party; *provided, however*, CGL Insurance Coverage excludes any agreement or contract providing reinsurance to a CGL Settling Insurer.

“CGL Insurance Policy” means a policy of primary or excess comprehensive general liability insurance that during any period of time provided CGL Insurance Coverage to the Debtor, its predecessors, successors, or assigns, or any Persons that are Related Persons to the Debtor.

“CGL Insurer” means (a) any Person that during any period of time either (i) provided CGL Insurance Coverage to the Debtor and/or a Participating Party, or their predecessors, successors, or assigns, or (ii) issued a CGL Insurance Policy to the Debtor, its predecessors, successors, or assigns; and (b) any Person owing a duty to defend and/or indemnify the Debtor under any CGL Insurance Policy.

“Chapter 11 Case” means the case under Chapter 11 of the Bankruptcy Code commenced by USA Gymnastics on December 5, 2018 in the Bankruptcy Court, Case No. 18-09108-RLM-11.

“Claim” means any past, present, or future claim, demand, action, request, formal or informal subpoena, cause of action, suit, proceeding, or liability of any kind or nature whatsoever, whether at law or equity, known or unknown, actual or alleged, asserted or not asserted, suspected or not suspected, anticipated or unanticipated, accrued or not accrued, fixed or contingent, which has been or may be asserted by or on behalf of any Person, whether seeking damages (including compensatory, punitive, or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, causes of action or orders, and any other claim within the definition of “claim” in Section 101(5) of the Bankruptcy Code.

**1.1.22.** “Claims Agent” means Omni Agent Solutions, Inc., the Court appointed Claims and Noticing Agent.

“Claimant” means a Holder of a Claim.

“Class” means a class of Claims as classified under the Plan.

“Co-Defendant” means a Person that is named as a defendant in a lawsuit in which the Debtor is also named as a defendant, and/or who is alleged to be fully or partially responsible for a Claim asserted, or which may be asserted in the future, against both such Person and the Debtor, including co-debtors as described in Section 509 of the Bankruptcy Code.

“Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order.

“Confirmation Hearing” means the hearing held by the Bankruptcy Court regarding confirmation of the Plan, as such may be continued from time to time.

“Confirmation Order” means an order issued by the Bankruptcy Court confirming the Plan.

“Creditor” has the meaning ascribed to the term in Section 101(10) of the Bankruptcy Code.

“Debtor” means USA Gymnastics, a 501(c)(3) not-for-profit organization incorporated in Texas.

“Debtor’s Professionals” means Jenner & Block LLP, Miller Johnson P.L.C., Plews Shadley Racher & Braun LLP, APCO Worldwide LLC, Barnes & Thornburg LLP, BDO USA, LLP, Hilder & Associates, P.C., Pierce Atwood LLP, White & Amundson, P.C., Zuckerman Spaeder LLP, and all other professionals, if any, which the Debtor has retained or may retain to provide professional services in accordance with Sections 327(a), 327(b), and 327(e) of the Bankruptcy Code.

“Disclosure Statement” means the Disclosure Statement relating to this Plan, as it may be amended from time to time.

“Disputed Claim” means a Claim as to which a proof of Claim is filed or is deemed filed under Bankruptcy Rule 3003(b)(1); and as to which an objection: (a) has been timely filed; and (b) has neither been overruled nor denied by a Final Order and has not been withdrawn.

“Distribution” means any transfer of Cash or other property or instruments to a Claimant pursuant to the Plan.

“District Court” means the United States District Court for the Southern District of Indiana.

“Effective Date” means the first Business Day after the Confirmation Date upon which: (a) the conditions in Section 18.1 of the Plan have been satisfied or waived; and (b) no stay of the Confirmation Order is in effect.

“Estate” means the estate created in this Chapter 11 Case pursuant to Section 541 of the Bankruptcy Code.

“Estimated Amount” means the amount at which the Bankruptcy Court, pursuant to Section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a), estimates any Claim.

“Exculpated Parties” means the Debtor, the Reorganized Debtor, the Debtor’s Professionals, the FCR, and the FCR’s Professionals, and each of their respective Related Persons. In the event Class 6 makes the Settlement Election, “Exculpated Parties” will also include the Survivors’ Committee, the Survivors’ Committee’s Professionals, the Settling Insurers, the Participating Parties, and their respective Related Persons.

“Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

“Final Order” means an order, judgment, or other decree (including any modification or amendment thereof) of the Bankruptcy Court, the District Court, or any other court having

jurisdiction that remains in effect and has not been reversed, withdrawn, vacated, or stayed, and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired or, if such appeal or review has been taken, it has been resolved and no longer remains pending.

“Future Claim” means a Claim by a Future Claimant.

“Future Claimant” means a Person who (a) held a Sexual Abuse Claim against the Debtor as of the Bar Date; and (b) meets one of the following criteria: (i) was under the age of majority under applicable state law as of March 1, 2019; (ii) as of March 1, 2019, the statute of limitations for such Person was tolled under applicable state law or had not begun to run under applicable state law; (iii) as of March 1, 2019, the Debtor was estopped under applicable state law from asserting the statute of limitations; or (iv) such Person’s Sexual Abuse Claim was barred by the applicable statute of limitations as of March 1, 2019, but is or becomes no longer barred by the applicable statute of limitations for any reason, including the enactment of legislation that revives such claims; *provided, however*, that the following persons are not Future Claimants: any Person who has, at any time before the Bar Date, asserted a claim against, asserted a cause of action against, provided notice to, or made a demand to or against the Debtor, arising out of or relating to Sexual Abuse or whose parent or guardian or other legal representative had done so on behalf of such Person.

“FCR” means Fred Caruso, appointed pursuant to the Order Authorizing Appointment of Future Claimants’ Representative and Appointing Fred C. Caruso as Future Claimants’ Representative [Dkt. 516], entered by the Bankruptcy Court on May 17, 2019, and any successor or such other person appointed by the Bankruptcy Court or otherwise.

“FCR Claim” means the Claim of the FCR on behalf of Future Claimants.

“FCR’s Professionals” means Development Specialists, Inc., FrankGecker LLP, and all other professionals, if any, which the FCR has retained or may retain to provide professional services in accordance with the Bankruptcy Code and as approved by the Bankruptcy Court.

“General Unsecured Claim” means any Claim against the Debtor that is not an Abuse Claim, Personal Injury Claim, USOPC Claim, the FCR Claim, Indemnification Claim, Administrative Claim, Priority Tax Claim, Other Priority Claim, or a Claim that is otherwise classified under the Plan.

“General Unsecured Convenience Claim” means any General Unsecured Claim in an amount of \$500.00 or less, or voluntarily reduced to \$500.00 by the Holder of such Claim. To the extent a Creditor filed multiple General Unsecured Claims, if those Claims in the aggregate exceed \$500.00, none of those Claims will be treated as General Unsecured Convenience Claims, unless the Holder of those Claims voluntarily reduces their aggregate value to \$500.00.

“Holder” means the legal or beneficial holder of any Claim or Interest.

“Impaired” has the meaning provided in Bankruptcy Code Section 1124.

“Indemnification Claim” means any Person’s Claim against the Debtor for contribution, indemnity, or reimbursement arising as a result of such Person having paid or defended against

any Claim and any Claim for future amounts to be paid defending against or paying a Claim. The Claims listed on Exhibit A are Indemnification Claims.

“Insurance Coverage” means any insurance that is available under any CGL Insurance Policy, Personal Injury Policy or Other Insurance Policy, whether known or unknown to the Debtor, that provides indemnification to: (a) the Debtor or any Person that is a Related Person to the Debtor for any reason or that provides reimbursement for any costs and expenses incurred by the Debtor or any Related Person; or (b) a Participating Party or any Person that is a Related Person to a Participating Party; *provided, however*, Insurance Coverage excludes any agreement or contract providing reinsurance to a CGL Settling Insurer.

“Insurance Coverage Adversary Proceeding” means the Adversary Proceeding against Ace American Insurance Company, Great American ~~As~~ Insurance Company, Liberty Insurance Underwriters, Inc., National Casualty Company, RSUI Indemnity Company, TIG Insurance Company, Virginia Surety Company, Inc., Western World Insurance Company, Endurance American Insurance Company, American Home Assurance Company, Doe Insurers, and any party that is added in the Adversary Proceeding, before the Bankruptcy Court and captioned as Adversary Proceeding 19-50012.

“Insurance Policy” means any CGL Insurance Policy or Other Insurance Policy.

“Insurance Reimbursement Claims” means any Claims of the Debtor, the Estate, or the Reorganized Debtor against the Insurers for reimbursement of fees and costs incurred in defense of any Claim or all Claims insured under the Insurance Policies, including the Claim for recovery of the Debtor’s fees and costs incurred in the Chapter 11 Case.

“Insurer” means a CGL Insurer, the Personal Injury Insurer, or an Other Insurer.

“Litigation Election” means the election made by Class 6 to litigate the Abuse Claims pursuant to the terms of this Plan.

“Medicare Beneficiary” means any Abuse Claimant or Future Claimant who is a citizen or resident of the United States and whose Claim indicates that he or she was abused, in whole or in part, after December 5, 1980.

“Medicare Claims” means any and all Claims relating to Abuse Claims or Future Claims by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and/or any other agent or successor Person charged with responsibility for monitoring, assessing, or receiving reports made under MMSEA and pursuing Claims under the MSP, including Claims for reimbursement of payments made to Abuse Claimants or Future Claimants who recover or receive any distribution from the Trust and Claims relating to reporting obligations.

“Medicare Trust Fund” means a U.S. Treasury-held trust fund account from which Medicare is funded or from which Medicare disbursements are paid, including the Hospital Insurance Trust Fund and the Supplementary Medical Insurance (SMI) Trust Fund.



“MMSEA” means § 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173).

“MSP” means the Medicare Secondary Payer Act, codified at 42 U.S.C. § 1395y *et seq.*, or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith or amendments thereto.

“Non-Sexual Abuse Claims” means General Unsecured Claim No. 312 and Sexual Abuse Claim No. 165.

“Other Insurance Coverage” means any insurance that is available under any Other Insurance Policy, whether known or unknown to the Debtor, that provides indemnification to: (a) the Debtor or any Person that is a Related Person to the Debtor for any reason or that provides reimbursement for any costs and expenses incurred by the Debtor or any Related Person; or (b) a Participating Party or any Person that is a Related Person to a Participating Party.

“Other Insurance Policy” means any policy of insurance other than the CGL Insurance Policies including directors’ and officers’ insurance, that during any period of time provided Other Insurance Coverage to the Debtor, its predecessors, successors, or assigns, or any Persons that are Related Persons to the Debtor.

“Other Insurers” means (a) any Person that during any period of time either (i) provided Other Insurance Coverage to the Debtor and/or a Participating Party, or their predecessors, successors, or assigns, or (ii) issued an Other Insurance Policy to the Debtor, its predecessors, successors, or assigns; and (b) any Person owing a duty to defend and/or indemnify the Debtor under any Other Insurance Policy.

“Other Priority Claim” means a Priority Claim that is not a Priority Tax Claim.

“Outstanding Amount” shall have the meaning ascribed to it in Section 9.2.1.

“Person” means any individual or entity, including any corporation, limited liability company, partnership, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, proprietorship, association, joint stock company, joint venture, estate, trust, trustee, personal executor or personal representative, unincorporated association, or other entity, including any federal, international, foreign, state, or local governmental or quasi-governmental entity, body, or political subdivision or any agency or instrumentality thereof and any other individual or entity within the definition of (a) “person” in section 101(41) of the Bankruptcy Code; or (b) “entity” in section 101(15) of the Bankruptcy Code.

“Personal Injury Claim” means General Unsecured Claim No. 251.

“Personal Injury Claimant” means the Holder of the Personal Injury Claim.

“Personal Injury Coverage” means any insurance that is available under the Personal Injury Insurance Policy for the Personal Injury Claim.

“Personal Injury Insurer” means ~~National Casualty Company and~~ Mutual of Omaha Insurance Company. No Settling Insurer shall be considered a Personal Injury Insurer for any reason, nor shall any Settling Insurer have any obligations to the Debtor or the Personal Injury Claimant with respect to the Personal Injury Claim.

“Personal Injury Insurance Policy” means: ~~(a) a general liability primary policy sold by National Casualty with policy number KRO0000006492900 and an effective period of August 1, 2016 to August 1, 2017 and an excess policy sold by National Casualty Company with Policy Number XKO0000006519400 and an effective period of August 1, 2016 to August 1, 2017; and (b)~~ insurance policies sold by Mutual of Omaha Insurance Company with policy number SB21CCIN-P-050607 effective August 1, 2016 to August 1, 2018; and policy number SR2014IN-P-051257 effective August 1, 2016 to August 1, 2017.

“Petition Date” means December 5, 2018, the date on which the Debtor commenced the Chapter 11 Case.

“Plan” means the Chapter 11 plan of reorganization, either in its present form or as it may be altered, amended, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

“Plan Documents” means all agreements, documents, and exhibits, as the same may be amended, modified, supplemented, or restated from time to time, that are necessary or appropriate to implement the Plan.

“PNC Bank” means PNC Financial Services Group d/b/a PNC Bank, N.A.

“PNC Bank Claim” means the Claim of PNC Bank listed by the Debtor on the Schedules.

“Post-Effective Date Award” means a judgment entered after the Effective Date in favor of an Abuse Claimant or the Personal Injury Claimant, or a settlement between an Abuse Claimant or the Personal Injury Claimant, and a CGL Insurer or Other Insurer that is made following the Effective Date.

“Post-Effective Date Litigation” means litigation brought or continued by an Abuse Claimant or the Personal Injury Claimant, commenced or continued after the Effective Date of the Plan.

“Pre-Petition Lawsuit” means a lawsuit brought by an Abuse Claimant prior to December 5, 2018.

“Priority Claim” means any Claim which, if Allowed, would be entitled to priority under Section 507 of the Bankruptcy Code.

“Priority Claimant” means the Holder of a Priority Claim.

“Priority Tax Claim” means a claim of a governmental unit of the kind specified in Section 507(a)(8) of the Bankruptcy Code.



“Professional” means any professional employed or to be compensated pursuant to Sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code.

“Professional Claim” means a claim for compensation for services and/or reimbursement of expenses pursuant to Sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 case.

“Professional Claims Bar Date” means (a) forty-five (45) days after a notice of the Effective Date is filed with the Bankruptcy Court and served on such Professional or other Persons; or (b) such later date as the Bankruptcy Court shall order upon application made prior to the end of such 45-day period.

“Pro Rata” means, with respect to any distribution on account of any Allowed Claim in any Class, the ratio of (a) the amount of such Allowed Claim to (b) the sum of (i) all Allowed Claims in such Class and (ii) the aggregate maximum of all Allowed Claims in such Class.

“Related Person” means, with respect to any Person, such Person’s predecessors, successors, assigns, and present and former shareholders, affiliates, subsidiaries, employees, agents, brokers, adjusters, managing agents, claims agents, underwriting agents, administrators, officers, directors, trustees, partners, attorneys, financial advisors, accountants, and consultants, each in their capacities solely as such; *provided, however*, that no Person shall be a Related Person if such Person personally committed an act of Sexual Abuse that resulted in a Claim against the Debtor or a Participating Party. With respect to any Settling Insurer, “Related Person” shall also include any such Settling Insurer’s affiliated companies sharing a common direct or indirect parent company as of the Effective Date.

“Reorganized Debtor” means USA Gymnastics, on and after the Effective Date.

“Revested Assets” means all assets and property, real or personal, owned by the Debtor that shall be revested in the Reorganized Debtor, pursuant to Sections 1141(b) and 1123(a)(5) of the Bankruptcy Code, on the Effective Date.

“Schedules” means the Schedules of Assets and Liabilities and Statement of Financial Affairs of the Debtor, as amended, filed pursuant to Section 521 of the Bankruptcy Code, the Official Bankruptcy Forms, and the Bankruptcy Rules, including any supplements or amendments thereto through the Confirmation Date [Dkts. 205, 206, 218, 219, 220, 242, 337, 474].

“Settlement Election” means the election made by Class 6 to settle the Abuse Claims pursuant to the terms of this Plan.

“Sexual Abuse” means any and all acts or omissions that the Debtor or any Protected Party may be or is alleged to be legally responsible for that arise out of, are based upon, or involve sexual conduct or misconduct, sexual abuse or molestation, sexual exploitation, indecent assault and/or battery, rape, pedophilia, ephebophilia, or sexually related psychological or emotional harm, humiliation, anguish, shock, sickness, disease, disability, dysfunction, or intimidation, or any other sexual misconduct or injury, or contacts or interactions of a sexual nature between an adult or child and a medical professional, coach, trainer, therapist, volunteer, or other authority figure allegedly affiliated with the Debtor, as a member or otherwise, or any current or former

employee or volunteer of the Debtor, or any other person for whose acts or failures the Debtor is or was allegedly responsible, or the alleged failure by the Debtor or a Protected Party or their its respective alleged agents, employees, or volunteers to report the same. An adult or child may have been sexually abused whether or not this activity involved explicit force, whether or not this activity involved genital or other physical contact, and whether or not there was physical, psychological, or emotional harm to the adult or child.

“Sexual Abuse Claim” means a Claim arising out of Sexual Abuse.

“Sharp Claim” means the secured Claim of Sharp Business Systems, as assigned to Wells Fargo Financial Leasing, Inc.

“Survivors’ Committee” means the Additional Tort Claimants Committee Of Sexual Abuse Survivors, appointed by the U.S. Trustee on December 19, 2018.

“Survivors’ Committee’s Professionals” means Pachulski Stang Ziehl & Jones LLP, Rubin & Levin, P.C., and all other professionals, if any, which the Survivors’ Committee has retained or may retain to provide professional services in accordance with Section 1103(a) of the Bankruptcy Code and as approved by the Bankruptcy Court.

“Undeliverable Distribution” means a Distribution that was returned to the Reorganized Debtor as undeliverable, and which shall be deemed an Undeliverable Distribution on the date that such Distribution was returned.

“U.S. Trustee” means the Office of the United States Trustee for Region 11, which includes the Southern District of Indiana.

“USOPC” means the United States Olympic and Paralympic Committee.

“USOPC Claim” means the claims for indemnification and contribution in General Unsecured Claim No. 299.

“Twistars” means Twistars USA, Inc. d/b/a ~~Geddert’s~~ Twistars Gymnastics Club USA, ~~Inc., Inc., d/b/a~~ Geddert’s Twistars USA Gymnastics Club, Inc., and ~~Twistars USA, Inc., John Geddert, and Kathryn Geddert.~~

## **1.2 Additional Definitions Applicable In The Event Of A Class 6 Settlement Election.**

“CGL Settling Insurer” means a Settling Insurer that is a CGL Insurer.

“CGL Settling Insurance Policy” means an Insurance Policy of a CGL Settling Insurer.

“Channeled Claim” means Abuse Claims, the FCR Claim, the USOPC Claim, Indemnification Claims, and/or any Claims against a Participating Party, a Non-Debtor CGL Settling Insurer Covered Person, or a Settling Insurer arising from, in connection with, or related in any way to an Abuse Claim, or any of the Settling Insurer Policies (excepting the Personal Injury Claim), whenever and wherever arising or asserted, whether sounding in tort, contract, warranty, or any other theory of law, equity, or admiralty, including without limitation all Claims by way of direct

action, subrogation, contribution, indemnity, alter ego, statutory or regulatory action, or otherwise, Claims for exemplary or punitive damages, for attorneys' fees and other expenses, or for any equitable remedy. A Channeled Claim includes any Claim against a Participating Party, a Non-Debtor CGL Settling Insurer Covered Person, or a Settling Insurer based on allegations that it is an alter ego of a Person that is not a Participating Party, Non-Debtor CGL Settling Insurer Covered Person, or Settling Insurer or that the Participating Party's, Non-Debtor CGL Settling Insurer Covered Person's or Settling Insurer's corporate veil should be pierced on account of Claims against a Person that is not a Participating Party, Non-Debtor CGL Settling Insurer Covered Person, or Settling Insurer or based on any other theory under which the legal separateness of any Person and any other Person may be disregarded to impose liability for a claim on either such Person.

"Channeled Claimant" means a Holder of a Channeled Claim.

**1.2.1.** "Channeling Injunction" means the injunction provided for under Article XII of the Plan.

"Future Claimant Reserve" means the reserve established pursuant to Section 9.5 of the Plan.

"Insurance Settlement Amount" shall have the meaning set forth in Section 9.2.1.

**"Insurance Settlement and Buy-Back Agreement" shall mean an separate settlement agreement including the Debtor and each Settling Insurer resolving and settling all claims, rights, issues and obligations between and among the Debtor and each Settling Insurer and allowing for each respective Settling Insurer to buy-back the respective Settling Insurer's known and unknown CGL Insurance Policies and Other Insurance Policies free and clear of all liens, claims (including Abuse Claims), encumbrances and interests of any kind and nature whatsoever, and resolving coverage issues relating to CGL Policies, Other Insurance Policies and Non-Debtor CGL Settling Insurer Covered Person Policies. Each respective Insurance Settlement and Buy-Back Agreement shall be filed as part of a plan supplement. For avoidance of doubt, the Debtor and one or more Settling Insurers may, but are not required to, have a single settlement agreement reflecting the agreements between the Debtors and such Settling Insurers.**

"Non-Debtor CGL Settling Insurer Covered Persons" means any Person that has or may have a Claim to Insurance Coverage under a CGL Settling Insurer Policy, including the USOPC, the National Gymnastics Foundation, All Olympia Gymnastics Center, ~~Twistars, Gedderts' Twistars Gymnastics Club USA, Twistars USA, Inc. d/b/a Gedderts' Twistars USA Gymnastics Club,~~ Karolyi Training Camps, LLC, Karolyi's Elite, Karolyi World Gymnastics, Inc., BMK Training Facilities Ltd., BMK Partners Ltd., Artur Akopyan, Galina Marinova, John Geddert, Kathryn Geddert, Bela Karolyi, Marta Karolyi, Donald Peters, Rhonda Fahan, Steve Penny, Paul Parilla, Amy White, Debra Van Horn, Kathy Scanlan, and Bob Colarossi.

**"Non-Debtor CGL Settling Insurer Covered Persons Policy" means any policy of insurance issued by a Settling Insurer but only to with regard to defense and indemnity insurance coverage under such policy for past, present and future known and unknown Abuse Claims.**

“Non-Participating Co-Defendant” means a Person that is named as a defendant in a lawsuit in which the Debtor is also named as a defendant, and/or who is alleged to be fully or partially responsible for a Claim asserted, or which may be asserted in the future, against both such Person and the Debtor, including co-debtors as described in Section 509 of the Bankruptcy Code. A Participating Party, a Non-Debtor CGL Settling Insurer Covered Person, and a Settling Insurer each are not a Non-Participating Co-Defendant.

“Non-Settling Insurer” means an Insurer that is not a CGL Settling Insurer.

“Participating Party” means those Persons listed on Exhibit B to the Plan, that are providing or will provide consideration or a portion of the funding for the Plan in exchange for: (a) the release of any indemnification or contribution Claim by the Debtor against such Participating Party; (b) the benefit of the Channeling Injunction; and/or (c) any other benefits in favor of Participating Parties under the Plan. A Settling Insurer is not a Participating Party. A Participating Party shall release all of its Claims (i) against the Debtor, the Estate, and the Reorganized Debtor, and each of their respective Related Persons, and (ii) against the Settling Insurers and their Related Persons as and to the extent provided elsewhere in the Plan and related settlement agreements.

“Participating Party Contribution” means the consideration provided by a Participating Party, including the Twistars Contribution and the USOPC Contribution.

“Plan Payment” shall have the meaning ascribed to it in Section 3.1.

“Protected Parties” means the Debtor, the Estate, the Reorganized Debtor, any Participating Party, any Settling Insurer, any Non-Debtor CGL Settling Insurer Covered Person, and each of or their respective Related Persons.

“Released Parties” means: (a) the Participating Parties; (b) the Participating Parties’ Related Persons; (c) a Settling Insurer; (d) a Settling Insurer’s Related Persons, but only to the extent such Person’s liability arises out of liabilities covered by the Insurance Policies issued by the Settling Insurer, but including any and all bad faith or other extracontractual liability; and (e) the Non-Debtor CGL Settling Insurer Persons. The term “Released Parties” does not include any Person who personally committed an act or acts of Sexual Abuse that resulted in a Claim against the Debtor or a Participating Party.

“Settling Insurer” means (a) each of those CGL Settling Insurers, USOPC Settling Insurers, and the Twistars Settling Insurers listed on Exhibit C to the Plan (the “Exhibit C Insurers”), as the same may be amended in accordance with this Plan; and (b) such Exhibit C Insurer’s predecessors, successors, and assigns, but only to the extent that: (i) such predecessor’s liability was assumed by the Exhibit C Insurer to the Plan, and not independent of the liability of the Exhibit C Insurer; and (ii) such successor’s or assign’s liability is derivative of the liability of the Exhibit C Insurer and not independent of the liability of the Exhibit C Insurer. Pursuant and subject to Section 11.6 of the Plan, a Person may become a Settling Insurer after the Effective Date with the consent of the Trustee and the Reorganized Debtor and upon approval of the Bankruptcy Court. If the addition of such Person is approved pursuant to a Final Order, Exhibit C will be deemed amended to include such Person.

“Settling Insurer Injunction” means the injunctions provided in Section 12.3.

“Settling Insurer Policies” means the Insurance Policies of any CGL Settling Insurer and the insurance policies issued by ~~of~~ the Twistars Settling Insurers or USOPC Settling Insurers.

1.2.1. “Settlement Election Trustee” means the trustee of the Trust, and any successor trustee appointed pursuant to the terms of this Plan and the Trust Documents.

**1.2.2.** “Trust” means the trust to be established pursuant to the Plan and the Trust Agreement.

“Trust Agreement” means the agreement attached as Exhibit D to the Plan.

“Trust Assets” means all property funded to the Trust pursuant to Section 10.2 of the Plan.

“Trust Documents” means Trust Agreement and all other instruments and other documents that are reasonably necessary or desirable in order to implement the provisions of the Plan that relate to the creation, funding, and administration of the Trust.

~~“Trustee” means the trustee of the Trust, and any successor trustee appointed pursuant to the terms of this Plan and the Trust Documents.~~

“Twistars PaymentContribution” means the Two Million One Hundred Twenty Five Thousand (\$2,125,000.00) to be paid pursuant to the Twistars sSettlement.

“Twistars Settlement” means that certain settlement agreement between Twistars, the Twistars Settling Insurers, and certain holders of Class 6 Claims.

**1.2.3.** “Twistars Settling Insurers” means Philadelphia Indemnity Insurance Company, Lexington Insurance Company, New Hampshire Insurance Company, Nationwide Mutual Insurance Company, and State Farm Fire and Casualty Company.

“USOPC Contribution” means contributions made by the CGL Settling Insurers on behalf of USOPC and by USOPC Settling Insurers.

1.2.24 “USOPC Settling Insurers” means **Virginia Surety Company f/k/a Combined Specialty Insurance Company, National Casualty Company, Great American Assurance Company, [insert names of those contributing]**.

## ARTICLE II. INTERPRETATION

**2.1 Bankruptcy Code Section 102.** The rules of construction in Bankruptcy Code Section 102 apply to this Plan to the extent not inconsistent with any other provision of this Article II.

**2.2 Undefined Terms.** Any term that is not defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**2.3 Plan Definitions Control.** The definition given to any term or provision in the Plan supersedes and controls any different meaning that may be given to that term or provision in the Bankruptcy Code, the Bankruptcy Rules, or the Disclosure Statement.

**2.4 Include and Including.** The terms “including” or “include(s)” are intended to be illustrative and not exhaustive, and shall be construed as “including, but not limited to” or “include(s), but is not limited to.”

**2.5 Plural and Singular Terms.** Whenever the context requires, terms shall include the plural as well as the singular number, and the masculine gender shall include the feminine and the feminine gender shall include the masculine.

**2.6 References to Court Filings.** Unless the context should otherwise require, all references to documents to be filed shall refer to filing with the Bankruptcy Court in accordance with the Bankruptcy Code and Bankruptcy Rules.

**2.7 Inclusion of Amended Agreements.** Any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified, or supplemented.

**2.8 Exhibits.** Unless otherwise specified, all references in the Plan to “Articles,” “Sections,” “Schedules,” and “Exhibits” are references to Articles, Sections, Schedules, and Exhibits of or to the Plan.

**2.9 Herein/Hereof/Hereto.** The words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan.

**2.10 Headings.** Captions and headings to Articles and Sections are inserted for ease of reference only and shall not be considered a part of the Plan or otherwise affect the interpretation of the Plan.

**2.11 No Admissions.** The Plan makes no judgments about the validity of any Claims. Nothing contained in this Plan constitutes an admission or denial by any Person of liability for, or the validity, priority, amount, or extent of, any Claim, lien, or security interest asserted against the Debtor or against any third party.

**2.12 Computation of Time.** In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply. If any act under the Plan is required to be performed on a date that is not a Business Day, then the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Enlargement of any period of time prescribed or allowed by the Plan shall be governed by the provisions of Bankruptcy Rule 9006(b).

**2.13 Merger.** The Plan supersedes all prior plans, drafts of the Plan, and all prior negotiations, agreements, and understandings with respect to the Plan, evidence of which shall not affect the interpretation of any provision of the Plan.

### ARTICLE III. MEANS OF FUNDING THE PLAN

#### 3.1 Abuse Claims, Indemnification Claims, the USOPC Claim, and the FCR Claim.

Plan Payment. The Debtor’s Insurance Policies are the only Assets the Debtor has to provide a Distribution to Abuse Claimants and Future Claimants. Subject to entry of the Confirmation



Order approving the Settlement Election, including Bankruptcy Court approval by Final Order of all Insurance Settlement and Buy-Back Agreements, approval of releases to be provided to all Settling Insurers and all Protected Parties from the Holders of the Abuse Claims and Future Claims, approval of the Channeling Injunction and other injunctions set forth in the Plan, including the Protected Party Injunction, the Confirmation Order becoming a Final Order, satisfaction of all conditions to effectiveness of the Plan and occurrence of the Effective Date, the sum of Through this Plan, the Debtor is making its Insurance Policies and the proceeds thereof available to the Abuse Claimants and Future Claimants in one of two alternative ways. To date, certain of the Debtor's CGL Insurers along with certain USOPC Settling Insurers are willing to offer Two Hundred Fifteen Million Dollars (\$215,000,000.00) (the "**Plan Payment**") will be made available by the Debtor to resolve the Abuse Claims and Future Claims. The Debtor is offering the Holders of Abuse Claims and Future Claims the choice of accepting the Plan Payment and the Two Million One Hundred Twenty Five Thousand (\$2,125,000.00) Twistars Contribution or, if the Settlement Election is not accepted, continuing the prosecution of their Claims in a non-bankruptcy forum with recovery from the Debtor limited to the amounts available under the Debtor's CGL Insurance Policies and Other Insurance Policies, and Non-Debtor CGL Insurer Covered Persons Policy (if any) that provide coverage for Abuse Claims. The treatment for Indemnification Claims, the USOPC Claim, the FCR Claim, and Abuse Claims filed after the Bar Date will depend on whether the Abuse Claimants, who will be classified in Class 6, make the Settlement Election or Litigation Election.

Twistars Payment. If Class 6 makes the Settlement Election, the Plan also provides for the implementation of the Twistars Settlement and the contribution of the Twistars Payment to the Trust. Twistars, the Twistars Settling Insurers, and certain holders of Class 6 Claims agreed to the Twistars Settlement conditioned upon the Twistars Settlement being implemented through a plan of reorganization for the Debtor that provided for a channeling injunction that protected Twistars and the Twistars Settling Insurers. The Debtor was not a party to the Twistars Settlement, however, the Debtor has agreed to implement the Twistars Settlement through the Plan, but only in the event Class 6 makes the Settlement Election. In the event that Class 6 does not make the Settlement Election, a material condition of the Twistars Settlement will not have been satisfied and the Twistars Settlement will be null and void. If the Litigation Election is selected the Twistars Contribution shall not be a part of the Plan.

**3.1.1. Settlement Election.** If Class 6 makes the Settlement Election, the Plan provides for the creation of a Trust for the exclusive benefit of the Holders of Abuse Claims and the FCR Claim. The Trust will assume liability for all Channeled Claims, which shall include Abuse Claims, the USOPC Claim, Indemnification Claims, the FCR Claim, and any Claim against a Participating Party or Settling Insurer (and its Related Persons) arising from, in connection with, or related in any way to a Channeled Claim. The Trust's assets will consist of the Plan Payment and the Twistars Contribution. ~~contributions by the CGL Settling Insurers and the Participating Parties.~~ Trust assets will be used to fund the Trust's costs and expenses and payments to the Holders of Abuse Claims and the FCR Claim. Distributions and reserves from the Trust to Holders of Abuse Claims and Future Claims will be determined by the Trust Documents. The creation of the Trust and payments into and out of the Trust to resolve Claims shall not be deemed an admission of liability by the Debtor, USOPC or any Settling Insurer (or their Related Persons). The Indemnification Claims and the USOPC Claim shall receive the benefit of the Channeling Injunction in complete satisfaction of their claims and will not receive any payment from the Trust or the Debtor or its Estate. For the avoidance of doubt, to the extent of any

conflict between the terms of this Plan and the Debtor's bylaws or any agreements between the Debtor and the Holder of the USOPC Claim or an Indemnification Claim, this Plan controls. The Participating Parties, the Non-Debtor CGL Settling Insurer Covered Persons, and the Settling Insurers (and their Related Persons) will receive the benefit of injunctions provided under the Plan. Nothing in this Plan, including Article XII, is intended to replace and does not affect, diminish, or impair the liabilities of any Non-Participating Co-Defendant under applicable non-bankruptcy law. The Settlement Election requires the release of USOPC because USOPC is an insured under many of the Debtor's CGL Insurance Policies and the CGL Settling Insurers have conditioned the payment of the Insurance Settlement Amount upon USOPC being part of any settlement.

Litigation Election. If Class 6 makes the Litigation Election, the Plan permits the Holders of Abuse Claims filed or deemed to be filed before the Bar Date to prosecute their Claims against the Reorganized Debtor in name only in the courts where such Claims were pending before the Petition Date or the courts in which such Claims could have been brought, but for the automatic stay imposed by Section 362 of the Bankruptcy Code, and to recover any judgments or awards exclusively from the ~~Reorganized~~-Debtor's CGL Insurance Policies (and Other Insurance Policies, if any, that provide coverage for Abuse Claims). For the avoidance of doubt, only the proceeds of the ~~Reorganized~~-Debtor's CGL Insurance Policies, to the extent those policies apply to particular Claims and coverage is available and not otherwise excluded (and Other Insurance Policies, or Non-Debtor CGL Settling Insurer Covered Persons Policies) if any, that provide coverage for Abuse Claims) will be available to satisfy Abuse Claims. The Debtor is not admitting liability for any such Claims. Subject to Section 22.1(vi) of this Plan, Abuse Claims that are not filed or deemed filed by the Bar Date are disallowed and will receive nothing under the Plan. The USOPC Claim and Indemnification Claims will not receive a Distribution; *provided, however*, that to the extent that the USOPC or the Holder of an Indemnification Claim has a right to recovery under any of the Debtor's Insurance Policies, such rights are preserved and will not be impaired under the Plan. For the avoidance of doubt, to the extent of any conflict between the terms of this Plan and the Debtor's bylaws or any agreements between the Debtor and the USOPC or the Holder of an Indemnification Claim, this Plan controls.

**3.2 Claims Other Than Abuse Claims, Indemnification Claims, and the USOPC Claim.** General Unsecured Claims will be paid from existing and future revenues of the Reorganized Debtor over time in accordance with the Plan. The Plan permits the Personal Injury Claimant to settle her claim with the Personal Injury Insurer or prosecute a lawsuit against the Reorganized Debtor in name only in the court in which the Personal Injury Claim could have been brought, but for the automatic stay, and to recover any judgments or settlement awards exclusively from the Personal Injury Insurance Policy. For the avoidance of doubt, only the proceeds of the Personal Injury Insurance Policy are available to satisfy the Personal Injury Claim. The Debtor is not admitting liability for the Personal Injury Claim. The Allowed Other Priority Claims, the PNC Bank Claim, the Sharp Claim, and the General Unsecured Convenience Claims are unimpaired under the Plan.

**3.3 Discharge.** The Debtor will receive the benefit of a Section 1141(d) discharge.



**3.4 Applicability Of Plan Provisions.** Articles IX-XIII are only applicable if Class 6 makes the Settlement Election. Articles XIV-XV are only applicable if Class 6 makes the Litigation Election. All other Articles are applicable to both the Settlement Election and Litigation Election.

#### **ARTICLE IV. TREATMENT OF UNCLASSIFIED CLAIMS**

**4.1 Administrative Claims.** Requests for allowance and payment of Administrative Claims must be filed and served no later than thirty (30) days after a notice of the Effective Date is filed with the Bankruptcy Court. Each Holder of an Allowed Administrative Claim against the Debtor shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, Cash equal to the Allowed amount of such Allowed Administrative Claim, either (a) on or as soon as practicable following the Effective Date, or, if later, the Allowance Date; or (b) upon such terms as may be agreed to in writing by the Administrative Claimant. Provided, however, that any Administrative Claim incurred post-petition by the Debtor in the ordinary course of its operations or arising pursuant to one or more post-petition agreements or transactions entered into by the Debtor with Bankruptcy Court approval, shall be paid or performed in accordance with the terms and conditions of the particular transaction(s) and any agreement(s) relating thereto, or as otherwise agreed by the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date), on the one hand, and the Holder of such Administrative Claim, on the other.

#### **4.2 Professional Claims.**

**Bar Dates for Professional Claims.** All Professionals or other Persons requesting compensation or reimbursement of expenses pursuant to any of Sections 327, 328, 330, 331, 503(b), and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including, among other things, any compensation requested by any Professional or any other Person for making a substantial contribution in the Chapter 11 Case) shall file and serve in accordance with the Bankruptcy Court's case management order an application for final allowance of compensation and reimbursement of expenses accruing from the Petition Date to the Effective Date, no later than the Professional Claims Bar Date.

**Objections to Professional Claims.** Objections to Professional Claims or Claims of other Persons for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor and the Professionals or other Persons to whose application the objections are addressed on or before (a) twenty-one (21) days after the Professional Claims Bar Date; or (b) such later date as (i) the Bankruptcy Court shall order upon application made prior to the end of such 21-day period or (ii) is agreed between the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date), as applicable, and the affected Professional or other Person.

**4.3 U.S. Trustee Fees.** All fees due and payable pursuant to 28 U.S.C. § 1930 and not paid prior to the Effective Date shall be paid in Cash as soon as practicable after the Effective Date. After the Effective Date, the Reorganized Debtor shall pay quarterly fees to the U.S. Trustee, in Cash, until the Chapter 11 Case is closed and a Final Decree is entered. In addition, the Reorganized Debtor shall file post-Confirmation Date reports in conformance with the U.S.

Trustee guidelines. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which will be deemed Administrative Claims against the Debtor and the Estate.

**4.4 Priority Tax Claims.** With respect to each Allowed Priority Tax Claim not paid prior to the Effective Date, the Reorganized Debtor shall (a) pay such Claim in Cash as soon as practicable after the Effective Date; or (b) provide such other treatment agreed to by the Holder of such Allowed Priority Tax Claim and the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date).

## ARTICLE V. CLASSIFICATION OF CLAIMS

**5.1 Classification of Claims.** All Claims except Administrative Claims and Priority Tax Claims are placed in the following Classes for all purposes including voting, confirmation of the Plan, and Distributions pursuant to the Plan. A Claim is classified in a particular Class only to the extent the Claim qualifies within the description of that Class and is classified in a different Class to the extent the Claim qualifies within the description of that different Class. Except as otherwise provided under the Bankruptcy Code or applicable law, if a Claim (other than a Claim entitled to priority status under Section 507 of the Bankruptcy Code) is acquired or transferred, the Claim will be placed in the Class where it would have been placed if it were owned by the original Holder of such Claim. If a Claimant has more than one Claim in the same Class, such Claims will be aggregated and treated as a single Claim. If a Claimant has Claims in different Classes, such Claims will be aggregated only within the same Class and not between Classes.

CLASS	DESCRIPTION	IMPAIRMENT	VOTING
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	PNC Bank Claim	Unimpaired	Deemed to Accept
3	Sharp Claim	Unimpaired	Deemed to Accept
4	General Unsecured Convenience Claims	Unimpaired	Deemed to Accept
5	General Unsecured Claims	Impaired	Yes
6	Abuse Claims	Impaired	Yes
7	Personal Injury Claim	Impaired	Yes
8	USOPC Claim	Impaired	Yes
9	Indemnification Claims	Impaired	Yes
10	FCR Claim <i>(only if there is a Settlement Election)</i>	Impaired	Yes
11	Sexual Abuse Claims filed after the Bar Date <i>(only if there is a Litigation Election)</i>	Impaired	No

**5.2 Treatment in Complete Satisfaction.** The treatment in this Plan is in full and complete satisfaction of all of the legal, contractual, and equitable rights that each Holder of a Claim may have against the Debtor, the Estate, or its Assets. This treatment supersedes and replaces any agreements or rights those Holders have in or against the Debtor, the Estate, or its Assets. All Distributions under the Plan will be tendered to the Person holding the Claim.

## **ARTICLE VI. TREATMENT OF UNIMPAIRED CLASSES OF CLAIMS**

### **6.1 Class 1: Other Priority Claims.**

**Impairment and Voting.** Class 1 is unimpaired under the Plan. Holders of Class 1 Claims are deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

**Treatment.** The Holders of Class 1 Claims will receive either (a) payment from the Reorganized Debtor of the full amount of their Allowed Claims in Cash, without interest on or as soon as practicable following the Effective Date or, if later, the Allowance Date; or (b) payment of their Allowed Claims upon such terms as may be agreed in writing by the Claimant and the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date).

### **6.2 Class 2: PNC Bank Claim.**

**Impairment and Voting.** Class 2 is unimpaired under the Plan. PNC Bank is deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and is not entitled to vote on the Plan.

**Treatment.** The VISA Commercial Card Agreement dated as of May 7, 2010, as amended from time to time, between PNC Bank and the Debtor shall be reinstated and become the obligation of the Reorganized Debtor. PNC Bank shall retain all of its rights and collateral pledged under the VISA Commercial Card Agreement.

### **6.3 Class 3: Sharp Claim.**

**Impairment and Voting.** Class 3 is unimpaired under the Plan. Sharp is deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and is not entitled to vote on the Plan.

**Treatment.** The Value Lease Agreement, Equipment Sales Agreement, and Customer Care Maintenance Agreement between Sharp Business Systems and the Debtor shall be deemed assumed and will become the obligation of the Reorganized Debtor. Sharp Business Systems shall retain all of its rights and collateral under the Value Lease Agreement, Equipment Sales Agreement, and Customer Care Maintenance Agreement.

### **6.4 Class 4: General Unsecured Convenience Claims.**

**Impairment and Voting.** Class 4 is unimpaired under the Plan. The Holders of Class 4 Claims are deemed to have accepted the Plan under Section 1126(f) of the Bankruptcy Code and are not entitled to vote on the Plan.

Treatment. The Holders of Class 4 Claims will receive either (a) payment from the Reorganized Debtor of the full amount of their Allowed General Unsecured Convenience Claims in Cash, on or as soon as reasonably practicable following the Effective Date or, if later, the Allowance Date; or (b) payment of their Allowed General Unsecured Convenience Claims upon such terms as may be agreed in writing by the Claimant and the Debtor and the Estate (if before the Effective Date) or the Reorganized Debtor (on and after the Effective Date).

## **ARTICLE VII. TREATMENT OF IMPAIRED CLASSES OF CLAIMS**

### **7.1 Class 5: General Unsecured Claims.**

Impaired and Voting. Class 5 is impaired under the Plan. The Holders of Allowed General Unsecured Claims are entitled to vote on the Plan.

Treatment. The Holders of Allowed General Unsecured Claims will receive payment from the Reorganized Debtor of 80% of their Allowed General Unsecured Claims, payable in equal installments on September 1, 2020, September 1, 2021, and September 1, 2022; or, at the Reorganized Debtor's discretion, in less than three installments so long as the Reorganized Debtor accelerates payment to all Holders of Allowed General Unsecured Claims.

### **7.2 Class 6: Abuse Claims.**

Impaired and Voting. Class 6 is impaired under the Plan. The Holders of Allowed Abuse Claims are entitled to vote on the Plan. Only for purposes of voting, each Claim in Class 6 is deemed to be \$1.00.

Election. The Ballot for Holders of Class 6 Claims will provide that Holders of Class 6 Claims voting in favor of the Plan may select the Settlement Election or the Litigation Election. If the required number and dollar amount of Class 6 Claims selects the Settlement Election, all Class 6 Claims will receive the treatment in Section 7.2.3. If the required number and dollar amount of Class 6 Claims select the Litigation Election, all Class 6 Claims will receive the treatment in Section 7.2.4. If Class 6 does not accept the Plan, and the requirements under Section 1129(b) are met, the treatment for Holders of Class 6 Claims will be the Litigation Election.

Class 6 Treatment Under Settlement Election. On the Effective Date, the Trust shall assume all liability for and the Trust will pay all Class 6 Claims pursuant to the provisions of the Plan and the Trust Documents. No Holder of a Class 6 Claim shall be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date. Except as otherwise provided in the Plan (including ~~Other than~~ the Settling Insurer Injunction, the Channeling Injunction, and the exculpations and releases in this Plan), the Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 6 Claims, including the liability of any Non-Participating Co-Defendant, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Bankruptcy Code Section 1141(d). Class 6 Claims under the Settlement Election will include Sexual Abuse Claims that are not filed by the Bar Date.

**Class 6 Treatment Under Litigation Election.** On the Effective Date, and pursuant to Section 14.1 of the Plan, the automatic stay and the stay imposed by the 105 Order shall be lifted and each Holder of a Class 6 Claim shall have thirty (30) days to: (a) file a lawsuit against the Reorganized Debtor, subject to any applicable statute of limitations or repose, or the equitable doctrine of laches, in accordance with Section 108(c) of the Bankruptcy Code; or (b) to the extent a Holder of a Class 6 Claim was a plaintiff in a Pre-Petition Lawsuit, file a notice in such Pre-Petition Lawsuit stating that the Holder of the Class 6 Claim is electing to resume its litigation against the Reorganized Debtor pursuant to the terms of the Plan. A Holder of a Class 6 Claim that does not commence suit or file a notice to resume the litigation of a Pre-Petition Lawsuit within such thirty (30) day period shall be forever barred from asserting the Holder's Class 6 Claim. The allowance or disallowance of Class 6 Claims will be determined in the Post-Effective Date Litigation related to such Class 6 Claims. To the extent the Holder of a Class 6 Claim obtains a Post-Effective Date Award, the sole source of recovery for such Claimant shall be from Insurance Coverage, if any, under the Debtor's Insurance Policies to pay for such types of claims. Any and all of the Debtor's liability on account of Class 6 Claims shall be discharged pursuant to the provisions of Section 1141(d) of the Bankruptcy Code. No Holder of a Class 6 Claim shall be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date. Nothing contained herein shall enlarge the rights or claims of Holders of Class 6 Claims or limit any defenses to Class 6 Claims. Such discharge shall not affect the liability of any other Person on, or the property of any other Person for, the Class 6 Claims, including the liability of any Insurer, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code. Nothing in the Plan is intended to affect, diminish, or impair any Holder of a Class 6 Claim's rights against a Co-Defendant, including that Co-Defendant's joint and several liability for Sexual Abuse. Pursuant to Section 22.1(vi), the Bankruptcy Court may determine on a motion that an Abuse Claim is deemed to be filed before the Bar Date. In the event of the Litigation Election, Abuse Claims that were not filed by the Bar Date are not part of Class 6 and will receive nothing under the Plan.

### **7.3 Class 7: Personal Injury Claim.**

**Impaired and Voting.** Class 7 is impaired under the Plan. The Holder of the Class 7 Claim is entitled to vote on the Plan. Only for purposes of voting, the Claim in Class 7 is deemed to be \$1.00.

**Treatment.** On the Effective Date, the stay shall be lifted and the Holder of the Class 7 Claim shall have thirty (30) days to file a lawsuit against the Reorganized Debtor, subject to any applicable statute of limitations or repose, or the equitable doctrine of laches, in accordance with Section 108(c) of the Bankruptcy Code, or reach a settlement paid by the Personal Injury Insurer. The allowance or disallowance of the Class 7 Claim will be determined in the Post-Effective Date Litigation related to the Class 7 Claim. To the extent the Holder of the Class 7 Claim obtains a Post-Effective Date Award, the sole source of recovery for such Claimant shall be from the Personal Injury Insurance Policy. The Holder of the Class 7 Claim shall not be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date. Nothing contained herein shall enlarge the rights or claims of the Holder of the Class 7 Claim or limit any defenses to the Class 7 Claim. Unless otherwise

provided in this Plan, the Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 7 Claim including the liability of the Personal Injury Insurer, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code. Nothing in the Plan is intended to affect, diminish, or impair the Holder of the Class 7 Claim's right against a Non-Participating Co-Defendant, including that Non-Participating Co-Defendant's joint and several liability.

#### **7.4 Class 8: USOPC Claim.**

Impairment and Voting. Class 8 is impaired under the Plan. The Holder of the USOPC Claim is entitled to vote on the Plan. Only for purposes of voting, the Claim in Class 8 is deemed to be \$1.00.

**Treatment Under Settlement Election.** If Class 6 makes the Settlement Election, all rights that the USOPC has to receive indemnification or reimbursement from the Debtor, including any right to receive reimbursement, indemnification, or a defense under any of the Debtor's Insurance Policies, shall be satisfied by granting the USOPC Claim the benefit of the Channeling Injunction and by deeming any Abuse Claim against the USOPC to be a Channeled Claim and USOPC to be a Participating Party and Protected Party. The USOPC shall not be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date and shall release and be deemed to have release-released all Claims against the Debtor, the Estate, and the Reorganized Debtor, and all rights and claims (including but not limited to extracontractual claims as defined in the Insurance Settlement and Buy-Back Agreements) arising under, relating to, or in connection with the CGL Settling Insurance Policies.

**Treatment Under Litigation Election.** If Class 6 makes the Litigation Election, in accordance with Section 502(e)(1) of the Bankruptcy Code, the sole source of recovery for the USOPC Claim shall be from Insurance Coverage, if any, under the Debtor's Insurance Policies. The USOPC will receive no Distribution under the Plan. The Debtor's discharge of the USOPC Claim shall not affect the liability of any Person other than the Debtor on, or the property of any Person other than the Debtor for, the USOPC Claim, including the liability of any Insurer, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code. The Debtor's CGL Insurers' rights and defenses, including coverage defenses, also remain unaffected by the Plan or the Debtor's discharge. For the avoidance of doubt, to the extent of any conflict between the terms of this Plan and the Debtor's bylaws or any agreements between the Debtor and the USOPC, this Plan controls.

#### **7.5 Class 9: Indemnification Claims.**

Impairment and Voting. Class 9 is impaired under the Plan. The Holders of Indemnification Claims are entitled to vote on the Plan. Only for purposes of voting, each Claim in Class 9 is deemed to be \$1.00.



Treatment Under Settlement Election. If Class 6 makes the Settlement Election, all rights that the Holder of a Class 9 Claim has to receive indemnification or reimbursement from the Debtor, including any right to receive reimbursement, indemnification, or a defense under any of the Debtor's Insurance Policies, shall be satisfied by granting the Holder of a Class 9 Claim the benefit of the Channeling Injunction and by deeming any Abuse Claim against the Holder of a Class 9 Claim to be a Channeled Claim and the Holder of a Class 9 Claim a Protected Party. The Holders of Class 9 Claims shall not be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date and shall be deemed to have released all Claims against the Debtor, the Estate, ~~and~~ the Reorganized Debtor, and all rights and claims (including but not limited to extracontractual claims as defined in the Insurance Settlement and Buy-Back Agreements) arising under, relating to, or in connection with arising under or relating to the CGL Settling Insurance Policies.

Treatment Under Litigation Election. If Class 6 makes the Litigation Election, in accordance with Section 502(e)(1) of the Bankruptcy Code, the Class 9 Claims will receive no Distribution; *provided, however*, that to the extent that the Holder of an Indemnification Claim has a right to recovery under any of the Debtor's Insurance Policies, such rights are preserved and will not be impaired under the Plan. The Debtor's discharge of the Indemnification Claims shall not affect the liability of any Person other than the Debtor on, or the property of any Person other than the Debtor for, the Indemnification Claims, including the liability of any Insurer, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code. For the avoidance of doubt, to the extent of any conflict between the terms of this Plan and the Debtor's bylaws or any agreements between the Debtor and the Holder of a Class 9 Claim, this Plan controls.

#### **7.6 Class 10: Future Claimants Representative Claim (Only In The Event Of A Settlement Election).**

Impaired and Voting. Class 10 only exists under the Settlement Election. Class 10 is impaired under the Plan. The FCR is deemed to be the Holder of the Class 10 Claim and is entitled to vote on the Plan on behalf of the Future Claimants. Only for purposes of voting, the Claim in Class 10 is deemed to be \$1.00.

Treatment Under Settlement Election. On the Effective Date, the Trust shall assume all liability for and the Trust will pay all Class 10 Claims pursuant to the provisions of the Plan and the Trust Documents; *provided, however*, that no Holder of a Class 10 Claim shall have an interest in the Trust Assets other than the Future Claimant Reserve. No Holder of a Class 10 Claim shall be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date. Except as otherwise provided in the Plan (including the Settling Insurer Injunction, the Channeling Injunction, Section 11.1.2, and the exculpations and releases in this Plan), ~~the~~ the Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 10 Claims, including the liability of any Non-Participating Co-Defendant, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code.

**7.7 Class 11: Sexual Abuse Claims Filed After The Bar Date (Only In The Event Of A Litigation Election).**

Impaired and Voting. Class 11 only exists under the Litigation Election. Class 11 is impaired under the Plan. The Holders of Class 11 Claims are deemed to have voted no on the Plan. In the event of a Settlement Election, the Sexual Abuse Claims which were not filed or deemed to be filed by the Bar Date will be classified within Class 6 and deemed to be Channeled Celaims.

Treatment Under the Litigation Election. The Class 11 Claims will receive no distributions under the Plan. No Holder of a Class 11 Claim shall be entitled to recover from the Reorganized Debtor's Revested Assets or property acquired by the Reorganized Debtor after the Effective Date or from the Debtor's Insurance Policies. The Plan shall not affect the liability of any other Person on, or the property of any other Person for, the Class 11 Claims, including the liability of any Non-Participating Co-Defendant, which liability shall continue unaffected by the terms of this Plan or the discharge granted to the Debtor, the Estate, or the Reorganized Debtor under this Plan and Section 1141(d) of the Bankruptcy Code.

**ARTICLE VIII. ACCEPTANCE OR REJECTION OF PLAN**

**8.1 Impaired Classes to Vote.** Each Holder of a Claim in an impaired Class shall be entitled to vote separately to accept or reject the Plan unless such Holder is deemed to accept or reject the Plan.

**8.2 Acceptance by Class of Creditors.** An impaired Class of Holders of Claims shall have accepted the Plan if the Plan is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have voted to accept or reject the Plan.

**ARTICLES APPLICABLE TO SETTLEMENT ELECTION ONLY**

**ARTICLE IX. TRUST FUNDING AND FORMATION**

**9.1 Resolution of the Insurance Coverage Adversary Proceeding as to the CGL Settling Insurers.** The Confirmation Order shall provide that, subject to the occurrence of the Effective Date, the Debtor shall dismiss with prejudice its claims against the CGL Settling Insurers in the Insurance Coverage Adversary Proceeding, ~~provided, however, that such dismissal shall not affect the Personal Injury Insurance Coverage.~~

**9.2 The CGL Settling Insurers' Settlement And Payments.**

Insurance Settlement Amount. The CGL Settling Insurers and USOPC Settling Insurers will pay the cumulative amount of Two Hundred Nineteen Million Seven Hundred Fifty Thousand (\$219,750,000.00) (the "**Insurance Settlement Amount**"). The Insurance Settlement Amount ~~will be allocated as follows: reflects the amount of money that the CGL Settling Insurers and USOPC Settling Insurers have been willing to pay to date:~~ (a) to settle the Abuse Claims on behalf of the Debtor, the USOPC, and the Non-Debtor CGL Settling Insured Covered Persons, the Abuse Claims (for which \$215,000,000.00 of the Insurance Settlement Amount is allocated); and (b) to settle the Debtor's alleged contractual rights to have its Insurance Reimbursement



Claims paid (for which \$4,750,000.00 of the Insurance Settlement Amount is allocated). ~~The Debtor reserves its right to amend this Plan to, among other things, increase the Insurance Settlement Amount.~~ The CGL-Settling Insurers' obligation to contribute their respective portion of the Insurance Settlement Amount is conditioned upon and subject to the Bankruptcy Court issuing the Confirmation Order, pursuant to Sections 1129, 363(b), (f), and (m), and 105(a) of the Bankruptcy Code, (a) barring, estopping, and permanently enjoining all Persons from asserting any (ai) Claims or Future Claims against the CGL Settling Insurer Policies; (bii) Claims-Claims or Future Claims against the CGL Settling Insurers with regard to, by reason of, based on, arising out of, relating to, or in any way connected with, the CGL Settling Insurer Policies; and (iiie) Medicare Claims; and (b) authorizing the Debtor and each CGL Settling Insurer to enter into an Insurance Settlement and Buy-Back -Agreement as agreed by each respective Insurer, in the form to be filed with the Plan Supplement, providing for each CGL Settling Insurer to buy-back its CGL Insurance Policies, free and clear of all liens, claims encumbrances and any interests in such CGL Insurance Policies, as set forth in the respective Insurance Settlement and Buy-back Agreement, which must be approved by the Bankruptcy Court by Final Order. Further, on or before the Effective Date, in addition to and notwithstanding the Protected Party Release set forth in Section 12.8 of the Plan, the USOPC shall provide a satisfactory written, complete release of insurance coverage for all Channeled Claims to the Settling Insurers that issued the relevant CGL Insurance Policies, the form of which shall be reasonably acceptable to the insurers, and shall consent to the buyback of the Debtor's CGL Insurance Policies. Each Protected Party shall, on the Effective Date, be deemed to have granted to each Settling Insurer and its Related Persons the Protected Party Release set forth in Section 12.8 of the Plan and consented to buyback of its respective interests in the Debtor's CGL Insurance Policies by each of the respective Settling Insurers, and such deemed release shall be incorporated in and expressly set forth in the Confirmation Order. ~~;~~ provided, however that in the event that any such buy back of the a Personal Injury Insurance Policy shall not be a buy back of Personal Injury Coverage and the Personal Injury Insurer shall remain liable to provide Personal Injury Coverage for the Personal Injury Claim. Subject to each of the foregoing requirements and execution and Bankruptcy Court approval by Final Order of the Insurance Settlement and Buy-Back Agreements and occurrence of all other preconditions to the Effective Date, ~~t~~The Insurance Settlement Amount will be paid to the Debtor on ~~or before~~ the Effective Date. ~~Notwithstanding the foregoing, the Personal Injury Insurance Policy will remain in place solely for purposes of defending the Personal Injury Claim and indemnifying the Debtor, the Estate, and the Reorganized Debtor from the Personal Injury Claim. The CGL Settling Insurers will continue to reimburse the Debtor for ongoing Insurance Reimbursement Claims in the ordinary course through the Effective Date. To the extent any such amounts are outstanding on the Effective Date (the "Outstanding Amount"), the Outstanding Amount shall be paid by the applicable CGL Settling Insurer in addition to the CGL Settling Insurer's portion of the Insurance Settlement Amount.~~

Plan Payment. The Plan Payment shall be made to the Trust in exchange for, inter alia, the entry of an Order by the Bankruptcy Court approving all releases and injunctions set forth in the Plan and the Insurance Settlement and Buyback Agreements, and including the Channelling Injunction, and imposing a nonconsensual release, remise, and discharge of all Claims ~~and/or~~ Future Claims relating to the CGL Settling Insurer Policies (excepting the Personal Injury Claim against the Personal Injury Insurer and Personal Injury Insurance Policy), including all Channeled Claims, by all Persons who now hold or in the future may hold such Claims or Future

Claims against the CGL Settling Insurers pursuant to Section 105 of the Bankruptcy Code, including but not limited to all Protected Parties.

### **9.3 Trust Formation and Funding.**

**Trust Purpose.** The Trust shall be established for the benefit of the Abuse Claimants and Future Claimants and will assume all liability for the Channeled Claims. The Trust will receive, liquidate, and distribute Trust Assets in accordance with this Plan and the Trust Documents. The proposed Trust Agreement is attached hereto as Exhibit D.

**Funding of Trust.** As set forth in Section 10.2, the Trust shall be funded, on or before the Effective Date, by: (a) the Plan Payment; and (b) the Participating Party Contributions.

**Payment of Professional Fees.** The Trust shall pay all unpaid Allowed Professional Claims of the Survivors' Committee's Professionals within seven (7) days after the later of the Effective Date or the Bankruptcy Court's order on such Claims and shall pay and reimburse the Debtor, the Estate, or the Reorganized Debtor, as the case may be, for the costs and expenses of publication of the notices of insurance settlement and plan confirmation within seven (7) days after the Effective Date.

**9.4 Approval of Settlement.** Pursuant to Section 105(a) of the Bankruptcy Code and in consideration for the classification, distributions, and other benefits provided under the Plan, including, *inter alia*, (a) the Plan Payment; and (b) the Participating Party Contributions, the provisions of the Plan shall constitute a good faith compromise and settlement of all Abuse Claims against the Debtor. The entry of an order(s) (including the Confirmation Order) approving the Insurance Settlement and Buy-Back Agreements ~~the Confirmation Order~~ will constitute the order approving the compromises and settlements and including the Insurance Settlement and Buy-Back Agreements required under this Plan. The Bankruptcy Court's findings in such approval order(s) ~~the Confirmation Order~~ shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Claimants holding Abuse Claims, the Holders of other Claims, the Settling Insurers, the Protected the Participating Parties, the Non-Debtor CGL Settling Insurer Persons, and all other parties in interest, and are fair, equitable, and within the range of reasonableness, and an appropriate exercise of each such Person's business judgment under the applicable laws of corporate governance.

**9.5 Future Claimant Reserve.** The Trust shall establish a Future Claimant Reserve which shall be funded with five (5%) percent of the Plan Payment. Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the FCR shall continue until he or his successor resigns or the funds in the Future Claimant Reserve are completely distributed as provided in Section 11.7 of the Plan.

**9.6 Closing.** Closing will be conducted in the offices of Jenner & Block, 353 North Clark Street, Chicago, Illinois, 60654, or at such other location designated by the Reorganized Debtor, as soon as reasonably practicable following the Effective Date for the purpose of the Reorganized Debtor, and the Participating Parties executing and delivering the Plan Documents and completing those actions necessary for the Reorganized Debtor and the Participating Parties to establish and fund the Trust and make other distributions required to be made upon, or promptly following, the

Effective Date. As soon as practicable after the conditions set forth in Section 18.1 have been satisfied or waived in accordance with Section 18.2, the Reorganized Debtor shall file a notice of the Closing and the occurrence of the Effective Date.

**9.7 Obligations of the Reorganized Debtor.** The Reorganized Debtor will:

- (a) In the exercise of its business judgment, review all Claims filed against the Estate except for Channeled Claims, and, if advisable, object to such Claims;
- (b) In the exercise of its business judgment, investigate, prosecute, settle, dismiss, or otherwise resolve Causes of Action that are not resolved under this Plan. Unless otherwise provided in this Plan, the Reorganized Debtor will be entitled to receive recoveries from Causes of Action;
- (c) Honor all of the Debtor's obligations under the Personal Injury Insurance Policy and the Other Insurance Policies; and
- (d) Perform all of its obligations under this Plan and Plan Documents, in each case, as and when the same become due or are to be performed.

**ARTICLE X. TRUST**

**10.1 Establishment of Trust.** On the Effective Date, the Trust shall be established in accordance with the Trust Documents. The Trust is intended to qualify as a "Designated" or "Qualified Settlement Fund" pursuant to Section 468B of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1 *et seq.*, as may be amended, and the regulations promulgated thereunder, 31 C.F.R. §§ 900 *et seq.* The Debtor is the "transferor" within the meaning of Treasury Regulation Section 1.468B-1(d)(1). The [Settlement Election](#) Trustee shall be classified as the "administrator" within the meaning of Treasury Regulation Section 1.468B-2(k)(3). The Trust Documents, including the Trust Agreement, are incorporated herein by reference.

**10.2 Trust Funding.** On ~~or before~~ the Effective Date (according to instructions that will be provided to the CGL Settling Insurers and USOPC Settling Insurers at least ten (10) business days prior to the Effective Date, each CGL Settling Insurer and USOPC Settling Insurer shall make its respective portion of the Settlement Payment to the Debtor and the Debtor shall thereafter pay the portion of the Plan Payment to the Trust by wire transfer. Five (5%) percent of the Plan Payment shall be used to create a Future Claimant Reserve for the benefit of ~~all any~~ Future Claimants. On ~~or before~~ the Effective Date, each Twistars Settling Insurer shall make its portion of the Twistars Contribution to the Trust by wire transfer. Each ~~Participating Party~~ Protected Party shall be deemed to have released any and all Claims such ~~Participating Protected~~ Party may have against the Debtor, the Estate, or the Reorganized Debtor, and its Insurance Policies and the Settling Insurers.

**10.3 Appointment of the [Settlement Election](#) Trustee.** The initial [Settlement Election](#) Trustee shall be identified in a supplement to be filed by the Debtor within fourteen (14) days prior to the Confirmation Hearing. The Trustee shall commence serving as the [Settlement Election](#) Trustee on the Confirmation Date; *provided, however,* that the [Settlement Election](#) Trustee shall be permitted to act in accordance with the terms of the Trust Agreement from such earlier date, as authorized

by the Debtor, and shall be entitled to seek compensation in accordance with the terms of the Trust Agreement and the Plan.

**10.4 Tax Matters.** The Trust shall not be deemed to be the same legal entity as the Debtor, but only the assignee of certain Assets of the Debtor and a representative of the Estate for delineated purposes within the meaning of Section 1123(b)(3) of the Bankruptcy Code. The Trust is expected to be tax exempt. The [Settlement Election](#) Trustee shall file such income tax and other returns and documents as are required to comply with the applicable provisions of the Internal Revenue Code, the regulations promulgated thereunder, and applicable state law, and shall pay from the Trust all taxes, assessments, and levies upon the Trust, if any.

**10.5 Cooperation by the Debtor and Reorganized Debtor.** The Debtor, the Estate, the Reorganized Debtor, and their counsel shall reasonably cooperate with the [Trustee-Settlement Election Trustee](#) as requested in connection with the [Settlement Election](#) Trustee's administration of the Trust.

**10.6 Objections to Channeled Claims.** No Person other than the [Settlement Election](#) Trustee has the right to object to the Channeled Claims, and any such objection will be prosecuted and resolved in accordance with the terms of the Trust Documents.

**10.7 Trust Indemnification Obligations.** From and after the Effective Date, the Trust shall be bound by the terms of this Plan and shall defend, indemnify, and hold harmless the Protected Parties with respect to any and all Channeled Claims, Medicare Claims, and Claims against the Debtor, the Estate, the Reorganized Debtor, a Participating Party, or a Settling Insurer Policy relating to an Abuse Claim, including: all Claims made by (a) any Person claiming to be insured (as a named insured, additional insured, or otherwise) under any Settling Insurer Policy; (b) any Person who has made, will make, or can make (but for this Plan) an Abuse Claim or a Claim against the Debtor, the Estate, the Reorganized Debtor, a Participating Party, or a Settling Insurer; (c) any Person who has actually or allegedly acquired or been assigned the right to make a Claim under any Settling Insurer Policy relating to Sexual Abuse or other abuse. The Protected Parties shall have the right to defend any Claims identified in this Section and shall do so in good faith. The Protected Parties may undertake the defense of any Claim on receipt of such Claim. The Protected Parties shall notify the Trust as soon as practicable of any Claims identified in this Section and of their choice of counsel. The Protected Parties may seek to enjoin such Claim and introduce a copy of the Confirmation Order in support thereof, and the Trust shall take all reasonable steps to join in and support such injunctive relief. The Protected Parties' defense of any Claims shall have no effect on the obligations of the Trust, as applicable, to indemnify any such party for such Claims, as set forth in this Section. The Trust shall reimburse all reasonable and necessary attorneys' fees, expenses, costs, and amounts incurred by the Protected Parties in defending such Claims. In defense of any such Claims, the Protected Parties may settle or otherwise resolve a Claim consistent with the terms of this Plan and with the prior consent of the indemnifying party, which consent shall not be unreasonably withheld. The Settlement Election Trustee shall be obligated to ensure that the Trust complies in all respects with the obligations set forth in this Paragraph.

## ARTICLE XI. LIQUIDATION AND PAYMENT OF CHanneled CLAIMS

### 11.1 Liquidation and Resolution of Channeled Claims.

Resolution and Payment of Channeled Claims. The Trust shall pay Abuse Claims in accordance with the Plan, the Confirmation Order, and the Trust Documents. The FCR Claim shall be paid from the Future Claimant Reserve and not from any other Trust Assets. The USOPC Claim and the Indemnification Claims shall not be entitled to payment from Trust Assets but rather shall be satisfied by granting the USOPC Claim and the Indemnification Claims the benefit of the Channeling Injunction and by deeming any Abuse Claim against the USOPC or a Holder of an Indemnification Claim to be a Channeled Claim.

Conditions to Payment of Abuse Claims and FCR Claims. As a pre-condition to receiving any payment from the Trust, each Abuse Claimant or Future Claimant shall execute and deliver to the Trust a full and complete release of the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers and their Related Persons, all Participating Parties, and all known or unknown parties who may or could claim coverage under any Insurance Policy issued to the Debtor, including the Non-Debtor CGL Settling Insurer Covered Persons, in form and substance acceptable to the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, of any and all Claims arising from or relating to Abuse Claims or Future Claims. The form of this release shall be included in the Plan Supplement. In addition, within ten (10) days after receiving any payment from the Trust, an Abuse Claimant or Future Claimant shall dismiss with prejudice any lawsuit that such Abuse Claimant or Future Claimant had brought against the Debtor, any Participating Party, and any Non-Debtor CGL Settling Insurer Covered Person, and shall promptly deliver evidence of such dismissal, with prejudice, to the Settlement Election Trustee. The Settlement Election Trustee shall provide copies of such dismissal orders and releases to any Protected Party that requests a copy.

Trust Documents May Not Modify The Plan. Nothing in the Trust Documents shall (a) impose any costs, directly or indirectly, upon the Debtor, the Estate, the Reorganized Debtor, any Participating Party, or any Settling Insurer relating to the treatment of Channeled Claims, or (b) otherwise modify the rights or obligations of the Debtor, the Estate, the Reorganized Debtor, any Participating Party, or any Settling Insurer as otherwise set forth in the Plan.

**11.2 Effect of No Award on Channeled Claims.** If a Channeled Claim, including an Abuse Claim filed after the Bar Date, is denied payment from the Trust, the Holder of such Channeled Claim will have no further rights against the Debtor, the Estate, the Reorganized Debtor, the Trust, the Settlement Election Trustee, any Participating Party, or any Settling Insurer (including their Related Persons), and any of their respective assets or property, including any Revested Assets, relating to such Channeled Claim.

**11.3 Treatment of Attorneys' Fees and Costs of Channeled Claimants.** The fees and expenses of attorneys representing Channeled Claimants who receive payment from the Trust will be borne by such Channeled Claimants based on applicable state law and individual arrangements made between such Channeled Claimants and their respective attorneys. The Debtor, the Estate, the Reorganized Debtor, the Released Parties, the Settling Insurers and their Related Persons, the Non-Debtor CGL Settling Insurer Covered Persons, the Trust, and the Settlement Election Trustee



will not have any liability for any fees and expenses of attorneys representing any of the Channeled Claimants, and all Claims for such fees and expenses, if any, will be disallowed.

**11.4 Withdrawal of Channeled Claims.** A Channeled Claimant may withdraw a Channeled Claim at any time on written notice to the [Settlement Election](#) Trustee. If withdrawn, (a) the Channeled Claim will be withdrawn with prejudice and may not be reasserted against any Person, and (b) as a condition to withdrawal of the Channeled Claim, any funds paid to the Channeled Claimant by the Trust shall be returned to the Trust.

**11.5 Supplementing Exhibit B to Add Participating Parties.**

Participating Party Agreement. After the Effective Date and notwithstanding any present exclusionary language contained in this Plan, upon the consent of the [Settlement Election](#) Trustee, any Person may become a Participating Party if the Bankruptcy Court, after notice and hearing, approves an agreement between such Person and the [Settlement Election](#) Trustee (a “**Participating Party Agreement**”). After the Effective Date, the [Settlement Election](#) Trustee shall have the exclusive authority to seek approval of such a Participating Party Agreement. Upon the Bankruptcy Court’s entry of a Final Order approving such an agreement, Exhibit B will be amended by the [Settlement Election](#) Trustee to include such Person. For the purposes of defining a Participating Party, the Persons listed on Exhibit B shall include their respective predecessors, successors, and assigns, or their respective employees, officers, agents, attorneys, and directors, except as provided in the agreement.

Rights of Additional Participating Parties. Any Person becoming a Participating Party shall have all of the rights, remedies, and obligations of a Participating Party notwithstanding that such Person originally may have been excluded as a Participating Party under any provision of the Plan, including, without limitation, the terms and conditions of the Channeling Injunction.

Retention of Jurisdiction. The Bankruptcy Court’s retained jurisdiction to approve a Participating Party Agreement under this Section shall include jurisdiction to determine the adequacy of the notice of a motion to approve such a Participating Party Agreement.

**11.6 Supplementing Exhibit C to add Settling Insurers.**

Additional Settling Insurers. After the Effective Date, upon the consent of the [Settlement Election](#) Trustee and the Reorganized Debtor, a Person may become a Settling Insurer if the Bankruptcy Court, after notice and hearing with opportunity, approves an agreement between such Person and the [Settlement Election](#) Trustee. After the Effective Date a Person may become a Settling Insurer with the consent of the [Settlement Election](#) Trustee and the Reorganized Debtor ~~and~~ upon approval of the Bankruptcy Court. If the addition of such Person is approved pursuant to a Final Order, Exhibit C will be deemed amended to include such Person.

Rights of Additional Settling Insurers. Any Person becoming a Settling Insurer shall have all of the rights, remedies, and duties of a Settling Insurer notwithstanding that such Person originally may have been excluded as a Settling Insurer under any provision of the Plan. Such rights, remedies, and duties shall include, without limitation, the terms and conditions of the Channeling Injunction.

Retention of Jurisdiction. The Bankruptcy Court's retained jurisdiction to approve an agreement under this Section shall include jurisdiction to determine the adequacy of notice of a motion to approve such an agreement.

**11.7 Future Claimant Process.** A Future Claimant must file a Claim with the Settlement Election Trustee on or before the fifth (5th) anniversary of the Effective Date. The Claim will be entitled to a Distribution from the Future Claimant Reserve, provided funds remain in such Future Claimant Reserve, only if the Settlement Election Trustee, in consultation with the FCR, determines that the Holder of such Claim has proven by a preponderance of the evidence that such Holder meets the definition of a Future Claimant and such Holder's Claim meets the definition of a Sexual Abuse Claim. Except as provided in the Plan, Future Claimants will have no right to payment or any other right under the Plan or against the Debtor, the Estate, or the Reorganized Debtor, or any of their respective property including any Revested Assets, or against the Settling Insurers, or the Participating Parties. Following the fifth (5th) anniversary of the Effective Date, any funds held in the Future Claimant Reserve shall be released to the Settlement Election Trustee to, ~~at the Trustee's discretion, (a)~~ administer to Holders of Abuse Claims consistent with the Trust Documents and the terms of this Plan. In the event that the remaining funds held, when combined with other Trust assets, total \$50,000 or less, the Settlement Election Trustee shall have the discretion to either (a) administer to Holders of Abuse Claims consistent with the Trust Documents and the terms of the Plan; or (b) distribute to a charitable entity mutually agreed upon by the Settlement Election Trustee and the Reorganized Debtor; *provided, however*, that any such funds shall not revert to the Debtor, the Estate, the Reorganized Debtor, the National Gymnastics Foundation, or the USOPC.

#### **11.8 Special Distribution Conditions.**

Medicare Secondary Payer. To the extent that any of the Trust, the Debtor, the Reorganized Debtor, the Settling Insurers or the Participating Parties are considered "responsible reporting entities" for purposes of MMSEA (and the Debtor does not concede or contend that they are), the Trust shall, at its sole expense, in connection with the implementation of the Plan, act as a reporting agent for the Debtor, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, as applicable, and shall timely submit all reports that would be required to be made by any of the Debtor, the Reorganized Debtor, the Participating Parties, or any of the Settling Insurers as a "responsible reporting entity" under MMSEA on account of any Claims settled, resolved, paid, or otherwise liquidated by the Trust or with respect to contributions to the Trust for purposes of MMSEA. The Trust, in its role as reporting agent, shall follow all applicable guidance published by the Centers for Medicare and Medicaid Services ("CMS") to determine whether or not, and, if so, how, to report to CMS pursuant to MMSEA.

Certification of Reports. If the Trust is required to act as a reporting agent for the Debtor, the Reorganized Debtor, the Participating Parties, or the Settling Insurers pursuant to the previous provision, the Trust shall provide a written certification to each of the Debtor, the Reorganized Debtor, the Participating Parties, and the Settling Insurers within ten (10) business days following the end of each calendar quarter, confirming that all reports to CMS required by the previous section have been submitted in a timely fashion, and identifying (a) any reports that were rejected or otherwise identified as noncompliant by CMS, along with the basis for such

rejection or noncompliance, and (b) any payments to Medicare Beneficiaries that the Trust did not report to CMS.

**Rejected or Non-Compliant Reports.** With respect to any reports rejected or otherwise identified as noncompliant by CMS, the Trust shall, upon request by the Debtor, the Reorganized Debtor, any Participating Party, or any of the Settling Insurers, promptly provide copies of the original reports submitted to CMS, as well as any response received from CMS with respect to such reports; *provided, however*, that the Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of Abuse Claimants, Future Claimants, guardians, conservators, and/or other personal representatives, as applicable. With respect to any such reports, the Trust shall reasonably undertake to remedy any issues of noncompliance identified by CMS and resubmit such reports to CMS, and, upon request by the Debtor, the Reorganized Debtor, the Participating Parties, or the Settling Insurers, provide the Debtor, the Reorganized Debtor, the Participating Parties, or the Settling Insurers copies of such resubmissions; *provided, however*, that the Trust may redact from such copies the names, Social Security numbers other than the last four digits, health insurance claim numbers, taxpayer identification numbers, employer identification numbers, mailing addresses, telephone numbers, and dates of birth of Abuse Claimants, Future Claimants, guardians, conservators, and/or other personal representatives, as applicable. In the event the Trust is unable to remedy any issue of noncompliance, the provisions of Section 11.8.7 shall apply.

**Reporting Agent Obligations.** If the Trust is required to act as a reporting agent for any of the Debtor, the Reorganized Debtor, the Participating Parties, or the Settling Insurers pursuant to the provisions of Section 11.8.1, with respect to each Claim of a Medicare Beneficiary that was paid by the Trust and not disclosed to CMS, the Trust shall, upon request by the Debtor, the Reorganized Debtor, any of the Participating Parties, or any of the Settling Insurers, promptly provide the last four digits of the Abuse Claimant's or Future Claimant's Social Security number, the year of the Abuse Claimant's or Future Claimant's birth, and any other information that may be necessary in the reasonable judgment of any of the Debtor, the Reorganized Debtor, the Participating Parties, or Settling Insurers to satisfy their obligations, if any, under MMSEA, as well as the basis for the Trust's failure to report the payment. In the event that any of the Participating Parties or Settling Insurers inform the Trust that it disagrees with the Trust's decision not to report a Claim paid by the Trust, the Trust shall promptly report the payment to CMS. All documentation relied upon by the Trust in making a determination that a payment did not have to be reported to CMS shall be maintained for a minimum of six (6) years following such determination.

**Duration of Reporting Agent Obligations.** If the Trust is required to act as a reporting agent for the Participating Parties or the Settling Insurers pursuant to the provisions of Section 11.8.1, the Trust shall make the reports and provide the certifications and perform the obligations required by Sections 11.8.1, 11.8.2, 11.8.3, or 11.8.4 until such time as the Debtor, the Reorganized Debtor, the Participating Parties, and each of the Settling Insurers determine, in their reasonable judgment, that they have no further legal obligation under MMSEA or otherwise to report any settlements, resolutions, payments, or liquidation determinations made by the Trust or contributions to the Trust. Furthermore, following any permitted cessation of reporting, or if



reporting has not previously commenced due to the satisfaction of one or more of the conditions set forth in Section 11.8.1, and if the Debtor, the Reorganized Debtor, the Participating Parties, or any of the Settling Insurers reasonably determines, based on subsequent legislative, administrative, regulatory, or judicial developments, that reporting is required, then the Trust shall promptly perform its obligations under Sections 11.8.1, 11.8.2, 11.8.3, or 11.8.4.

**Prophylactic Measures.** Section 11.8 is intended to be purely prophylactic in nature, and does not imply, and shall not constitute an admission, that the Debtor, the Reorganized Debtor, the Participating Parties, and/or the Settling Insurers are in fact “responsible reporting entities” or within the meaning of MMSEA, or that they have any legal obligation to report any actions undertaken by the Trust or contributions to the Trust under MMSEA or any other statute or regulation.

**Corrections of Reports.** In the event that CMS concludes that reporting done by the Trust in accordance with Section 11.8.1 is or may be deficient in any way, and has not been corrected to the satisfaction of CMS in a timely manner, or if CMS communicates to the Trust, the Debtor, the Reorganized Debtor, any of the Participating Parties, or any of the Settling Insurers a concern with respect to the sufficiency or timeliness of such reporting, or there appears to the Debtor, the Reorganized Debtor, the Participating Parties, or any of the Settling Insurers a reasonable basis for a concern with respect to the sufficiency or timeliness of such reporting or non-reporting based upon the information received pursuant to sections 11.8.2, 11.8.3, or 11.8.4, or other credible information, then each of the Debtor, the Reorganized Debtor, the Participating Parties, and the Settling Insurers shall have the right to submit its own reports to CMS under MMSEA, and the Trust shall provide to any party that elects to file its own reports such information as the electing party may require in order to comply with MMSEA, including the full reports filed by the Trust pursuant to Section 11.8.1 without any redactions. The Debtor, the Reorganized Debtor, the Participating Parties and the Settling Insurers shall keep any information they receive from the Trust pursuant to this Section confidential and shall not use such information for any purpose other than meeting obligations under MMSEA.

**Medicare Reporting Number.** Notwithstanding any other provisions hereof, the Trust shall not be required to report as required by this Section until each Person on whose behalf the Trust is required to report shall have provided its Medicare Reporting Number, if one exists. Moreover, the Trust shall have no indemnification obligation under Section 11.8.10 to such Person for any penalty, interest, or sanction with respect to a Claim that may arise solely on account of such Person’s failure timely to provide its Medicare Reporting Number, if one exists, to the Trust in response to a timely request by the Trust for such Medicare Reporting Number. However, nothing herein relieves the Trust from its reporting obligations with respect to each Person who provides the Trust with its Medicare Reporting Number. The Trust shall indemnify the Debtor, the Estate, the Reorganized Debtor, a Participating Party, or a Settling Insurer for any failure to report payments to Medicare-eligible Abuse Claimants or Future Claimants who have supplied Medicare Reporting Numbers, if any exist.

**Payment from the Trust.** In connection with the implementation of the Plan, the [Settlement Election](#) Trustee of the Trust shall obtain, prior to remitting funds to an Abuse Claimant’s or Future Claimant’s counsel, or to an Abuse Claimant or Future Claimant, if *pro se*, in respect of any Claim, a certification from the Abuse Claimant or Future Claimant to be paid that said Abuse

Claimant or Future Claimant has or will provide for the payment and/or resolution of any obligations owing or potentially owing under the MSP relating to such Claim; otherwise the Trust shall withhold from any payment to the Abuse Claimant or Future Claimant funds sufficient to assure that any obligations owing or potentially owing under the MSP relating to such Claim are paid to CMS. The Trust shall provide a quarterly certification of its compliance with this Section to each of the Debtor, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, and permit reasonable audits by such Persons, no more often than quarterly, to confirm the Trust's compliance with this Section. For the avoidance of doubt, the Trust shall be obligated to comply with the requirements of this Section regardless of whether any of the Participating Parties or the Settling Insurers elects to file its own reports under MMSEA pursuant to Section 11.8.7.

**Indemnification.** The Trust shall defend, indemnify, and hold harmless the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers from any Medicare Claims, and any Claims related to the Trust's obligations under this Section.

**Medicare Holdback.** The Trust shall establish a "**Medicare Holdback**" and such Medicare Holdback shall consist of the proceeds of the Plan Payment. The Trust shall not distribute any portion of the Medicare Holdback until such time as the Medicare Procedures (defined below) are completed by the Trust. The "**Medicare Procedures**" to be completed by the Trust are as follows: (i) immediately upon the Effective Date, the [Settlement Election](#) Trustee shall make a query to the Social Security Administration (the "**SSA Query**"), with respect to each Abuse Claimant or Future Claimant, to determine whether each Abuse Claimant or Future Claimant is eligible to receive, is receiving, or has received Medicare benefits ("**Medicare Eligible**"); (ii) within ten (10) calendar days after the Effective Date, the Trust shall provide to the Settling Insurers and Participating Parties, and, if requested, the Reorganized Debtor, information sufficient to allow them to perform their own SSA queries to the extent they wish to do so; (iii) in the event that one or more Abuse Claimants or Future Claimants is identified through the SSA Query as Medicare Eligible, the Trust shall complete a query to CMS for each such Abuse Claimant or Future Claimant to determine whether any payment ("**Conditional Payment**") made pursuant to Section 1395y(b)(2)(B) of the MSP has been made to or on behalf of that Abuse Claimant or Future Claimant arising from or relating to treatment for abuse; (iv) if any Conditional Payment has been made to or on behalf of that Abuse Claimant or Future Claimant, the [Settlement Election](#) Trustee shall, within the time period called for by the MSP, reimburse the appropriate Medicare Trust Fund for the appropriate amount, and submit the required information for that Abuse Claimant or Future Claimant to the appropriate agency of the United States government; and upon resolution of all CMS inquiries or matters relating to the foregoing provisions of this Section 11.8.11, the Medicare Holdback shall be immediately available for distribution by the Trust. The [Settlement Election](#) Trustee's obligation to make the reimbursements required by Section 11.8.11(iv) above and to indemnify the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers with respect to Medicare Claims, Claims of an Abuse Claimant or Future Claimant, and Claims against a Settling Insurer Policy related to Sexual Abuse or the Non-Sexual Abuse Claims is not limited to the amount of the Medicare Holdback.

## ARTICLE XII. CHANNELING INJUNCTION

**12.1 Effective Date Injunctions.** THE INJUNCTIONS PROVIDED FOR IN THIS PLAN SHALL BE DEEMED ISSUED, ENTERED, VALID, AND ENFORCEABLE ACCORDING TO THEIR TERMS. THE INJUNCTIONS SHALL BE PERMANENT AND IRREVOCABLE AND MAY ONLY BE MODIFIED BY THE BANKRUPTCY COURT.

**12.2 Channeling Injunction Preventing Prosecution of Abuse Claims.** IN CONSIDERATION OF THE UNDERTAKINGS OF THE PARTICIPATING PARTIES AND SETTLING INSURERS PURSUANT TO THE TERMS OF THIS PLAN, INCLUDING THE FUNDING OF THE TRUST, AND TO FURTHER PRESERVE AND PROMOTE THE SETTLEMENTS EMBEDDED IN THIS PLAN BETWEEN AND AMONG THE PARTICIPATING PARTIES, THE SETTLING INSURERS, AND THE DEBTOR, AND PURSUANT TO SECTIONS 105, 363, AND 1129 OF THE BANKRUPTCY CODE:

- (A) ANY AND ALL CHANNELED CLAIMS ARE CHANNELED INTO THE TRUST AND SHALL BE TREATED, ADMINISTERED, DETERMINED, AND RESOLVED UNDER THE PROCEDURES AND PROTOCOLS AND IN THE AMOUNTS AS ESTABLISHED UNDER THE PLAN AND TRUST AGREEMENT AS THE SOLE AND EXCLUSIVE REMEDY FOR ALL HOLDERS OF CHANNELED CLAIMS; AND
- (B) ALL PERSONS THAT HAVE HELD OR ASSERTED, HOLD OR ASSERT, OR MAY IN THE FUTURE HOLD OR ASSERT, ANY CHANNELED CLAIM (INCLUDING ALL DEBT HOLDERS, GOVERNMENTAL, TAX, AND REGULATORY AUTHORITIES, LENDERS, TRADE AND OTHER CREDITORS, ABUSE CLAIMANTS, FUTURE CLAIMANTS, OTHER INSURERS, AND ALL OTHERS HOLDING CLAIMS OR INTERESTS OF ANY KIND OR NATURE WHATSOEVER) ARE HEREBY PERMANENTLY STAYED, ENJOINED, BARRED, AND RESTRAINED FROM TAKING ANY ACTION, DIRECTLY OR INDIRECTLY, FOR THE PURPOSES OF ASSERTING, ENFORCING, OR ATTEMPTING TO ASSERT OR ENFORCE ANY CHANNELED CLAIM, INCLUDING:
  - i. COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND WITH RESPECT TO ANY CHANNELED CLAIM AGAINST THE PROTECTED PARTIES OR AGAINST THE PROPERTY OF THE PROTECTED PARTIES;
  - ii. ENFORCING, ATTACHING, COLLECTING OR RECOVERING, BY ANY MANNER OR MEANS, FROM THE PROTECTED PARTIES, OR FROM THE PROPERTY OF THE PROTECTED PARTIES, WITH RESPECT TO ANY SUCH CHANNELED CLAIM, ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE PROTECTED PARTIES;

- iii. CREATING, PERFECTING OR ENFORCING ANY LIEN OF ANY KIND AGAINST THE PROTECTED PARTIES, OR THE PROPERTY OF THE PROTECTED PARTIES, WITH RESPECT TO ANY SUCH CHanneled CLAIM;
- iv. ASSERTING, IMPLEMENTING, OR EFFECTUATING ANY CHanneled CLAIM OF ANY KIND AGAINST: (1) THE PROTECTED PARTIES; (2) ANY DIRECT OR INDIRECT OBLIGATION DUE TO THE PROTECTED PARTIES; OR (3) THE PROPERTY OF THE PROTECTED PARTIES, WITH RESPECT TO ANY SUCH CHanneled CLAIM; AND
- v. TAKING ANY ACTION, IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM TO, OR COMPLY WITH, THE PROVISIONS OF THE PLAN.

**ALL CLAIMS DESCRIBED IN THIS SECTION 12.2 SHALL BE CHanneled TO THE TRUST. THIS INJUNCTION SHALL NOT APPLY TO ANY REINSURANCE CLAIM.**

SCOPE OF CHANNELING INJUNCTION. NOTWITHSTANDING ANY PROVISION OF THIS PLAN, THE FOREGOING “CHANNELING INJUNCTION PREVENTING PROSECUTION OF ABUSE CLAIMS” PROVIDES ABSOLUTELY NO PROTECTION TO (A) A PERSON OR PERSONS HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR, A PARTICIPATING PARTY, OR A SETTling INSURER; (B) ANY PERSON ON ACCOUNT OF CLAIMS EXCEPTED FROM THE EXCULPATION UNDER SECTION 19.4; AND (C) TO THE EXTENT THE TWISTARS SETTling INSURERS ARE ALSO INSURERS TO THE DEBTOR OR TO THE USOPC UNDER POLICIES ISSUED SD TO THE DEBTOR OR THE USOPC, THIS INJUNCTION SHALL NOT APPLY TO CLAIMS BY THE DEBTOR OR THE USOPC AGAINST ANY OF THE TWISTARS SETTling INSURERS IN THEIR CAPACITY AS AN INSURER TO THE DEBTOR OR THE USOPC UNDER POLICIES ISSUED SD TO THE DEBTOR OR THE USOPC, AS THE CASE MAY BE.

ENFORCEMENT TO THE MAXIMUM EXTENT. TO THE EXTENT NOT OTHERWISE ENJOINED IN SECTION 12.2, THE ASSERTION OR ENFORCEMENT OF CHanneled CLAIMS, AND ANY ATTEMPT TO ASSERT OR ENFORCE SUCH CLAIMS, BY ANY PERSON, AGAINST A PARTICIPATING PARTY OR SETTling INSURER IS HEREBY PERMANENTLY STAYED, ENJOINED, BARRED, AND RESTRAINED.

**12.3 SETTling INSURER INJUNCTION.** IN CONSIDERATION OF THE UNDERTAKINGS OF THE SETTling INSURERS PURSUANT TO THE TERMS OF THIS PLAN, INCLUDING THE FUNDING OF THE TRUST, AND TO FURTHER PRESERVE AND PROMOTE THE SETTLEMENTS EMBEDDED IN THIS PLAN BETWEEN AND AMONG THE SETTling INSURERS, AND THE DEBTOR, AND PURSUANT TO SECTIONS 105, 363, AND 1129 OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, ANY AND ALL ~~PERSONS~~~~CLAIMANTS~~~~PERSONS~~ (INCLUDING, WITHOUT LIMITATION, ALL DEBT HOLDERS, ALL EQUITY HOLDERS, GOVERNMENTAL, TAX,

AND REGULATORY AUTHORITIES, LENDERS, TRADE AND OTHER CREDITORS, ABUSE CLAIMANTS, FUTURE CLAIMANTS, OTHER INSURERS, AND ALL OTHERS HOLDING CLAIMS OR INTERESTS OF ANY KIND OR NATURE WHATSOEVER) ARE PERMANENTLY ENJOINED AND BARRED FROM ASSERTING AGAINST A SETTLING INSURER ANY CLAIM (INCLUDING ANY INSURANCE COVERAGE CLAIM, EXTRA-CONTRACTUAL CLAIM, CONTRIBUTION CLAIM, OR SUBROGATION CLAIM) OR INTEREST OF ANY KIND OR NATURE WHATSOEVER ARISING FROM OR RELATING IN ANY WAY TO (A) ANY ABUSE CLAIM OR FUTURE CLAIM OR (B) ANY OF THE SETTLING INSURER POLICIES OR (C) ANY CLAIM AGAINST ANY SETTLING INSURER FOR CONTRIBUTION, INDEMNITY, DEFENSE, SUBROGATION, OR SIMILAR RELIEF THAT ARISES DIRECTLY OR INDIRECTLY FROM ANY CLAIM AGAINST THE DEBTOR, ANY SETTLING INSURER POLICY, OR INSURANCE COVERAGE FOR ABUSE CLAIMS UNDER ANY NON-DEBTOR CGL SETTLING INSURER COVERED PERSONS POLICY OR THE TWISTARS SETTLEMENT PARTIES; PROVIDED, HOWEVER, THAT SUCH INJUNCTION SHALL NOT APPLY TO THE HOLDER OF THE PERSONAL INJURY CLAIM AND HER ABILITY TO PURSUE RECOVERY FROM THE PERSONAL INJURY INSURANCE POLICY. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THE TWISTARS SETTLING INSURERS ARE ALSO INSURERS TO THE DEBTOR OR TO THE USOPC UNDER POLICIES ISSUED TO THE DEBTOR OR THE USOPC, THIS SETTLING INSURER INJUNCTION SHALL NOT APPLY TO CLAIMS BY THE DEBTOR OR THE USOPC AGAINST ANY OF THE TWISTARS SETTLING INSURERS IN THEIR CAPACITY AS AN INSURER TO THE DEBTOR OR THE USOPC UNDER POLICIES ISSUED TO THE DEBTOR OR THE USOPC, AS THE CASE MAY BE.

**12.4 TERM OF INJUNCTIONS OR STAYS AND CONFIRMATION OF SETTLEMENTS WITH PARTICIPATING PARTIES AND SETTLING INSURERS.** ALL INJUNCTIONS AND STAYS PROVIDED FOR IN THIS PLAN AND UNDER THE INJUNCTIVE PROVISIONS OF SECTIONS 105(a), 524 AND 1141 OF THE BANKRUPTCY CODE ARE PERMANENT AND WILL REMAIN IN FULL FORCE AND EFFECT FOLLOWING THE EFFECTIVE DATE AND ARE NOT SUBJECT TO BEING VACATED OR MODIFIED.

**12.5 RELEASE OF AVOIDANCE CLAIMS AGAINST PARTICIPATING PARTIES, NON-DEBTOR CGL SETTLING INSURER PERSONS, AND SETTLING INSURERS AND THEIR RELATED PERSONS.** ON THE EFFECTIVE DATE, ALL AVOIDANCE RIGHTS OF THE DEBTOR, THE ESTATE, AND THE REORGANIZED DEBTOR, INCLUDING THOSE ARISING UNDER SECTIONS 544, 547, 548, 549, 550, AND 553 OF THE BANKRUPTCY CODE, AGAINST EACH OF THE PARTICIPATING PARTIES, NON-DEBTOR CGL SETTLING INSURER PERSONS, AND SETTLING INSURERS (AND THEIR RELATED PERSONS) SHALL BE DEEMED SETTLED, COMPROMISED, AND RELEASED BY THIS PLAN.

**12.6 MUTUAL RELEASE.** EXCEPT FOR OBLIGATIONS ARISING UNDER ANY EXECUTORY CONTRACT ASSUMED BY THE REORGANIZED DEBTOR PURSUANT TO ARTICLE XX OF THIS PLAN, OBLIGATIONS UNDER THE PLAN, AND CLAIMS EXCEPTED FROM EXCULPATION AND DISCHARGE UNDER SECTIONS 19.1 AND 19.4, ON THE EFFECTIVE DATE, THE DEBTOR, THE ESTATE, AND THE



REORGANIZED DEBTOR, ON THE ONE HAND, AND THE PARTICIPATING PARTIES, THE NON-DEBTOR CGL SETTLING INSURER COVERED PERSONS, AND SETTLING INSURERS, ON THE OTHER HAND, WAIVE, RELEASE, AND DISCHARGE ANY AND ALL CLAIMS OR CAUSES OF ACTION OF EVERY KIND AND NATURE THAT THEY MAY HAVE AGAINST EACH OTHER, AND THEIR RESPECTIVE RELATED PERSONS. NO SUCH CLAIM WILL SURVIVE THE EFFECTIVE DATE. NO SUCH CLAIM WILL BE DEEMED TO BE ASSIGNED TO THE TRUST. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THE TWISTARS SETTLING INSURERS ARE ALSO INSURERS TO THE DEBTOR OR TO THE USOPC UNDER POLICIES ISSUED TO THE DEBTOR OR THE USOPC, THIS MUTUAL RELEASE SHALL NOT APPLY TO CLAIMS BY THE DEBTOR OR THE USOPC AGAINST ANY OF THE TWISTARS SETTLING INSURERS IN THEIR CAPACITY AS AN INSURER TO THE DEBTOR OR THE USOPC UNDER POLICIES ISSUED DS TO THE DEBTOR OR THE USOPC, AS THE CASE MAY BE.

12.8 PROTECTED PARTY RELEASE. IN CONSIDERATION OF THE CHANNELING INJUNCTION AND THEIR RESPECTIVE TREATMENT AS A PROTECTED PARTY UNDER THE TERMS OF THIS PLAN, ON THE EFFECTIVE DATE OF THE PLAN, EACH AND EVERY PROTECTED PARTY SHALL GRANT, AND SHALL BE DEEMED TO HAVE GRANTED, TO EACH SETTLING INSURER AND ITS RELATED PERSONS A FULL AND COMPLETE GENERAL RELEASE OF ALL CLAIMS OR CAUSES OF ACTION WHATSOEVER, KNOWN OR UNKNOWN, THAT SUCH PROTECTED PARTY HAD, HAS, OR MAY HAVE HAD AGAINST SUCH SETTLING INSURER (OR ITS RELATED PERSONS) OR WITH RESPECT TO ANY CGL INSURANCE POLICY, OTHER INSURANCE POLICY, OR NON-DEBTOR CGL SETTLING INSURER COVERED PERSON POLICY ISSUED BY ANY SETTLING INSURER OR OTHER INSURER RELATING TO OR ARISING OUT OF OR WITH REPECT TO ANY AND ALL CHanneled CLAIMS. THIS PROTECTED PARTY RELEASE SHALL BE IN FULL FORCE AND EFFECT UPON THE EFFECTIVE DATE OF THE PLAN AND WITHOUT REGARD TO WHETHER EACH PROTECTED PARTY EXECUTES AND DELIVERS A SEPARATE RELEASE OF ALL SUCH CLAIMS TO EACH SETTLING INSURER AND SHALL CONSTITUTE THEIR CONSENT TO SALE OF THE CGL INSURANCE POLICIES BACK TO THE SETTLING INSURERS.~~INSURER-INSURED RELEASE. EXCEPT FOR OBLIGATIONS UNDER THE PLAN AND CLAIMS EXCEPTED FROM EXCULPATION AND DISCHARGE UNDER SECTIONS 19.1 AND 19.4, ON THE EFFECTIVE DATE, THE PARTICIPATING PARTIES AND NON-DEBTOR CGL SETTLING INSURER COVERED PERSONS, ON THE ONE HAND, AND THE SETTLING INSURERS, ON THE OTHER HAND, WAIVE, RELEASE, AND DISCHARGE ANY AND ALL CLAIMS OR CAUSES OF ACTION OF EVERY KIND AND NATURE THAT THEY MAY HAVE AGAINST EACH OTHER, AND THEIR RESPECTIVE RELATED PERSONS RELATED SOLELY TO CHanneled CLAIMS.~~

12.9 NOTWITHSTANDING ANY OTHER PROVISION OF THIS PLAN, USOPC'S RELEASE OF ANY RIGHTS AND INTERESTS IN DEFENSE AND INDEMNITY COVERAGE (INCLUDING BY POLICY BUY-BACK) FOR PAST, PRESENT, OR FUTURE, KNOWN OR UNKNOWN, ABUSE CLAIMS UNDER ANY CGL INSURANCE

**POLICY, OTHER INSURANCE POLICY, OR NON-DEBTOR CGL SETTling INSURER COVERED PERSON POLICY IS A RELEASE ONLY TO THE EXTENT THAT THE ABUSE CLAIMANT HAS PROVIDED A RELEASE TO USOPC PURSUANT TO SECTION 11.1 OF THE PLAN.**

**ARTICLE XIII. SETTLEMENT ELECTION INSURANCE NEUTRALITY**

**13.1 No Modification of Insurance Policies of Non-Settling Insurers.** Nothing in this Plan, the Confirmation Order, or in any Plan Document modifies any of the terms of any Non-Settling Insurers' Insurance Policies.

**13.2 Non-Settling Insurers' Duties Not Impaired.** The duties and obligations, if any, of Non-Settling Insurers under their respective Insurance Policies shall not be impaired, altered, reduced, or diminished by: (a) the discharge granted to the Debtor under the Plan pursuant to Section 1141(d) of the Bankruptcy Code; or (b) the exonerations, exculpations, and releases contained in the Plan.

**13.3 Obligations for Claims.** The Non-Settling Insurers' obligations, if any, with respect to any Claim, shall be determined by and in accordance with the terms of their respective Insurance Policies and applicable non-bankruptcy law.

**13.4 Direct Actions.** Any right to sue any Non-Settling Insurer directly, in connection with a Claim or any Insurance Policy, shall be determined by and in accordance with the terms of their respective Insurance Policies and applicable non-bankruptcy law.

**13.5 Defenses of the Debtor, the Estate, and the Reorganized Debtor.** Nothing in the Plan, the Confirmation Order, or any other Plan Document shall diminish or impair the Debtor's, the Estate's, or the Reorganized Debtor's defenses to liability or damages in connection with any insured Claim and the right of any Non-Settling Insurer that is defending the Reorganized Debtor to assert any such underlying defenses to liability.

**13.6 Governing Law.** Nothing in this Plan is intended to affect the governing law of the respective Insurance Policies of the Non-Settling Insurers.

**ARTICLES APPLICABLE TO LITIGATION ELECTION ONLY**

**ARTICLE XIV. LITIGATION ELECTION IMPLEMENTATION**

**14.1 Lifting of Automatic Stay and Stay Imposed Under the 105 Order for the Benefit of the Holders of Class 6 Claims.** On the Effective Date, the automatic stay shall be lifted only for the Holders of Class 6 Claims and the injunction imposed by the 105 Order will be dissolved. Holders of Class 6 Claims who had not filed a Pre-Petition Lawsuit against the Debtor shall have, subject to any and all defenses, including any applicable statute of limitations or repose, or the equitable doctrine of laches, thirty (30) days pursuant to Section 108(c) of the Bankruptcy Code, to file such lawsuit in a court of appropriate jurisdiction against the Debtor; *provided, however*, that the sole source of recovery for such Claims shall be any proceeds of the Debtor's CGL Insurance Policies (and Other Insurance Policies, if any, that provide coverage for Class 6 Claims). Holders of a Class 6 Claim who filed a Pre-Petition Lawsuit against the Debtor or any Co-

Defendants shall have thirty (30) days to file a notice in such Pre-Petition Lawsuit stating that the Claimant is electing to recommence litigation against the Reorganized Debtor in name only pursuant to the terms of the Plan; *provided, however*, that the sole source of recovery for such Claims shall be limited to available ~~any~~ proceeds of the Debtor's CGL Insurance Policies (and Other Insurance Policies, if any, that provide coverage for Class 6 Claims). A Holder of a Class 6 Claim that does not file a suit or file a notice to recommence litigation of a Pre-Petition Lawsuit within such thirty (30) day period shall be forever barred from asserting the Holder's Claim. The Debtor does not admit liability for any of the alleged Class 6 Claims and reserves all rights and defenses, and all rights and defenses, including coverage defenses, under any of the Debtor's Insurance Policies are also expressly reserved and preserved.

**14.2 Post-Effective Date Awards.** In the event that any Holder of a Class 6 Claim obtains a Post-Effective Date Award against the Reorganized Debtor, the Reorganized Debtor will not object to the Claimant pursuing payment from any CGL Insurer that the Claimant contends provides CGL Insurance Coverage for such Post-Effective Date Award. To the extent the Holder of a Class 6 Claim pursues payment from an Insurer other than a CGL Insurer, the Debtor and Reorganized Debtor reserves its right to object.

**14.3 Cooperation with Insurers in Defense of Claims.** In the event that any Holder of a Class 6 Claim prosecutes an action against the Reorganized Debtor, the Reorganized Debtor shall reasonably cooperate, in accordance with the terms of any applicable Insurance Policy, governing law, and consistent with the terms of this Plan. The Debtor does not admit liability for any such Claims, with any Insurer that is providing a defense to such a Claim, but the Reorganized Debtor shall not be required to pay for the costs of any such defense or cooperation, which will be paid solely by the Insurer(s) providing the defense. The Debtor does not admit liability for any such Claims. Because the Debtor shall be sued in name only, the Insurer(s) providing the defense shall have the absolute right to control and pay for the defense, and settle those matters as it deems prudent, pursuant to the terms, limits, provisions and exclusions of the defending Insurer(s) policy(ies).

**14.4 Remand of Removed Actions and Relief from Automatic Stay/Discharge.** On the thirtieth (30th) day after the Effective Date and without further order of the Bankruptcy Court or the District Court, (a) all actions removed by the Debtor or any other Co-Defendant during the Chapter 11 Case are remanded to the Court from which they were removed; and (b) such actions are not subject to the automatic stay or the injunction in Bankruptcy Code Section 524(a)(2). Nothing contained herein is intended to affect, diminish, or impair those provisions of this Plan which prohibit execution of any judgment against the Reorganized Debtor, the Reorganized Debtor's Revested Assets or property the Reorganized Debtor acquires after the Effective Date. Notwithstanding the foregoing, any plaintiff in a removed action may object to remand of such action by filing an objection with the Bankruptcy Court within fifteen (15) days after the Effective Date. Any removed action subject to an objection to remand shall not be remanded except upon order of the Bankruptcy Court. The Reorganized Debtor shall file a notice of remand on the docket for each remanded action.



**14.5 Obligations of the Reorganized Debtor.** The Reorganized Debtor will:

- (a) In the exercise of its business judgment, review all Claims filed against the Estate except for Abuse Claims, the Personal Injury Claim, the USOPC Claim, and the Indemnification Claims, and, if advisable, object to such Claims; however, all Claim in Classes 6, 7, 8, 9, 10 and 11 shall be deemed objected to if the Settlement Election is not selected.
- (b) In the exercise of its business judgment, investigate, prosecute, settle, dismiss, or otherwise resolve all Causes of Action that are not resolved under this Plan. Unless otherwise provided in this Plan, the Reorganized Debtor will be entitled to receive recoveries from Causes of Action, including Insurance Reimbursement Claims, and from Insurance Policies other than recoveries for Post-Effective Date Awards.
- (c) Notwithstanding anything to the contrary in this Plan, honor all of the Debtor's obligations under the Insurance Policies issued by the Insurers and under applicable non-bankruptcy law, with the Reorganized Debtor's attorneys' fees, costs, and expenses incurred in doing so, if any, to be paid by the Insurers, as provided under the Insurance Policies.

**ARTICLE XV. LITIGATION ELECTION INSURANCE NEUTRALITY**

**15.1 No Modification of Insurance Policies.** Notwithstanding anything to the contrary in the Confirmation Order, the Plan or any Plan Documents (including any other provision that purports to be pre-emptory or supervening), nNothing in theis Plan, the Confirmation Order, or any Plan Document modifies any of the terms of any Insurer's Insurance Policy, or shall in any way operate to, or have the effect of impairing any Insurer's legal, equitable or contractual rights, if any, in respect of any Claims. The rights of Insurers shall be determined under the respective Insurance Policies and any applicable settlement by an Insurer and under applicable law. Further, none of (a) the Bankruptcy Court's approval of the Plan or the Plan Documents, (b) the Confirmation Order or any findings and conclusions entered with respect to Confirmation, nor (c) any estimation or valuation of any Abuse Claims, either individually or in the aggregate (including, without limitation, any agreement as to the valuation of Abuse Claims) in the Chapter 11 Cases shall, with respect to any CGL Insurer or USOPC Insurer, constitute a trial or hearing on the merits or an adjudication or judgment, or accelerate the obligations, if any, of any CGL Insurer or USOPC Insurer under its respective insurance policies.

**15.2 Insurers' Obligations Not ModifiedImpaired.** The Confirmation Order and the Plan Documents shall not impair or diminish any Insurer's legal, equitable, or contractual rights or obligations relating to the Insurance Policies, or the Insurance Reimbursement Claims against the Insurers in any respect. ~~Subject to collateral estoppel and res judicata,~~Iin the event that any court determines that any provision of this Plan impairs or diminishes any Insurer's rights or obligations with respect to the Insurance Policies, such provision of this Plan shall be given effect only to the extent that it shall not cause such impairment or diminishment.

**15.3 Insurers' Duties Not ~~Modified~~ Impaired.** The rights, duties and obligations, if any, of the Insurers under each Insurer's Insurance Policy shall not be impaired, altered, reduced, or diminished by: (a) the discharge granted to the Debtor under the Plan pursuant to Section 1141(d) of the Bankruptcy Code; or (b) the exonerations, exculpations, and releases contained in the Plan.

**15.4 Insurers' Rights Under Insurance Policies.** ~~No provision of this Plan, the Confirmation Order, or any Plan Document shall diminish or impair the rights of any Insurer under its Insurance Policy or the rights of an Insurer to assert any defense to any Insurance Reimbursement Claim or to any Claim for coverage for Abuse Claims. Nothing in the Plan, any Plan Document, or in the Confirmation Order shall preclude any Insurer from asserting in any proceeding any and all claims, defenses, exclusions, rights or causes of action that it has or may have under or in connection with any Insurance Policy or settlement agreement. Nothing in the Plan, any Plan Document, or Confirmation Order shall be deemed to waive, any claims, defenses, exclusions, rights or causes of action that any Insurer may have under the provisions, terms, conditions, defenses and/or exclusions contained in the Insurance Policies, including, but not limited to any and all such Claims, defenses, rights or causes of action based upon or arising out of Abuse Claims.~~

**15.5 Additional Insureds' Rights.** No provision of this Plan, the Confirmation Order, or any Plan Document shall diminish or impair the rights of any insured or additional insured under the Debtor's Insurance Policies.

**15.6 Insurers' Obligations for Claims.** An Insurer's obligations, with respect to any Claim, and the obligations of any entity for whom or on whose behalf coverage is sought, shall be determined by and in accordance with the terms of the Insurance Policies and applicable non-bankruptcy law.

**15.7 Direct Actions.** Any right to sue any Insurer directly, in connection with a Claim or any Insurance Policy, shall be determined by and in accordance with the terms of the Insurance Policies and applicable non-bankruptcy law.

**15.8 Insurers' Defenses.** Nothing in this Plan, the Confirmation Order, or any Plan Document shall constitute a finding or determination that the Debtor and/or any third party is or is not a named insured, additional insured, or insured in any other way under any Insurance Policy; or that any Insurer has or does not have any defense or indemnity obligation with respect to any Claim. No defense, denial, or position of an Insurer shall be impaired or prejudiced in any insurance coverage dispute. Such rights shall be determined by and in accordance with the terms of the Insurance Policies and applicable non-bankruptcy law. Nothing in the Plan, any Plan Document, or Confirmation Order creates a right of direct action not in accordance with applicable state law or Insurance Policy or eliminates a right of direct action in accordance with applicable state law or Insurance Policy.

**15.9 Defenses of the Debtor, the Estate, and the Reorganized Debtor.** Nothing in the Plan, the Confirmation Order, or any other Plan Document shall diminish or impair the Debtor's, the Estate's, or the Reorganized Debtor's defenses to liability or damages in connection with any insured Claim ~~and~~ the right of any Insurer that is defending the Reorganized Debtor to assert any such underlying defenses to liability.

**15.10 Governing Law.** Nothing in this Plan is intended to affect the governing law of any Insurance Policy.

## **GENERALLY APPLICABLE ARTICLES**

### **ARTICLE XVI. CLAIMS AND DISTRIBUTIONS**

**16.1 Lift of Automatic Stay for Personal Injury Claim.** On the Effective Date, the automatic stay of litigation against the Debtor will be modified solely to permit the Holder of the Personal Injury Claim to file a lawsuit against the Debtor in a court of appropriate jurisdiction within thirty (30) days, subject to any applicable statute of limitations or repose, or the equitable doctrine of laches, and pursuant to Section 108(c) of the Bankruptcy Code; *provided, however*, that the sole source of recovery for the Personal Injury Claimant shall be any proceeds of the Personal Injury Insurance Policy. In the event the Personal Injury Claimant prosecutes an action against the Reorganized Debtor, the Reorganized Debtor shall reasonably cooperate, in accordance with the terms of the Personal Injury Insurance Policy, governing law, and consistent with the terms of this Plan, with the Insurer that is providing a defense to such a Claim, but the Reorganized Debtor shall not be required to pay for the costs of any such defense or cooperation. The Debtor admits no liability for the Personal Injury Claim. If the Holder of the Personal Injury Claim does not file suit within such thirty (30) day period, the Holder of the Personal Injury Claim shall be forever barred from asserting the Holder's Claim.

**16.2 Objections to Claims other than Abuse Claims, the Personal Injury Claim, the USOPC Claim, Indemnification Claims, and the FCR Claim.** Unless a Claim is (a) expressly described as an Allowed Claim pursuant to or under the Plan; or (b) otherwise becomes an Allowed Claim prior to the Effective Date, upon the Effective Date, the Reorganized Debtor shall be deemed to have a reservation of any and all rights, interests, and objections of the Debtor, or the Estate, to any and all Claims and motions or requests for the payment of or on account of Claims, whether administrative expense, priority, secured, or unsecured, and whether under the Bankruptcy Code, other applicable law, or contract. The Debtor's failure to object to any Claim in the Chapter 11 Case shall be without prejudice to the Reorganized Debtor's rights to object to, contest or otherwise defend against such Claim in the Bankruptcy Court as set forth in this Section when and if such Claim is sought to be enforced by the Holder of such Claim. Objections to a Claim (except for Abuse Claims, the Indemnification Claim, and the Personal Injury Claim) as to which no objection is pending as of the Effective Date, must be filed and served not later than sixty (60) days after the later of (a) the Effective Date or (b) the date such Claim is filed, provided that the Reorganized Debtor may request (and the Bankruptcy Court may grant) extensions of such deadline, or of any Bankruptcy Court approved extensions thereof, by filing a motion with the Bankruptcy Court without any requirement to provide notice to any Person, based upon a reasonable exercise of the Reorganized Debtor's business judgment. A motion seeking to extend the deadline to object to any Claim shall not be deemed an amendment to the Plan.

**16.3 Service of Objections.** An objection to a Claim shall be deemed properly served on the Holder of such Claim if the objector effects service by any of the following methods: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (b) to the extent counsel for such Holder is unknown, by first class mail, postage prepaid, on the signatory on the proof of Claim or other representative identified on the

proof of Claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of such Holder in the Chapter 11 Case.

**16.4 Additional Documentation.** From and after the Effective Date, the Reorganized Debtor shall be authorized to enter into, execute, adopt, deliver, and/or implement all contracts, leases, instruments, releases, and other agreements or documents necessary to effectuate or memorialize the settlements contained in this Plan without further Order of the Bankruptcy Court.

**16.5 Provisions Governing Distribution To Holders of Allowed Claims.**

**Distribution Only to Holders of Allowed Claims.** Distributions under this Plan and the Plan Documents will be made only to the Holders of Allowed Claims. Until a Disputed Claim becomes an Allowed Claim, the Holder of that Disputed Claim will not receive any Distribution otherwise provided to the Claimants under this Plan. If necessary in determining the amount of a Pro Rata distribution due to the Holders of Allowed Claims in any Class, the Reorganized Debtor will make the Pro Rata calculation as if all unresolved Claims were Allowed Claims in the full amount claimed or in the Estimated Amount. When an unresolved Claim in any Class becomes an Allowed Claim, the Reorganized Debtor will make full or partial distributions, as applicable, with respect to such Allowed Claim, net of any setoff contemplated by the order, if any, allowing such Claim and/or any required withholding of applicable federal and state taxes.

**Timing of Distributions.** Unless otherwise agreed by the Reorganized Debtor and the recipient of a distribution under this Plan on account of an Allowed Claim, whenever any payment to be made is due on a day other than a Business Day, such payment will instead be made on the next Business Day, with interest to the extent expressly contemplated by this Plan or any applicable agreement or instrument. Any Claimant that is otherwise entitled to an Undeliverable Distribution and who does not provide the Reorganized Debtor, within thirty (30) days after a Distribution is deemed to be an Undeliverable Distribution, a written notice asserting its claim to that Undeliverable Distribution and setting forth a current, deliverable address, will be deemed to waive any claim to such Undeliverable Distribution and will be forever barred from receiving such Undeliverable Distribution or asserting any Claim against the Reorganized Debtor or its property. Any Undeliverable Distributions that are not claimed under this Section will be retained by the Reorganized Debtor in accordance with the Plan. Nothing in the Plan requires the Reorganized Debtor to attempt to locate any Claimant who is otherwise entitled to an Undeliverable Distribution.

**Waiver of Distribution.** If an instrument delivered as a Distribution to a Claimant is not negotiated within one hundred and twenty (120) days after such instrument is sent to the Claimant, that instrument shall be null and void, the Claimant shall be deemed to have waived such Distribution, and such Distribution shall become Cash available to the Reorganized Debtor.

**Form of Distributions.** Unless otherwise agreed by the Reorganized Debtor and the recipient of a Distribution under this Plan, all Distributions will be made, at the option of the Reorganized Debtor, by a check by first class mail, postage prepaid, or by wire or ACH transfer.

**No Professional Fees or Expenses.** No professional fees or expenses incurred by a Claimant will be paid by the Debtor, the Estate, or the Reorganized Debtor, except as specified in this Plan.

**16.6 No Distributions Pending Allowance.** No payments or distributions will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order, and the Disputed Claim has become an Allowed Claim; *provided, however*, that in the event that only a portion of such Disputed Claim is an Allowed Claim, the Reorganized Debtor may, in its discretion, make a distribution on account of the portion of such Claim that is an Allowed Claim.

**16.7 Claim Estimation.** In order to effectuate distributions pursuant to the Plan and avoid undue delay in the administration of the Chapter 11 Case, the Debtor and the Estate (if prior to the Effective Date) and the Reorganized Debtor (on and after the Effective Date), after notice and a hearing (which notice may be limited to the Holder of such Disputed Claim), shall have the right to seek an Order of the Bankruptcy Court or the District Court, pursuant to Section 502(c) of the Bankruptcy Code, estimating or limiting, on account of a Disputed Claim, the amount of (a) property that must be withheld from or reserved for distribution purposes on account of such Disputed Claim, (b) such Claim for allowance or disallowance purposes, or (c) such Claim for any other purpose permitted under the Bankruptcy Code; *provided, however*, that the Bankruptcy Court or the District Court, as applicable, shall determine (a) whether such Claims are subject to estimation pursuant to Section 502(c) of the Bankruptcy Code and (b) the timing and procedures for such estimation proceedings, if any, with such matters being beyond the scope of the Plan.

**16.8 Setoffs.** The Reorganized Debtor may, to the extent permitted under applicable law, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, the Claims, rights, and Causes of Action of any nature that the Reorganized Debtor may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor of any such Claims, rights, and Causes of Action that the Reorganized Debtor possesses against such Holder.

**16.9 No Interest on Claims.** Post-petition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In addition, and without limiting the foregoing or any other provision of the Plan or the Confirmation Order, interest shall not accrue on or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made when and if such Disputed Claim becomes an Allowed Claim.

**16.10 Withholding Taxes.** The Reorganized Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. As a condition to making any distribution under the Plan, the Reorganized Debtor may require that the Holder of an Allowed Claim provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary to comply with applicable tax reporting and withholding laws.

**16.11 No De Minimis Distributions.** Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$10 will be made by the Reorganized Debtor to any Holder of an Allowed Claim. No consideration will be provided in lieu of the de minimis distributions that are



not made under this Section. Allowed Claims that are entitled to a Pro Rata distribution of less than \$10 shall continue to accrue until such time as the Pro Rata distribution on account of such Claim will be \$10 or more.

**16.12 Manner of Cash Payments.** Cash payments to domestic Claimants will be denominated in U.S. dollars and will be made by checks drawn on a domestic bank selected by the Reorganized Debtor, or at the Reorganized Debtor's option, by wire transfer from a domestic bank. Cash payments to foreign Claimants may be paid, at the Reorganized Debtor's option, either in the same manner as payments to domestic entities or in any funds and by any means that are necessary or customary in the particular foreign jurisdiction.

## ARTICLE XVII. LITIGATION

**17.1 Reorganized Debtor's Retention of Litigation.** The Reorganized Debtor shall retain and exclusively enforce the Debtor's Causes of Action, including Insurance Reimbursement Claims, whether arising before or after the Petition Date, in any court or other tribunal, including, without limitation, an adversary proceeding filed in the Chapter 11 Case. The Reorganized Debtor shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such Causes of Action, without obtaining Bankruptcy Court approval. Notwithstanding the foregoing, in the event Class 6 makes the Settlement Election, the Debtor's alleged Insurance Reimbursement Claims and any other Claims against CGL Settling Insurers and Participating Parties will be released.

**17.2 Additional Actions.** Any Person to whom the Debtor has incurred an obligation (whether on account of the provision of goods, services, or otherwise), or who has received goods or services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor, should assume that such obligation, transfer, or transaction may be reviewed by the Reorganized Debtor subsequent to the Effective Date and may, if appropriate, be the subject of an action after the Effective Date, regardless of whether (a) such Person has filed a proof of Claim against the Debtor in this Chapter 11 Case; (b) such Person's proof of Claim has been objected to; (c) such Person's Claim was included in the Schedules; or (d) such Person's scheduled Claim has been objected to or has been identified as disputed, contingent, or unliquidated. Notwithstanding the foregoing, this Section shall not be applicable to Abuse Claimants if Class 6 makes the Settlement Election.

## ARTICLE XVIII. CONDITIONS PRECEDENT

**18.1 Conditions to Effectiveness.** The Effective Date will occur when each of the following conditions in Section 18.1.1 (if Class 6 makes the Settlement Election) or Section 18.1.2 (if Class 6 makes the Litigation Election) have been satisfied or waived in accordance with Section 18.2 of this Plan:

Conditions to Effectiveness if Class 6 Makes the Settlement Election. The Effective Date will not occur ~~until~~when: (a) the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Reorganized Debtor, the Survivors' Committee, the Participating Parties, and the CGL Settling Insurers and the Confirmation Order shall have become a Final Order; (b) the Settlement Election Trustee and Reorganized Debtor have signed

the Trust Agreement and the Settlement Election Trustee shall have agreed to be bound by the terms and conditions set forth in the Plan; (c) ~~the CGL Settling Insurers have paid the Insurance Settlement Amount and the Insurance Settlement and Buy-Back Agreements in form and substance acceptable to the Settling Insurers have been fully executed by the Debtors, the Settling Insurers and USPOC, and have been approved by the Bankruptcy Court by Final Order;~~ and (d) the Participating Parties and the CGL Settling Insurers have made the transfers required to fund the Trust as described in Section 9.2 of the Plan; (e) the Channeling Injunction and all releases and exculpations set forth in the Plan have been approved by Final Order of the Bankruptcy Court; and (f) the Settling Insurers have been dismissed from the Insurance Coverage Adversary Proceeding, with prejudice.-

Conditions to Effectiveness if Class 6 Makes the Litigation Election. The Effective Date will occur when the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Reorganized Debtor and no stay of such Confirmation Order shall be in effect.

**18.2 Waiver of Conditions.** Any conditions set forth in Section 18.1 of this Plan may be waived only by the mutual written consent of the Debtor, the Survivors' Committee, the Participating Parties, and the Settling Insurers.

**18.3 Statement.** A statement shall be filed with the Court within three (3) Business Days after the Effective Date, advising the Court and all parties in interest of the occurrence of the Effective Date.

**18.4 Non-Occurrence of Effective Date.** Subject to further order of the Bankruptcy Court, in the event that the Effective Date does not occur within one hundred twenty (120) days after entry of a Final Order confirming the Plan, the Plan shall become null and void. A statement shall be filed with the Court within three (3) Business Days after the Effective Date, advising all parties of the Effective Date, or within three (3) Business Days after the occurrence of any event that renders the Plan null and void, advising all parties that the Plan is null and void.

## **ARTICLE XIX. EFFECTS OF PLAN CONFIRMATION AND DISCHARGE**

**19.1 Discharge.** On the Effective Date, pursuant to Section 1141(d) of the Bankruptcy Code, the Debtor, the Estate, and the Reorganized Debtor will be discharged from all liability for any and all Claims and Debts, known or unknown, whether or not giving rise to a right to payment or an equitable remedy, that arose, directly or indirectly, from any action, inaction, event, conduct, circumstance, happening, occurrence, agreement, or obligation of the Debtor, or the Debtor's Related Persons, before the Confirmation Date, or that otherwise arose before the Confirmation Date, including all interest, if any, on any such Claims and Debts, whether such interest accrued before or after the date of commencement of the Chapter 11 Case, and including all Claims and Debts based upon or arising out of Abuse Claims, the Personal Injury Claim, the USOPC Claim, or the Indemnification Claims and from any liability of the kind specified in Sections 502(g), 502(h), and 502(i) of the Bankruptcy Code, whether or not (a) a proof of claim is filed or is deemed filed under Section 501 of the Bankruptcy Code; (b) such Claim is Allowed under this Plan; or (c) the Holder of such Claim has accepted this Plan.

Source of Payment in the Event Class 6 Makes the Litigation Election. IN THE EVENT CLASS 6 MAKES THE LITIGATION ELECTION, EXCEPT AS REQUIRED BY THE DEBTOR'S INSURANCE POLICIES, AND UPON NOTICE TO THE APPLICABLE INSURER, THE DEBTOR MAY ELECT NOT TO DEFEND ANY POST EFFECTIVE DATE LITIGATION WHICH IS AUTHORIZED TO BE PROSECUTED AGAINST THE DEBTOR PURSUANT TO THIS PLAN AND NO JUDGMENT OBTAINED AGAINST THE DEBTOR IN SUCH LITIGATION CAN BE EXECUTED AGAINST THE REVESTED ASSETS, AGAINST ANY PROPERTY ACQUIRED BY THE REORGANIZED DEBTOR SUBSEQUENT TO THE EFFECTIVE DATE, OR AGAINST THE REORGANIZED DEBTOR. THE REORGANIZED DEBTOR REMAINS LIABLE TO PAY AMOUNTS TO THE EXTENT THERE IS ALSO INSURANCE COVERAGE FOR THOSE AMOUNTS. THE ONLY SOURCE OF ANY PAYMENT FOR ANY JUDGMENT ENTERED IN ANY LITIGATION AUTHORIZED TO PROCEED AFTER THE EFFECTIVE DATE SHALL BE THE DEBTOR'S APPLICABLE INSURANCE POLICIES, IF ANY, THAT PROVIDE COVERAGE TO CLASS 6 CLAIMS. ALL INSURERS' RIGHTS AND DEFENSES, INCLUDING COVERAGE DEFENSES, WITH RESPECT TO ANY AND ALL CLAIMS, INCLUDING CLASS 6 CLAIMS, ARE EXPRESSLY RESERVED AND PRESERVED, INCLUDING DEFENSES THAT MAY ARISE FROM THE FAILURE TO COOPERATE OR PRESERVE DEFENSES TO SUCH CLAIMS.

**19.2 Vesting of Assets.** In accordance with Sections 1141 and 1123(a)(5) of the Bankruptcy Code, the Revested Assets shall vest in the Reorganized Debtor on the Effective Date free and clear of all liens, Claims, and interests of Creditors, including successor liability Claims. On and after the Effective Date, the Reorganized Debtor may operate and manage its affairs and may use, acquire, and dispose of property without notice to any Person, and without supervision or approval by the Bankruptcy Court, and free of any restrictions imposed by the Bankruptcy Code, Bankruptcy Rules, or the Bankruptcy Court, other than those restrictions expressly imposed by the Plan or the Confirmation Order.

**19.3 Continued Existence of Reorganized Debtor.** The Debtor will, as the Reorganized Debtor, continue to exist after the Effective Date in accordance with the applicable laws of the State of Texas, with all the powers of a not-for-profit having tax-exempt status under 26 U.S.C. § 501(c)(3) and all other applicable laws, and without prejudice to any right to alter or terminate such existence under applicable state law.

**19.4 Exculpation and Limitation of Liability.** NONE OF THE EXCULPATED PARTIES WILL HAVE OR INCUR ANY LIABILITY TO, OR BE SUBJECT TO ANY RIGHT OF ACTION BY, ANY HOLDER OF A CLAIM, ANY OTHER PARTY IN INTEREST, OR ANY OF THEIR RESPECTIVE RELATED PERSONS, AGENTS, EMPLOYEES, REPRESENTATIVES, FINANCIAL ADVISORS, ATTORNEYS, OR AFFILIATES, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF THIS CHAPTER 11 CASE, INCLUDING (1) THE EXERCISE OF THEIR RESPECTIVE BUSINESS JUDGMENT AND THE PERFORMANCE OF THEIR RESPECTIVE FIDUCIARY OBLIGATIONS, (2) THE PURSUIT OF CONFIRMATION OF THE PLAN, OR (3) THE ADMINISTRATION OF THE PLAN, EXCEPT LIABILITY FOR THEIR WILLFUL MISCONDUCT OR FRAUD (PROVIDED, HOWEVER, THE DEBTOR, THE ESTATE, AND REORGANIZED DEBTOR WILL BE DISCHARGED FROM ANY SUCH LIABILITY FOR SUCH ACTS OR OMISSIONS



OCCURRING PRIOR TO THE CONFIRMATION DATE) OR (4) ANY CAUSES OF ACTION ARISING FROM OR RELATED TO DENIALS OF COVERAGE OR COVERAGE DEFENSES, AND, IN ALL RESPECTS, SUCH PARTIES WILL BE ENTITLED TO REASONABLY RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN OR IN THE CONTEXT OF THE CASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE DEBTOR AND ITS RELATED PARTIES, ITS EMPLOYEES, AND THE DEBTOR'S PROFESSIONALS, SHALL BE ENTITLED TO AND GRANTED THE BENEFITS OF SECTION 1125(E) OF THE BANKRUPTCY CODE. FOR THE AVOIDANCE OF DOUBT, THIS SECTION AND THE DEFINITION OF "EXCULPATED PARTIES" SHALL NOT, DIRECTLY OR INDIRECTLY, INURE TO OR FOR THE BENEFIT OF A PERSON OR PERSONS HAVING PERSONALLY COMMITTED AN ACT OR ACTS OF SEXUAL ABUSE RESULTING IN A CLAIM AGAINST THE DEBTOR. NEITHER THE EXCULPATED PARTIES, NOR, IN THE EVENT CLASS 6 MAKES THE SETTLEMENT ELECTION, THE TRUST OR THE SETTLEMENT ELECTION TRUSTEE, AND PROFESSIONALS EMPLOYED BY THE FOREGOING, SHALL ~~NOT~~ HAVE ANY LIABILITY TO ANY GOVERNMENTAL ENTITY OR INSURER ON ACCOUNT OF PAYMENTS MADE TO A SEXUAL ABUSE CLAIMANT, INCLUDING LIABILITY UNDER THE MEDICARE SECONDARY PAYER ACT, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

## **ARTICLE XX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**20.1 Assumed Employee Benefit Plans.** To the extent not previously assumed, all employee and retiree benefit plans to which the Debtor is a party will be deemed assumed by the Reorganized Debtor on the Effective Date.

**20.2 General; Assumed if Not Rejected.** Subject to the requirements of Section 365 of the Bankruptcy Code, all executory contracts and unexpired leases of the Debtor that have not been rejected by order of the Bankruptcy Court or are not the subject of a motion to reject pending on the Confirmation Date will be deemed assumed by the Reorganized Debtor on the Effective Date. If any party to an executory contract or unexpired lease that is being assumed objects to such assumption, the Bankruptcy Court may conduct a hearing on such objection on any date that is either mutually agreeable to the parties or fixed by the Bankruptcy Court. All payments to cure defaults that may be required under Section 365(b)(1) of the Bankruptcy Code will be made by the Reorganized Debtor. In the event of a dispute regarding the amount of any such payments, or the ability of the Debtor to provide adequate assurance of future performance, the Reorganized Debtor will make any payments required by Section 365(b)(1) of the Bankruptcy Code after the entry of a Final Order resolving such dispute.

**20.3 Claims for Contract Rejection.** All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases must be filed with the Bankruptcy Court within 30 days after the Effective Date or such Claims will be forever barred. If any order providing for the rejection of an executory contract or unexpired lease did not provide a deadline for the filing of Claims arising from such rejection, proofs of Claim with respect thereto must be filed within 30 days after the later to occur of (a) the Effective Date or, (b) if the order is entered after

the Effective Date, the date such order becomes a Final Order, or such Claims will be forever barred.

## ARTICLE XXI. NON-MONETARY COMMITMENTS

**21.1 Commitment to Athlete Safety.** Athletes are the heart and soul of gymnastics, and the Debtor is focused on making its organization more athlete-centric. As part of this commitment, the Debtor has made significant strides towards the creation of a safe, positive, and encouraging environment where athletes and all members can thrive, have fun, be successful, and be themselves. The Debtor's goal is to do everything it can to prevent the opportunity for abuse to happen in the future.

To that end, the Debtor has undertaken the following steps to strengthen athlete safety:

- Before the Petition Date, the Debtor implemented a streamlined Board structure, reducing the number of directors from 21 to 15. The Board has 8 independent directors, 3 national membership directors, 3 athlete directors and 1 Advisory Council member.
- The Debtor hired a new President and CEO, who has met with hundreds of stakeholders, including survivors, to hear their perspectives on how to improve athlete safety and the organization overall.
- The Debtor amended its bylaws to strengthen Safe Sport provisions and complaint processing. These amendments include: creating a permanent Safe Sport Committee; increasing the number of independent directors to eight; removing the President from a role in the processing of complaints; easing complaint filing requirements; delineating responsibilities of the Board and president more clearly; and providing for the publication of the names of members who have been suspended or placed on the permanently ineligible list as part of the disciplinary process.
- The Debtor adopted a new Safe Sport Policy, which mandates reporting, defines specific types of misconduct, sets standards to prohibit "grooming" behavior, and establishes greater accountability. The policy further provides important requirements and information on mandatory reporting and Proactive Policies that empower athletes and guide athlete-coach interactions. A copy of the Safe Sport Policy is available at: <https://usagym.org/pages/education/safesport/policy.html>. The website also includes a "Policy Snapshot" summary and educational webinars.
- The Debtor has expanded its Safe Sport Department to better support, train, educate, and serve members. The department now includes a Director of Safe Sport Education and Training, a Safe Sport Legal Counsel, three Safe Sport Investigators, and a Safe Sport Administrator.
- The Debtor has hired a Vice President of Athlete Health and Wellness, which is a new role. This person is responsible for overseeing the organization's strategy and execution of holistic athlete health and wellness initiatives, including sports medicine, sports psychology, and nutrition services.

- The Debtor has streamlined the reporting process by creating a dedicated, toll-free number, 833-844-SAFE; the safe sport email address of safesport@usagym.org; and online reporting at usagym.org/safesport. In addition to reporting violations of the Safe Sport code to USA Gymnastics, members are required to report suspected child abuse, including sexual abuse, to law enforcement and to the U.S. Center for Safe Sport.
- The Debtor publishes on its website the names of permanently ineligible members and suspended members. The website for permanently ineligible members is: [https://usagym.org/pages/aboutus/pages/permanently\\_ineligible\\_members.html](https://usagym.org/pages/aboutus/pages/permanently_ineligible_members.html) And the website for suspended members is: [https://usagym.org/pages/aboutus/pages/suspended\\_members.html](https://usagym.org/pages/aboutus/pages/suspended_members.html)
- The Debtor has strengthened its educational initiatives about athlete safety. The Debtor rolled out its new Safe Sport educational and training materials, which include industry best practices and ideas from experts in the prevention of child sexual abuse. The educational outreach encompasses presentations at Regional and National Congresses, along with additional educational and informational opportunities for clubs and all professional members; informational videos and articles about Safe Sport issues at usagym.org/safesport; and additional resources for parents at usagymparents.com. Professional members and USA Gymnastics staff are required to take Safe Sport training. Safe Sport is also included as part of the safety and risk management course.

In addition, the Debtor and the Reorganized Debtor commit to the following steps to continue strengthening athlete safety:

- Hire additional key positions, including a Vice President of Safe Sport;
- Become a more data-driven organization, particularly with regards to athlete safety;
- Implement additional educational programming about athlete safety, including dialogue-based information-share opportunities and more easily-accessed content;
- Audit member clubs for compliance with the Safe Sport Policy;
- Continue to engage with, and listen to, all stakeholders; and
- Engage with survivors who want to be involved in order to improve the organization on every level—culture, policies, governance, etc.

## **ARTICLE XXII. MISCELLANEOUS PROVISIONS**

**22.1 Retention of Jurisdiction.** Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction over all matters arising under, in furtherance of, or in connection with this Plan, including the following:

- (i) The determination of objections to Disputed Claims, and the determination of requests for payment of Claims entitled to priority under Section 507 of the

Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;

- (ii) The resolution of controversies and disputes regarding interpretation and implementation of this Plan and the Plan Documents;
- (iii) The granting of relief in aid of this Plan and the Plan Documents, including the entry of appropriate orders (which may include removal of actions in non-Bankruptcy Court forums to the Bankruptcy Court, as well as contempt or other sanctions) to protect the Reorganized Debtor and the Released Parties from actions prohibited under this Plan or the Plan Documents;
- (iv) Amendments to and modifications of this Plan;
- (v) Subject to the limitations and exclusions described above, the determination of any and all applications, adversary proceedings, and contested or litigated matters pending on the Effective Date;
- (vi) In the event Class 6 makes the Litigation Election, the determination of any motion to determine that a Claimant is a Future Claimant or to determine that an Abuse Claim filed after the Bar Date shall be deemed to have been filed before the Bar Date; and
- (vii) The closing of this case.

**22.2 Modification of Plan.** The Debtor reserves the right, in accordance with the Bankruptcy Code, to amend, modify, or withdraw this Plan prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Debtor may, upon order, amend, or modify this Plan in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**22.3 Post-Confirmation Court Approval.** Any action requiring Bankruptcy Court, District Court, or state court approval after the Effective Date will require the Person seeking such approval to file an application, motion, or other request with the Bankruptcy Court, District Court, or state court, as applicable, and obtain a Final Order approving such action before the requested action may be taken. The Person filing such application, motion, or other request shall serve such application, motion, or other request, together with a notice setting forth the time in which objections must be filed with the Bankruptcy Court, on the Reorganized Debtor by first-class mail, electronic mail, ECF, overnight courier, facsimile, or hand delivery. Unless the court orders otherwise, all notices shall provide at least 21 days in which to file an objection to the application, motion, or other request. If no objection is timely filed, the court may authorize the proposed action without further notice or a hearing. If an objection is timely filed, the court will determine whether to conduct a hearing, or to require the submission of further documentation, prior to ruling on the application, motion, or other request.

**22.4 Election Pursuant to Section 1129(b) of the Bankruptcy Code.** If necessary, the Debtor hereby requests confirmation of the Plan pursuant to Section 1129(b) of the Bankruptcy Code if

the requirements of all provisions of Section 1129(a) of the Bankruptcy Code, except Section 1129(a)(8) thereof, are met with regard to the Plan. In determining whether the requirements of Section 1129(a)(8) of the Bankruptcy Code have been met, any Class that does not contain as an element thereof an Allowed Claim or a Claim temporarily allowed under Bankruptcy Rule 3018 as of the date fixed by the Bankruptcy Court for filing acceptances or rejections of this Plan shall be deemed deleted from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class.

**22.5 Closing of the Chapter 11 Case.** As soon as practicable after the Effective Date, when the Reorganized Debtor deems appropriate, the Reorganized Debtor will seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules; *provided, however*, that entry of a final decree closing the Chapter 11 Case shall, whether or not specified therein, be without prejudice to the right of the Reorganized Debtor, or any other party in interest, to reopen the Chapter 11 Case for any matter over which the Bankruptcy Court or the District Court has retained jurisdiction under this Plan. Any order closing this Chapter 11 Case will provide that the Bankruptcy Court or the District Court, as appropriate, will retain (a) jurisdiction to enforce, by injunctive relief or otherwise, the Confirmation Order, any other orders entered in this Chapter 11 Case, and the obligations created by this Plan and the Plan Documents; and (b) all other jurisdiction and authority granted to it under this Plan and the Plan Documents.

**22.6 Dissolution of the Survivors' Committee.** On the Effective Date, the Survivors' Committee shall dissolve automatically, whereupon its members and the Survivors' Committee's Professionals shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except that such parties shall continue to be bound by any obligations arising under confidentiality agreements, joint defense/common interest agreements (whether formal or informal), and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms, and further provided that such parties shall continue to have a right to be heard with respect to any and all applications for Professional Claims.

**22.7 Termination of the Appointment of the FCR.** The Bankruptcy Court's appointment of the FCR shall be terminated, if Class 6 makes the Litigation Election, on the Effective Date, whereupon the FCR and the FCR's Professionals shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except that such parties shall continue to be bound by any obligations arising under confidentiality agreements, joint defense/common interest agreements (whether formal or informal), and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms, and further provided that such parties shall continue to have a right to be heard with respect to any and all applications for Professional Claims. The Bankruptcy Court's appointment of the FCR shall be terminated, if Class 6 makes the Settlement Election, when the funds in the Future Claimant Reserve are completely distributed as provided in Sections 9.5 and 11.7 of the Plan, whereupon the FCR and the FCR's Professionals shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except that such parties shall continue to be bound by any obligations arising under confidentiality agreements, joint defense/common interest agreements (whether formal or informal), and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms,

and further provided that such parties shall continue to have a right to be heard with respect to any and all applications for Professional Claims.

**22.8 Notices.** All notices or requests to the Debtor, the Estate, or the Reorganized Debtor in connection with this Plan shall be in writing and served either by (i) United States mail, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, all charges prepaid, and shall be deemed given when received by the following parties:

**If to the Debtor, the Estate, or Reorganized Debtor:**

USA Gymnastics  
130 East Washington Street  
Suite 700  
Indianapolis, Indiana 46204

*With a copy to:*

Jenner & Block LLP  
353 North Clark Street  
Chicago, Illinois 60654  
Attn: Catherine Steege and Melissa Root

**22.9 Notices to Claimants.** All notices and requests to a Person holding any Claim will be sent to them at the last known address listed for such Person with the Bankruptcy Court or with the Claims Agent, or to the last known address of their attorney of record. The Holder of a Claim may designate in writing any other address, which designation will be effective upon actual receipt by the Reorganized Debtor. Any Person entitled to receive notice under this Plan will have the obligation to provide the Reorganized Debtor with such Person's current address for notice purposes. The Reorganized Debtor will have no obligation to attempt to locate a more current address in the event any notice proves to be undeliverable to the most recent address which has been provided to the Reorganized Debtor.

**22.10 Consummation of the Plan.** The Debtor reserves the right to request that the Confirmation Order include a finding by the Bankruptcy Court that Bankruptcy Rule 3020(e) shall not apply to the Confirmation Order.

**22.11 Severability.** If, before confirmation, the Bankruptcy Court holds that any Plan term or provision is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so that it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then be applicable as altered or interpreted, except if such term or provision is inconsistent with the intent of the Debtor, in which case the Plan may be unilaterally withdrawn by the Debtor. Notwithstanding any such holding, alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted in accordance with this Section, is valid and enforceable under its terms. In the event of a successful collateral attack on any provision of this Plan (i.e., an attack other than through a direct appeal of the Confirmation Order), the remaining provisions of this Plan will



remain binding on the Debtor, the Estate, the Reorganized Debtor, the Survivors' Committee, any Participating Parties, any Settling Insurers, any Non-Debtor CGL Settling Insurer Person, all Claimants, all Creditors, and all other parties in interest.

**22.12 Headings.** The headings of the Sections of this Plan are inserted for convenience only and will not affect the interpretation hereof.

**22.13 Exemption from Transfer Taxes.** Pursuant to Section 1146(a) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, whether occurring prior or subsequent to the Confirmation Date, including any deeds, bills of sale, or assignments executed in connection with any disposition of assets contemplated by this Plan, shall not be subject to any stamp tax, real estate transfer tax, excise tax, sales tax, use tax, or other similar tax. The Plan may be modified after the Effective Date to incorporate the terms of such sale.

**22.14 Waivers.** Any term of the Plan may be waived by the party benefited by the term to be waived.

**22.15 Setoffs, Recoupments, and Defenses.** Nothing contained in the Plan shall constitute a waiver or release by the Debtor, the Estate, or the Reorganized Debtor of any rights of setoff or recoupment or of any defense they may have with respect to any Claim (including rights under Section 502(d) of the Bankruptcy Code). The Debtor, the Estate, and the Reorganized Debtor may, but will not be required to, set off against any Claim or any Distributions with respect to such Claim, any and all of the Claims, rights, and causes of action of any nature that the Debtor, the Estate, or the Reorganized Debtor may hold against the Holder of such Claim; *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, the payment of any Distribution hereunder or any other action or omission of the Debtor, the Estate, or the Reorganized Debtor, nor any provision of the Plan, shall constitute a waiver or release by the Debtor, the Estate, or the Reorganized Debtor of any such Claims, rights, and causes of action that the Debtor, the Estate, or the Reorganized Debtor may possess against such Holder.

**22.16 Withdrawal or Revocation of the Plan.** The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date.

**22.17 Default.** In the event that the Reorganized Debtor defaults in the performance of any of its respective obligations under the Plan or under any of the Plan Documents, and shall not have cured such default within any applicable cure period (or, if no cure period is specified in the Plan, Plan Documents, or any instrument issued to or retained by a Claimant under the Plan, then within 30 days after receipt of written notice of default), then the entity to whom the performance is due may pursue such remedies as are available at law or in equity. An event of default occurring with respect to one Claim shall not be an event of default with respect to any other Claim.

**22.18 Governing Law.** Except to the extent that federal law (including the Bankruptcy Code or Bankruptcy Rules) is applicable, the rights and obligations arising under the Plan and under the Plan Documents shall be governed by and construed and enforced in accordance with the laws of the State of Indiana without giving effect to the principles of conflicts of laws.

**22.19 Reservation of Rights.** If the Plan is not confirmed, the rights of all parties in interest in the Chapter 11 Case are and will be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Chapter 11 Case shall be bound or deemed prejudiced by any such concessions or settlements.

**22.20 Successors and Assigns.** The Plan shall be binding upon and inure to the benefit of the Debtor, the Estate, the Reorganized Debtor, all Claimants, and all other parties in interest affected thereby, and their respective successors, heirs, legal representatives, and assigns.

**22.21 Direction to a Party.** On and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for entry of an Order directing any Person to execute or deliver or to join in the execution or delivery of any instrument or document reasonably necessary or reasonably appropriate to effect a transfer of properties dealt with by the Plan, and to perform any other act (including satisfaction of any lien or security interest) that is reasonably necessary or reasonably appropriate for the consummation of the Plan.

**22.22 Certain Actions.** By reason of entry of the Confirmation Order, prior to, on, or after the Effective Date (as appropriate), all matters provided for under the Plan that would otherwise require approval of the officers of the Debtor under the Plan, including (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements or documents related to the Plan, and (b) the adoption, execution, and implementation of other matters provided for under the Plan involving the Debtor or the organizational structure of the Debtor, shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as appropriate), pursuant to applicable non-bankruptcy law, without any requirement of further action by the officers of the Debtor.

**22.23 Rounding of Fractional Numbers.** All fractional numbers, including payments or Distributions under the Plan, shall be rounded (up or down) to the nearest whole number.

**22.24 Saturday, Sunday, or Legal Holiday.** If any payment or act under the Plan should be required to be made or performed on a day that is not a Business Day, then the payment or act may be completed on the next succeeding day that is a Business Day, in which event the payment or act will be deemed to have been completed on the required day.

**22.25 Exhibits.** All Exhibits to this Plan are incorporated into and are a part of this Plan as if set forth in full herein.



### ARTICLE XXIII. CONFIRMATION REQUEST

**23.1 Request for Confirmation.** USA Gymnastics requests confirmation of the Plan under Section 1129 of the Bankruptcy Code with respect to any impaired class that does not accept the Plan or is deemed to reject the Plan.

Dated: ~~February 21~~ April, 2020

Respectfully submitted,

#### JENNER & BLOCK LLP

By: /s/ Catherine Steege

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**EXHIBIT A**

**Indemnification Claims**

**USA Gymnastics Plan of Reorganization  
Exhibit A, Indemnification Claims**

<b>Claim Number<sup>1</sup></b>	<b>Claimant's Name</b>
General Unsecured Claim 7	Debra Van Horn
General Unsecured Claim 143	All Olympic Gymnastics Center Inc.
General Unsecured Claim 147	Galina Marinova
General Unsecured Claim 189	Artur Akopyan
General Unsecured Claim 246	Mihael Anton
General Unsecured Claim 285	Stephen D. Penny, Jr.
General Unsecured Claim 288	Twistars USA, Inc.
General Unsecured Claim 292	Federal Insurance Company
General Unsecured Claim 293	Executive Risk Indemnity, Inc.
General Unsecured Claim 294	ACE American Insurance Company
General Unsecured Claim 295	ACE Property & Casualty Insurance Company
General Unsecured Claim 317	Leslie L. French
General Unsecured Claim 319	BELIEVE LLC
General Unsecured Claim 332	National Gymnastics Foundation
General Unsecured Claim 355	Martha Karolyi
General Unsecured Claim 356	Bela Karolyi
General Unsecured Claim 357	Karolyi Training Camps, LLC
General Unsecured Claim 358	BMK Partners, Ltd.
General Unsecured Claim 359	BMK Training Facilities, Ltd.

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<sup>1</sup> The Debtor reserves the right to object to any of the Claims on this Exhibit A and to supplement or amend this Exhibit A.

**EXHIBIT B**

**Participating Parties**

USA Gymnastics Plan of Reorganization  
Exhibit B, Participating Parties

Participating Parties
<del>John Geddert</del>
<del>Kathryn Geddert</del>
Twistars
<del>USOPC</del> <del>United States Olympic &amp; Paralympic Committee</del>

**EXHIBIT C**

**Settling Insurers**

**USA Gymnastics Plan of Reorganization  
Exhibit C, Settling Insurers**

<b>Settling Insurers</b>
<b>CGL Settling Insurers</b>
CIGNA Insurance Company (n/k/a ACE American Insurance Company)
ACE American Insurance Company
<del>Chubb Indemnity Company a/k/a Ace American Insurance Company</del>
National Union Fire Insurance Company of Pittsburgh, <del>P.A. a/k/a American International Group, Inc.</del>
Great American Assurance Company
National Casualty Company
Transamerica Insurance Company
TIG Insurance Company
Virginia Surety Company, Inc., f/k/a Combined Specialty Insurance Company
<b>Twistars Settling Insurers</b>
Philadelphia Indemnity Insurance Company
Lexington Insurance Company
New Hampshire Insurance Company
Nationwide Mutual Insurance Company
State Farm Fire and Casualty Company
<a href="#"><u>USOPC Settling Insurers</u></a>



**EXHIBIT D**

**Trust Agreement**

## TRUST AGREEMENT

This Trust Agreement is made and entered into between USA Gymnastics (“**USAG**”, the “**Debtor**”, or the “**Reorganized Debtor**”) and [\_\_\_\_\_] (the “**Trustee**”), pursuant to the terms of the *First Amended Chapter 11 Plan Of Reorganization* (as it may hereafter be amended or modified, the “**Plan**”), filed by the Debtor in its chapter 11 case in the United States Bankruptcy Court for the Southern District of Indiana (the “**Bankruptcy Court**”).<sup>1</sup>

## RECITALS

A. On December 5, 2018, USAG filed a voluntary petition under chapter 11 of the Bankruptcy Code. The Debtor remained in possession of its property and continued to operate and maintain its organization as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

B. On February 21, 2020, the Debtor filed the Plan. On [\_\_\_\_\_] 2020, the Bankruptcy Court confirmed the Plan by entering the Confirmation Order. The Debtor will become the Reorganized Debtor upon the Effective Date of the Plan.

C. Pursuant to the Settlement Election under the Plan, a Trust is created for the benefit of Abuse Claimants and Future Claimants. All Abuse Claims and Future Claims are channeled to the Trust, along with the USOPC Claim, the Indemnification Claims, all other claims arising from or related in any way to the Abuse Claims, and any claims for punitive damages, alter ego liability, or piercing the corporate veil against any Participating Party, Settling Insurer, or Non-Debtor CGL Settling Insurer Covered Person. Distributions to Holders of Allowed Abuse Claims and Holders of Allowed Future Claims shall be made from assets contributed to the Trust by the Settling Insurers and Participating Parties.

D. The Trust is intended to qualify as a “Designated” or “Qualified” Settlement Fund pursuant to Section 468B of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1 *et seq.*, as may be amended (the “**Internal Revenue Code**”), and the regulations promulgated thereunder, 31 C.F.R. §§ 900 *et seq.* (the “**Treasury Regulations**”).

E. The Trustee is duly appointed as a representative of the Debtor and its Estate for the sole purpose of implementing the Plan through the Trustee’s administration of the Trust and distribution of the Trust Assets (defined below) pursuant to 11 U.S.C. §1123(a)(5)(B).

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<sup>1</sup> The definitions set forth in Article I of the Plan apply to capitalized terms used, but not defined, in this Trust Agreement. The rules of construction set forth in Article II of the Plan apply to this Trust Agreement. To the extent that any provision of this Trust Agreement conflicts with any term of the Plan, the terms of the Plan shall control.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order and in consideration of the mutual covenants set forth herein, it is agreed as follows:

## ARTICLE I. AGREEMENT OF TRUST

**1.1 Contingent Upon Settlement Election.** For the avoidance of doubt, and as set forth in Section 13.1 of this Trust Agreement, the Trust described herein shall be created only if: (1) the Abuse Claimants vote to accept the Plan, (2) the Abuse Claimants vote to select the Settlement Election, (3) the Bankruptcy Court confirms the Plan, and (4) the Reorganized Debtor and the Trustee execute this Trust Agreement. If any of these conditions are not met, the terms of this Trust Agreement shall have no effect whatsoever.

**1.2 Creation and Name.** The Debtor hereby creates a trust known as “The USA Gymnastics Settlement Election Trust” as the Trust provided by the Settlement Election under the Plan.

**1.3 Purpose.** The Trust is established for the benefit of the Abuse Claimants and Future Claimants and shall assume all liability for the Channeled Claims. The Trust shall receive and distribute the Trust Assets (defined below) to Abuse Claimants and Future Claimants in accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order.

**1.4 Irrevocability.** The Trust is irrevocable. The Reorganized Debtor shall not alter, amend, revoke, or terminate the Trust. The Reorganized Debtor shall have no power or authority to direct the Trustee to return any of the Trust Assets to the Reorganized Debtor. The Trustee shall nevertheless have the power to amend this Trust Agreement for the purpose of conforming the Trust Agreement to the provisions of the Plan and the Confirmation Order, subject to approval by the Bankruptcy Court.

## ARTICLE II. CORPUS OF THE TRUST

**2.1 Trust Corpus.** The Settling Insurers shall fund the Trust with payments of \$217,125,000.00 in the aggregate (the “Trust Assets”). Of the Trust Assets, the CGL Settling Insurers shall contribute the Plan Payment of \$215,000,000.00 and the Twistars Settling Insurers shall contribute the Twistars Contribution of \$2,125,000.00.

**2.2 Future Claimant Reserve.** The Trust shall establish a Future Claimant Reserve funded with five percent (5%) of the Plan Payment (\$10,750,000.00).

**2.2.1 Expiration Of Future Claimant Reserve.** Following the fifth (5th) anniversary of the Plan’s Effective Date, any funds held in the Future Claimant Reserve shall be released to the Trustee to, ~~at the Trustee’s discretion, (a)~~ administer to Holders of Abuse Claims consistent with the terms of this Trust Agreement, the Plan, and the Confirmation Order; In the event that the remaining funds held, when combined with other Trust assets, total \$50,000 or less, the Trustee shall have the discretion to either (a) administer to Holders of Abuse Claims consistent with the Trust Documents and the terms of the Plan; or (b) distribute to a charitable entity mutually agreed upon by the Trustee and the Reorganized Debtor; provided, however, that any such funds shall not revert to the Debtor, the Estate, the Reorganized Debtor, the National Gymnastics Foundation, or the United States Olympic & Paralympic Committee.

**2.3 Transfer Of Trust Assets.** Following: (a) the Bankruptcy Court's entry of the Confirmation Order in form and substance reasonably acceptable to the Debtor; and (b) the Trustee's and Reorganized Debtor's execution of this Trust Agreement, the Reorganized Debtor and the Settling Insurers shall irrevocably and absolutely transfer, grant, assign, convey, set over, and deliver to the Trustee all of their rights, titles, and interests in and to the Trust Assets to be held in trust. The Trustee hereby agrees to accept and hold the Trust Assets in trust for the Abuse Claimants and Future Claimants.

**2.4 Trustee's Right To And Title And Interest In Trust Assets.** Upon the transfer of the Trust Assets, the Trustee shall succeed to all of the Debtor's, the Estate's, the Reorganized Debtor's, the Settling Insurers', and the Participating Parties' rights, titles, and interests, if any, in and to the Trust Assets, and the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, and the Participating Parties shall have no further rights, titles, or interests in, or with respect to, the Trust Assets.

**2.5 No Tax On Transfers To Trust.** Pursuant to Section 1146(a) of the Bankruptcy Code, the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Trust Agreement, including any deeds, bills of sale, or assignments executed in connection with any disposition of assets contemplated by this Trust Agreement, the Plan, and the Confirmation Order and any transfer to the Trust, shall not be subject to any stamp tax, real estate transfer tax, excise tax, sales tax, use tax, or other similar tax.

**2.6 Spendthrift Provision.** To the fullest extent permitted by law, the Trust Assets shall not, in whole or in part, be subject to any legal or equitable claims of creditors of any Abuse Claimant, Future Claimant, Channeled Claimant, or others, and the Trust Assets shall not be subjected to any legal process or any voluntary or involuntary attempts to transfer, assign, pledge, encumber, or otherwise alienate such Trust Assets, except as may be ordered by the Bankruptcy Court.

**2.7 Payment Obligations.** Pursuant to Sections 9.3.3 and 10.7 of the Plan, the Trust shall (1) pay all unpaid Allowed Professional Claims of the Survivors' Committee's Professionals within seven days after the later of the Effective Date or the Bankruptcy Court's order on such Claims; (2) pay and reimburse the Debtor, the Estate, or the Reorganized Debtor, as the case may be, for the costs and expenses of publication of the notices of insurance settlement and plan confirmation within seven days after the Effective Date; and (3) defend, indemnify, and hold harmless certain Protected Parties as set forth in Section 10.7 of the Plan. These payments shall be deducted from Available Trust Assets (defined below).

### ARTICLE III. POWERS AND DUTIES OF TRUSTEE

**3.1 Powers and Duties.** The Trustee shall have, in addition to any other powers and duties conferred on the Trustee by applicable trust, bankruptcy, or tax law, the following powers and duties:

1. Receive, deposit, and invest Trust Assets in compliance with Section 345 of the Bankruptcy Code.
2. Open and maintain bank accounts on behalf of the Trust, deposit funds into such accounts, and draw checks on such accounts.
3. Establish such reserves as required by this Trust Agreement, the Plan, and the Confirmation Order; *provided, however*, nothing in this provision shall restrict the Trustee's authority to pool the Trust's accounts for investment purposes or require separate bank accounts for the reserves required by this Trust Agreement, the Plan, and the Confirmation Order.
4. Allocate and make distributions to Abuse Claimants and Future Claimants.
5. Make, sign, execute, acknowledge, deliver, and file, including with any governmental authority, any documents that may be necessary or appropriate to effectuate the purpose of the Trust or to establish, maintain, or administer the Trust.
6. Fulfill all reporting obligations to the United States Department of Health and Human Services and other governmental authorities, as contemplated by Section 11.8 of the Plan.
7. File a motion with the Bankruptcy Court, with notice to parties in interest, for the enforcement of any provision of the Plan or the Confirmation Order pertaining to the Trust, or any provision of this Trust Agreement, as may be appropriate to effectuate the purpose of the Trust.
8. File a motion with the Bankruptcy Court, with notice to parties in interest, for a modification of the provisions of this Trust Agreement if the Trustee determines that such modification is necessary to effectuate the purpose of the Trust.
9. Retain and rely upon the advice of any counsel, consultants, experts, accountants, investment advisors, and such other agents or professionals (each, a "**Professional**") as are necessary and appropriate to effectuate the purpose of, and maintain and administer, the Trust, subject to the Bankruptcy Court's approval of such employment.
10. Fulfill any and all other obligations imposed on the Trust by this Trust Agreement, the Plan, or the Confirmation Order.

**3.2 Limitations on the Trustee.** The Trustee is prohibited from taking the following acts:

1. Making any transfers or distributions of Trust Assets other than as authorized by this Trust Agreement, the Plan, and the Confirmation Order.
2. Loaning or encumbering the Trust Assets, or issuing a guaranty with recourse to the Trust Assets.

3. Conducting any trade or business using or affecting the Trust Assets.
4. Engaging in any investments or activities inconsistent with the treatment of the Trust as a “Designated” or “Qualified” settlement fund pursuant to the Internal Revenue Code and the Treasury Regulations.

#### ARTICLE IV. ALLOCATION METHOD FOR ABUSE CLAIMS

**4.1 Trust Assets Available For Abuse Claims.** The Trust shall make distributions to Holders of Allowed Abuse Claims from the Trust Assets minus the amounts contained in the Future Claimant Reserve (the “**Available Trust Assets**”). As of the date of this Trust Agreement, there is \$206,375,000.00 of Available Trust Assets; *provided, however*, that, the Future Claimant Reserve may expire pursuant to Section 2.2.1 of this Trust Agreement and the terms of the Plan and the Confirmation Order, at which time the remaining amounts contained in the Future Claimant Reserve may become Available Trust Assets.

**4.2 Allocation Method.** The presumption is that Distributions to Holders of Allowed Abuse Claims will be ~~are~~ allocated based upon the location where Abuse Claimants allege Sexual Abuse occurred as set forth in the Disclosure Statement. Holders of Allowed Abuse Claims were ~~are~~ classified into Subclasses 6A, 6B, 6C, and 6D for this purpose so as to provide them notice of their anticipated Distribution and ~~–~~ The Subclasses were ~~are~~ then allocated percentages of Available Trust Assets for Pro Rata distributions to members of each Subclass. The Trustee will have the discretion to revise this allocation as he or she deems appropriate in individual cases.

**4.2.1. Subclass 6A (Elite Gymnasts).** Claimants are classified into Subclass 6A if they allege Sexual Abuse at the Olympics, the National Team Training Center, or a National Team event, such as the Olympic Team Trials or the World Championships. Subclass 6A is allocated 40% of Available Trust Assets for distribution (\$82,550,000.00).

**4.2.2. Subclass 6B (Non-Elite Gymnasts).** Claimants are classified into Subclass 6B if they allege Sexual Abuse at an event sanctioned by the Debtor, such as the National Championships or the U.S. Classic, as well as events held at Twistars. Subclass 6B excludes all Claimants who otherwise qualify for treatment under Subclass 6A. Subclass 6B is allocated 35% of Available Trust Assets for distribution (\$72,231,250.00).

**4.2.3. Subclass 6C (Other Claimants).** Claimants are classified into Subclass 6C if they do not qualify for treatment under Subclass 6A or Subclass 6B, such as Claimants who allege Sexual Abuse solely at Michigan State University. Subclass 6C is allocated 24% of Available Trust Assets for distribution (\$49,530,000.00).

**4.2.4. Subclass 6D (Derivative Claimants).** Claimants are classified into Subclass 6D if allege liability solely on account of Sexual Abuse committed against a third party, such as a spouse or family member. Subclass 6D is allocated 1% of Available Trust Assets for distribution (\$2,063,750.00).

**4.2.5. Late-Filed Abuse Claims.** There are seven (7) Abuse Claims that were filed after the deadline for submitting Abuse Claims in the Case. The Trustee, ~~in his sole discretion,~~ will ~~may~~ treat ~~such~~ late-filed Abuse Claims including any additional Late-Filed Abuse Claims filed through the Effective Date of the Plan as timely and ~~– or disallowed. If the Trustee treats late-filed Abuse Claims as timely filed,~~ each late-filed Abuse Claim shall be classified in Subclass 6A, 6B, 6C, or 6D, as appropriate.

**4.2.6. Duplicative Abuse Claims.** There are thirty three (33) Abuse Claims that are duplicative of Abuse Claims already classified within Subclasses 6A, 6B, 6C, and 6D. These duplicative Abuse Claims shall receive no distribution from the Trust.

**4.3 Pro Rata Distributions To Abuse Claimants.** Distributions to Holders of Allowed Abuse Claims shall be Pro Rata based upon the Available Trust Assets allocated to each Subclass. Members of each Subclass holding Allowed Abuse Claims shall take equal shares of the Available Trust Assets allocated to their Subclass.

**4.4 Release & Dismissal Of Litigation.** Before the Trust may make any distribution to any Abuse Claimant, such Abuse Claimant shall execute and deliver to the Trust a full and complete release of the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, all Participating Parties, and all known or unknown parties who may claim coverage under any Insurance Policy issued to the Debtor, including the Non-Debtor CGL Settling Insurer Covered Persons, in form and substance acceptable to the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, of any and all Claims arising from or relating to Abuse Claims or Future Claims. In addition, within ten (10) days after receiving any payment from the Trust, an Abuse Claimant shall dismiss with prejudice any lawsuit that such Abuse Claimant had brought against the Debtor, any Participating Party, and any Non-Debtor CGL Settling Insurer Covered Person, and shall promptly deliver evidence of such dismissal, with prejudice, to the Settlement Election Trustee. The Settlement Election Trustee shall provide copies of such dismissal orders to any Protected Party that requests a copy.

**4.5 Attorneys' Fees And Costs.** Pursuant to Section 11.3 of the Plan, the fees and expenses of attorneys representing Abuse Claimants who receive payment from the Trust will be borne exclusively by such Abuse Claimants based on applicable state law and individual arrangements made between such Abuse Claimants and their respective attorneys. The Trust, the Trustee, and the other parties listed in Section 11.3 of the Plan shall have no liability for any such fees and expenses, and any Claims for such fees and expenses shall be disallowed.

## **ARTICLE V. ALLOCATION METHOD FOR FUTURE CLAIMS.**

**5.1 Submission Of Future Claims And Eligibility For Distribution.** A Future Claimant must file a Claim with the Trustee on or before the fifth (5th) anniversary of the Plan's Effective Date. The Claim shall be entitled to a distribution exclusively from the Future Claimant Reserve and no other Trust Assets, provided funds remain in the Future Claimant Reserve, only if the Trustee, in consultation with the FCR, determines that the Holder of such Claim has proven by a preponderance of the evidence that such Holder meets the definition of a Future Claimant and such Holder's Claim meets the definition of a Sexual Abuse Claim.

**5.2 Allocation Method.** If the requirements of Section 5.1 of this Trust Agreement are satisfied, the Trustee, in his sole discretion, may allocate a distribution to a Future Claimant from funds remaining in the Future Claimant Reserve. In determining the amount of a Future Claimant's distribution, the Trustee shall consider the distribution the Future Claimant would receive if treated as an Abuse Claimant and classified into a Subclass of Abuse Claimants as specified in Section 4.2 of this Trust Agreement; *provided, however*, that the Trustee is not bound by such a comparison and may approve distributions to Future Claimants in lesser or greater amounts in light of the amount of funds remaining in the Future Claimant Reserve.



**5.3 Release And Dismissal Of Litigation.** Before the Trust may make any distribution to any Future Claimant, such Future Claimant shall execute and deliver to the Trust a full and complete release of the Debtor, the Estate, the Reorganized Debtor, the Settling Insurers, all Participating Parties, and all known or unknown parties who may claim coverage under any Insurance Policy issued to the Debtor, including the Non-Debtor CGL Settling Insurer Covered Persons, in form and substance acceptable to the Debtor, the Estate, the Reorganized Debtor, the Participating Parties, and the Settling Insurers, of any and all Claims arising from or relating to Abuse Claims or Future Claims. In addition, within ten (10) days after receiving any payment from the Trust, a Future Claimant shall dismiss with prejudice any lawsuit that such Future Claimant had brought against the Debtor, any Participating Party, and any Non-Debtor CGL Settling Insurer Covered Person, and shall promptly deliver evidence of such dismissal, with prejudice, to the Trustee. The Trustee shall provide copies of such dismissal orders to any Protected Party that requests a copy.

**5.4 Attorneys' Fees And Costs.** Pursuant to Section 11.3 of the Plan, the fees and expenses of attorneys representing Future Claimants who receive payment from the Trust will be borne exclusively by such Future Claimants based on applicable state law and individual arrangements made between such Future Claimants and their respective attorneys. The Trust, the Trustee, and the other parties listed in Section 11.3 of the Plan shall have no liability for any such fees and expenses, and any Claims for such fees and expenses shall be disallowed.

## ARTICLE VI. TERMINATION OF THE TRUST

**6.1 When Termination Shall Occur.** The Trustee shall terminate the Trust after the Trust Assets are fully and completely distributed in accordance with this Trust Agreement, the Plan, and the Confirmation Order, and after the Trustee has fully and completely performed all other duties set forth in this Trust Agreement, the Plan, and the Confirmation Order. The Trust Assets shall be deemed totally distributed when the amount remaining in the Trust is less than \$50,000.

**6.2 Termination Distribution.** Upon termination of the Trust, provided that all fees and expenses of the Trust have been paid or provided for in full, the Trustee shall deliver all funds and other investments remaining in the Trust, if any, including any investment earnings thereon, to a charitable entity mutually agreed upon by the Trustee and the Reorganized Debtor; *provided, however,* that any such funds shall not revert to the Debtor, the Estate, the Reorganized Debtor, the National Gymnastics Foundation, or the United States Olympic & Paralympic Committee.

**6.3 Termination Procedures.** After termination of the Trust and solely for the purpose of liquidating and winding up its affairs, the Trustee shall retain the books, records, documents, and files that were delivered to or created by the Trustee. The Trustee, at his discretion, may destroy all such books, records, documents and files at any time following the later of: (a) one year following the final distribution of the Trust Assets; and (b) the date until which applicable law requires the Trustee to retain such books, records, documents, and files; *provided, however,* the Trustee shall not destroy any books, records, documents, or files relating to the Trust without giving the Reorganized Debtor, the Participating Parties, the Settling Insurers, Abuse Claimants, other Channeled Claimants, and the FCR reasonable prior written notice thereof.

## **ARTICLE VII. IMMUNITY, LIABILITY, AND INDEMNIFICATION OF TRUSTEE AND PROFESSIONALS**

**7.1 Limitations On Liability.** Neither the Trustee nor any of his Professionals whose employment is approved by the Bankruptcy Court shall be liable for any good faith act or omission within the scope of their duties under this Trust Agreement, the Plan, and the Confirmation Order, and may only be liable for willful misconduct and fraud. No recourse shall ever be had, directly or indirectly, against the Trustee personally or against any of the Trustee's Court-approved Professionals personally, by legal or equitable proceedings of any kind, for any good faith act or omission within the scope of their duties under this Trust Agreement, the Plan, and the Confirmation Order. Any claims arising out of such acts or omissions shall be enforceable only against, and satisfied only out of, the Trust Assets. The foregoing does not limit the liability of the Trustee and his Court-approved Professionals for their willful misconduct or fraud.

**7.2 Advice Of Professionals.** The Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his Court-approved Professionals and shall not be liable for any good faith act or omission in accordance with the advice or opinions provided by such Professionals. Notwithstanding the foregoing, the Trustee shall be under no obligation to consult with his Court-approved Professionals, and his determination not to do so shall not result in the imposition of liability on the Trustee, unless such determination is based on the Trustee's willful misconduct or fraud.

**7.3 Indemnification.** The Trustee, using the Trust Assets, shall defend, indemnify, and hold harmless the Trustee and any Court-approved Professionals to the fullest extent that a corporation or trust organized under the laws of the State of Indiana is entitled to defend, indemnify, and hold harmless its agents against any and all costs (including attorneys' fees and expenses), judgments, awards, amounts paid in settlement, liabilities, claims, damages, or losses incurred by them in the performance of their duties under this Trust Agreement, the Plan, and the Confirmation Order; *provided, however,* neither the Trustee nor any of the Trustee's agents shall be defended, indemnified, or held harmless in any way for any liability, expense, claim, damage, or loss arising from their willful misconduct or fraud.

## **ARTICLE VIII. COMPENSATION AND REIMBURSEMENT OF TRUSTEE AND PROFESSIONALS**

**8.1 Trustee Compensation.** The Trustee shall be entitled to receive reasonable compensation for services rendered. Such compensation must be approved by the Bankruptcy Court upon application, and will be paid from the Trust Assets.

**8.2 Compensation Of Trustee's Agents.** Any Professional retained by the Trustee pursuant to this Trust Agreement, the Plan, and the Confirmation Order, and whose employment is approved by the Bankruptcy Court, shall be entitled to reasonable compensation for services rendered. Such compensation must be approved by the Bankruptcy Court upon application, and will be paid from the Trust Assets.

**8.3 Reimbursement Of Expenses.** The Trustee and any Professional retained by the Trustee, whose employment is approved by the Bankruptcy Court, shall be entitled to reimbursement of all

reasonable and necessary costs and expenses incurred in the performance of the duties imposed by this Trust Agreement, the Plan, and the Confirmation Order. Such reimbursement must be approved by the Bankruptcy Court upon application, and will be paid from the Trust Assets.

## **ARTICLE IX. SUCCESSOR TRUSTEES**

**9.1 Vacancy Caused By Trustee Resignation.** The Trustee may resign upon thirty (30) days' written notice filed with the Bankruptcy Court.

**9.2 Vacancy Caused By Trustee Removal.** The Bankruptcy Court may remove a Trustee upon finding that the Trustee has engaged in a breach of fiduciary duty, willful misconduct, or fraud. The removal will take effect upon the date ordered by the Bankruptcy Court.

**9.3 Appointment Of Successor Trustee.** If there is a vacancy in the position of Trustee, the Reorganized Debtor, in consultation with the Participating Parties, Settling Insurers, the FCR, and the Survivors' Committee (unless the Survivors' Committee has been dissolved), shall designate a successor Trustee, subject to the approval of the Bankruptcy Court, after notice and a hearing. Upon the Bankruptcy Court's approval of any successor Trustee, all rights and obligations of the prior Trustee shall vest in the successor Trustee, and the successor Trustee shall be substituted for the prior Trustee as a matter of law, including in any action or proceeding brought by the prior Trustee. The Bankruptcy Court may enter such orders as are necessary to effect the appointment of the successor Trustee.

**9.4 Obligations Of Retiring Or Removed Trustees.** In the event of the resignation or removal of the Trustee, that Trustee shall, within 30 days of resignation or removal: (a) deliver to the successor Trustee all of the Trust Assets which were in the possession of the resigning or removed Trustee along with a complete list of Trust Assets and a complete accounting of all transactions engaged in by the Trustee while serving as Trustee; (b) execute and deliver such documents, instruments, records, and other writings as may be reasonably requested by the successor Trustee to effect such resignation or removal and the conveyance of the Trust Assets then held by the resigning or removed Trustee to the successor Trustee; (c) deliver to the successor Trustee all documents, instruments, records, and other writings relating to the Trust Assets as may be in the possession or under the control of the resigning or removed Trustee; and (d) otherwise assist and cooperate in effecting the assumption of the resigning or removed Trustee's obligations and functions by the successor Trustee.

## **ARTICLE X. TRUSTEE REPORTING AND DISCHARGE**

**10.1 Annual Accountings.** The Trustee shall prepare, at least annually, and upon termination of the Trust, a written accounting of the administration of the Trust listing the current assets (with fair market values) and detailing all transactions that occurred during the period covered by such accounting. Each such accounting shall be filed with the Bankruptcy Court.

**10.2 Approval of Accountings And Discharge of Trustee.** The Trustee may file with the Bankruptcy Court a motion for approval of the accounting described in Section 10.1 of this Trust Agreement. Upon the entry of an order of the Bankruptcy Court approving such accounting, the Trustee shall be discharged from all liability with respect to all assets and transactions listed in

such accounting to the Trust, any Claimant, and any other person who has or may have a claim against the Trust for acts or omissions in the Trustee's capacity as the Trustee.

#### ARTICLE XI. SECTION 468B SETTLEMENT FUND

**11.1 Trust As Settlement Fund.** In accordance with the Plan and the Confirmation Order, the Trustee shall take all reasonable steps to ensure that the Trust will qualify as, and remain, a "Designated" or "Qualified" settlement fund within the meaning of Section 468B of the Internal Revenue Code and the Treasury Regulations. The Debtor is the "transferor" within the meaning of Treasury Regulation Section 1.468B-1(d)(1). The Trustee shall be classified as the "administrator" within the meaning of Treasury Regulation Section 1.468B-2(k)(3). It is further intended that the transfers to the Trust will satisfy the "all events test" and the "economic performance" requirements of Section 461(h)(1) of the Internal Revenue Code and Treasury Regulation Section 1.461-1(a)(2).

**11.2 Employer Identification Number.** Upon establishment of the Trust, the Trustee shall apply for an employer identification number for the Trust in accordance with Treasury Regulation Section 1.468B-2(k)(4).

**11.3 Relation-Back Election.** If applicable, the Trustee and the Reorganized Debtor shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), to treat the Trust as coming into existence as a settlement fund as of the earliest possible date.

**11.4 Filing Requirements.** The Trustee shall cause to be filed, on behalf of the Trust, all required federal, state, and local tax returns in accordance with the provisions of Treasury Regulation Section 1.468B-2(k)(1). The election statement shall be included with the Trust's first timely filed income tax return. The Reorganized Debtor and the Settling Insurers shall supply to the Trustee and to the Internal Revenue Service the statement described in Treasury Regulation Section 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which the Reorganized Debtor or the Settling Insurers make any transfers to the Trust.

#### ARTICLE XII. BENEFICIARIES

**12.1 Names And Addresses.** The Trustee shall at all times keep a register in which the Trustee maintains a record of the awards made to the Abuse Claimants and Future Claimants pursuant to this Trust Agreement, the Plan, and the Confirmation Order, including their names, contact information, and the amounts of their awards, as well as copies of the required releases they delivered to the Trust; *provided, however*, the Trustee's management of this register shall be subject to the confidentiality provisions imposed by the Bankruptcy Court's *Order Approving Debtor's Motion For Order Establishing Deadlines For Filing Proofs Of Claim And Approving Form And Manner Of Notice Thereof* [Dkt. 301]. The Trustee may rely upon this register for the purposes of delivering distributions and notices.

**12.2 Rights Of Beneficiaries.** Abuse Claimants, Future Claimants, and any other Channeled Claimants shall have no title to, right to, possession of, management of, or control over the Trust Assets, or any right to call for a partition or division of the Trust Assets. Title to all of the Trust Assets shall be vested in the Trust and the Trustee, and the sole interest of any Claimants in the Trust Assets shall be the rights and benefits given to such Claimants under this Trust Agreement,

the Plan, and the Confirmation Order. The rights of a Claimant under this Trust Agreement shall, upon a Claimant's death or incapacity, pass to the legal representative of such Claimant.

**12.3 Tax Identification Numbers.** The Trustee may require any Claimant to furnish to the Trustee the Claimant's employer or taxpayer identification number or social security number as assigned by the IRS, and such other records or documents necessary to satisfy the Trustee's tax reporting obligations (including, but not limited to, certificates of non-foreign status). The Trustee may condition the payment of any distribution to any Claimant upon receipt of such number and records or documents.

### ARTICLE XIII. MISCELLANEOUS PROVISIONS

**13.1 Effective Date.** This Trust Agreement shall only become effective one Business Day after all of the following conditions are satisfied: (1) the Abuse Claimants vote to accept the Plan, (2) the Abuse Claimants vote to select the Settlement Election, (3) the Bankruptcy Court confirms the Plan, and (4) the Reorganized Debtor and the Trustee execute this Trust Agreement.

**13.2 Incorporation.** The Plan, the Confirmation Order, and any other Plan Documents and Trust Documents are incorporated into this Trust Agreement.

**13.3 Notices.** All notices or deliveries required or permitted under this Trust Agreement shall be given to the following:

If to the Trust or Trustee:

[Trustee notice party]

If to a Claimant:

The last known address listed for such Claimant with the Bankruptcy Court or with the Claims Agent, or to the last known address of such Claimant's attorney of record.

**13.4 Waiver.** No failure or delay of any party to exercise any right or remedy pursuant to this Trust Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

**13.5 Entirety Of Trust Agreement.** This Trust Agreement, along with the Plan, the Confirmation Order, and any other Plan Documents or Trust Documents, constitutes the full and complete understanding of the Parties regarding the Trust Agreement's subject matter and supersedes any prior understanding or agreement, whether oral or in writing.

**13.6 Counterparts.** This Trust Agreement may be executed in two or more counterparts, with the same effect as if all signatures on such counterparts appeared on one document, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**13.7 Captions.** The captions of Articles and Sections are included for convenience only and are to be disregarded in interpreting this Trust Agreement.

**13.8 Independent Legal And Tax Counsel.** All parties to this Trust Agreement have been represented by counsel and advisors of their own selection in this matter. Consequently, the parties agree that the language in all parts of this Trust Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly in favor of or against any party. It is specifically acknowledged and understood that this Trust Agreement has not been submitted to, nor reviewed or approved by, the Internal Revenue Service or the taxing authorities of any State or locality of the United States of America.

**13.9 Applicable Law.** Except to the extent that federal law (including the Bankruptcy Code and the Internal Revenue Code) is applicable, the rights and obligations arising under this Trust Agreement and any other Trust Document shall be governed by and construed and enforced in accordance with the laws of the State of Indiana without giving effect to the principles of conflicts of laws.

**IN WITNESS WHEREOF,** the Reorganized Debtor and the Trustee execute this Trust Agreement as of the last date set forth below.

**USA GYMNASTICS**

**[TRUSTEE]**

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

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

Dated: \_\_\_\_ \_\_, 2020

Dated: \_\_\_\_ \_\_, 2020

## Exhibit B



### **Bullet-Point Issues with the Plan and Disclosure Statement**<sup>1</sup>

Issues with the Disclosure Statement:

- **Class 7 Treatment.** NCC has not yet agreed to the treatment the Debtor proposes for the Class 7 Personal Injury Claim. NCC did not agree (and does not agree) to a contribution to the Insurance Settlement Amount plus an additional carve-out for the Personal Injury Claim. Any recovery for the Personal Injury Claim, if any, must be paid from the Insurance Settlement Amount or other Debtor funds. No additional fund is being made available for the Personal Injury Claim.
- **Allocation of the Insurance Settlement Amount.** All insurers' proposals to contribute to a settlement, including payment of any Insurance Settlement Amount is premised on all insurers and all Protected Parties receiving full and complete releases, channeling injunctions, exculpations and protections from any and all known and unknown, present and future claims, including Abuse Claims. In Section 9.2.1 of the Plan and Article I.B. of the Disclosure Statement, the Debtor has proposed to allocate the Insurance Settlement Amount. The insurers take no position on the Debtor's proposed allocation, but note that any obligation of the insurers, if any, to pay their respective portions of the Insurance Settlement Amount is conditioned on the insurers receiving full protections as set forth herein, and not on any proposed allocation sought by the Debtor.
- **Any Settlement must be conditioned on Acceptable Insurance Buyback and Settlement Agreements.** As has been proposed by the insurers, the Debtor's Plan and Disclosure Statement must describe that any settlement with the insurers is premised on the Debtor, USOPC, and each insurer entering an agreed form of Insurance Settlement and Buyback Agreement. Each insurer premised any proposal to the Debtor on a complete buyback of all insurance policies, pursuant to 363(b), (f), (m) and 1123(a)(5) and (b)(6). This separate agreement will need to be negotiated by the Debtor, USOPC and the insurers. An initial form of proposed agreement has been shared with the Debtor and USOPC and final forms of the agreements would be filed in the plan supplement. Approval of the Insurance Settlement and Buy-Back Agreements by Final Order of the Bankruptcy Court is a precondition to occurrence of the Effective Date.
- **The CGL Settling Insurers must be properly identified.** In Article I.B. of the Disclosure Statement, revisions are required so that the CGL Settling Insurers are properly identified.
- **Clarification of the FCR's Representation.** Just as the Debtor has agreed to expand the definition of "Sexual Abuse" in the plan to expressly include claims against USOPC and other Protected Parties for which Debtor is or may be alleged to be also responsible, so, too the order of appointment of the FCR (dkt 516) has to be clarified, and the FCR has to agree that the FCR represents future claimants against the USOPC and other Protected

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<sup>1</sup> The insurers believe that some of these may be resolved based on the debtor's proposed revisions to the Disclosure Statement and Plan.

Parties as to future Sexual Abuse Claims so defined. The FCR's order of appointment contemplates a change of definition, but the Disclosure Statement and Plan should make that clear, and the FCR must agree that he represents all claimants under the revised definition.

- **Dismissal of Lawsuits must include Dismissal of any and all claims or causes of action against "Protected Parties" not just "Participating Parties."** In Article I.B. of the Disclosure Statement, the Debtor proposes that within 10 days after receiving any payment from the Trust, the Claimants shall dismiss with prejudice any lawsuits that such Abuse Claimants previously brought against the Debtor or any "Participating Party." The reference to Participating Party must be changed to "Protected Party" so that all claims or lawsuits naming any "Non-Debtor CGL Settling Insurer Covered Persons" are also dismissed. Same change must be made in any revised plan.
- **The Definition of "Non-Debtor CGL Settling Insurer Covered Persons" must be expanded.** The definition of Non-Debtor CGL Settling Insurer Covered Persons must be expanded to include Kathy Scanlan, individually, Geddert's Twistars Gymnastics Club USA, Twistars USA, Inc. d/b/a Geddert's Twistars USA Gymnastics Club, and AOGC All Olympia Gymnastics Center.
- **The Litigation Election Must Make Clear That Litigation is Subject to any and all defenses.** The description of the Litigation Election must clearly provide that any litigation under the Litigation Election is subject to all defenses available to the Debtor, any defendant, or any insurer, including statutes of limitations, and any coverage defenses.
- **Certainty of Amount and Timing of Payment.** The description in the disclosure statement relating to the Certainty of Amount and Timing of Payment should be clarified to make clear that there can be no certainty of any recovery based on the defenses of any Protected Party or payment of such recovery if any, from any insurer of any Protected Party based on the coverage defenses of the insurers in the event the Abuse Claimants select the Litigation Election.
- **More Fulsome Description of Insurance Liability and Coverage Issues is required.** The insurers believe that the Disclosure Statement Requires a more fulsome discussion of the risk associated with the Litigation Election relating to defenses to liability of the Protected Parties and Defenses to coverage by the insurers of the Protected Parties, including limitations on applicability of insurance, limitations on availability of insurance, and risks that judgments could be uncollectable for any other reason. The insurers have proposed detailed language on these issues to the Debtor.
- **The Disclosure Statement should indicate that the Insurers' obligation to pay the Insurance Settlement Amount is Conditioned on specific relief being granted.** The Disclosure Statement should specifically indicate that any obligation of the Settling Insurers to contribute their respective portions of the Insurance Settlement Amount is expressly conditioned on specific relief being granted to the Settling Insurers,

Participating Parties, Protected Parties and other individuals, and that absent obtaining such relief, including but not limited to appropriate injunctive protections, insurance buybacks and settlement agreements, and releases there is no settlement with the Settling Insurers.

- **The Definition of “USOPC Contribution” should reflect contributions from USOPC’s own CGL insurance policies.** The definition of “USOPC Contribution” means “contributions made by the CGL Settling Insurers on behalf of USOPC.” In the Disclosure Statement, however, the Debtors note that “the Plan Payment includes contributions from USOPC’s CGL insurance policies.” The defined term suggests that USOPC’s own CGL Insurers are not contributing. The definition should be clarified to reflect that USOPC’s carriers are contributing from USOPC policies.
- **The Disclosure Statement should contain more fulsome disclosures relating to the Post-petition litigation relating to the Insurance Coverage Adversary Proceeding.** The insurers have provided language to the Debtor to more accurately state the status of all post-petition litigation in connection with the Insurance Coverage Adversary Proceeding. Moreover, since the filing of the Disclosure Statement, the Debtor has instituted additional litigation against Liberty Insurance Underwriters which should be described and additional litigation against other insurers that should be described.
- **The Funding of the Trust.** The Debtor must revise the Disclosure Statement to indicate that any obligation to fund the Insurance Settlement Amount is expressly conditioned on the Bankruptcy Court granting certain releases, injunctions, granting Settling Insurers Protected Party Status, effecting the Insurance Settlement and Buyback Agreements and otherwise reaching agreement with the insurers on the terms of each of these and other provisions. Furthermore, the Disclosure Statement and Plan must make clear that any funding of the Insurance Settlement Amount will be held in escrow pending the Effective Date of any Plan and that release from escrow to the Trust shall only occur upon terms acceptable to the Insurers including all protections required by the Insurers as preconditions to funding the Insurance Settlement Amount. Moreover, a provision must be included in the Plan requiring the immediate repayment of each insurer’s contribution to the respective insurer – without any setoff, recoupment or deduction whatsoever – in the event the Effective Date does not occur within 30 days following confirmation of the Plan as a Settlement Plan.
- **Insurers Have Not Agreed to pay “Insurance Reimbursement Claims” as part of any settlement.** No insurers, as a part of any proposed settlement, have agreed to pay or fund, or continue to pay or fund the Debtor for past or ongoing Insurance Reimbursement Claims in the ordinary course and through the Effective Date of the Plan. Both the Disclosure Statement and Plan must be revised to strike all references that suggest the insurers have agreed to, or will in the future, agree to pay any Insurance Reimbursement Claims if the Settlement Election is approved.
- **Each Provision allowing for Litigation against the Debtor in the Litigation Election must reserve rights and defenses of the insurers.** To the extent the Plan is approved as

a Litigation Plan, then it should be made clear that the Debtor is deemed to object to each Abuse Claim, and does not admit liability for any claims, including the Abuse Claims, and that the Debtor and the insurers and all other parties reserve all rights and defenses, including the applicable statute of limitations and all coverage defenses.

- **If the Debtor gets a discharge under the Litigation Election, the insurers should have the right to control ongoing litigation.** The Disclosure Statement and Plan should expressly provide that, if the Debtor confirms the Plan as a Litigation Plan, and would therefore be sued in name only, then the insurer(s) providing a defense shall have the absolute right to control and pay for the defense and try or settle those matters it shall deem prudent pursuant to the terms, limits, provisions and exclusions of the defending Insurer(s) policy(ies). The insurers have provided the Debtor with language to address this issue.
- **The Medicare Reimbursement Discussion must be updated.** The insurers have provided the Debtor with language to amend and clarify the Medicare Reimbursement provisions of the Plan. The insurers believe the sections are not accurate based on current Medicare reimbursement provisions and practices.

#### Issues with the Plan

- **Plan Definitions Must be Revised.** To effect a settlement acceptable to the insurers, many of the Plan Definitions must be revised as follows – specific language is set forth in Exhibit A:
  - “Insurance Coverage Adversary Proceeding” – to properly name Great American Assurance Company
  - “Personal Injury Insurer” – to remove reference to National Casualty Company
  - “Personal Injury Insurance Policy” – to remove reference to any National Casualty Company insurance policy.
  - “Related Person” – to include brokers, adjusters, various agents and affiliated companies.
  - “Sexual Abuse” – as amended by the Debtor in the 4/10/2020 version
  - “Twistars” – to properly reflect names or d/b/a’s of certain parties and individuals
  - “Participating Party” – to reflect that releases are being given to the Settling Insurers and their Related Persons.
  - “Released Parties” – to reflect that claims of bad faith and all claims for extracontractual liability are also being released.
  - “Settling Insurer” – to include all USOPC Settling Insurers..
  - “Settlement Election Trustee” – to reflect that it means the trustee of the Trust and any successor trustee appointed pursuant to the plan and plan documents.
  - “Twistars Payment” – to make the definition consistent with terms used elsewhere in the Plan
  - “USOPC Settling Insurers” – to name the USOPC Settling Insurers.

- **Several Additional Plan Definitions must be included.** The insurers have proposed two additional definitions for the Plan as follows:
  - “Insurance Settlement and Buy-Back Agreement” shall mean an separate settlement agreement including the Debtor and each Settling Insurer resolving and settling all claims, rights, issues and obligations between and among the Debtor and each Settling Insurer and allowing for each respective Settling Insurer to buy-back the respective Settling Insurer’s known and unknown CGL Insurance Policies and Other Insurance Policies free and clear of all liens, claims (including Abuse Claims), encumbrances and interests of any kind and nature whatsoever, and resolving coverage issues relating to CGL Policies, Other Insurance Policies and Non-Debtor CGL Settling Insurer Covered Person Policies. Each respective Insurance Settlement and Buy-Back Agreement shall be filed as part of a plan supplement. For avoidance of doubt, the Debtor and one or more Settling Insurers may, but are not required to, have a single settlement agreement reflecting the agreements between the Debtors and such Settling Insurers.
  - “Non-Debtor CGL Settling Insurer Covered Persons Policy” means any policy of insurance issued by a Settling Insurer but only with regard to defense and indemnity insurance coverage under such policy for past, present and future known and unknown Abuse Claims.
- **Treatment of Class 6 Under the Settlement Election.** Section 7.2.3 needs to be amended to include reference to the Channeling Injunction.
- **Treatment of Class 7 – the Personal Injury Claim.** NCC objects to any separate treatment of the Personal Injury Claim. NCC has not agreed to carve this claim out from its settlement proposal.
- **Treatment of USOPC under the Settlement Election.** Section 7.4.2 of the Plan needs to be revised to specify that USOPC will be a Participating Party and a Protected Party. Furthermore, this same section must be revised to make clear that USOPC shall
- release all Claims against the Settling Insurers in accordance with language exchanged between USOPC and the Settling Insurers.
- **Treatment of the FCR Claim.** Section 7.6.2 must be amended to indicate that “except as otherwise provided in the Plan (including the Settlement Insurer Injunction, Channeling Injunction, Section 11.1.2 and the Exculpation and Limitation on Liability in section 19.4), the Plan shall not affect the liability of any other Person for the Class 10 Claim.
- **Trust Funding and Formation.** Section 9.2 and 9.2.1 of the Plan must be revised to be consistent with comments made to the Disclosure Statement and Plan relating to allocation, preconditions to payment of the Insurance Settlement Amount and specifically provide that any settlement is subject to an Bankruptcy Court approval (by Final Order) of the Insurance Settlement and Buy Back Agreement, free and clear of all liens, claims,

encumbrances and interests. The same section must be amended to reflect that no insurer has agreed to pay any Insurance Reimbursement Claims. That provision should be stricken.

- **Section 9.2.2 must be revised to exclude any reference to the Personal Injury Claim and to include a release of the Settling Insurers by all Protected Parties.**
- **The Plan must include a “Protected Party Release”.** Because Protected Parties under the Plan include others who are or who could claim to be additional insureds under the CGL Insurance Policies, the insurers require a non-consensual release by all Protected Parties of any claims arising under or related to the CGL Insurance Policies. Accordingly, the insurers have proposed language for a new section 12.8 called “Protected Party Release” as set forth in this Objection and In Exhibit A to the Objection. The Debtor has proposed alternative language including that such release is mutual. The insurers find such language unacceptable.
- Section 14.5(c) Obligations of the Reorganized Debtor must be amended to reflect that the Debtor cannot require the Insurers to pay any fees, costs or expenses beyond those required under the Policies: This section should be revised as follows: “Notwithstanding anything to the contrary in this Plan, honor all of the Debtor’s obligations under the Insurance Policies and under applicable non-bankruptcy law, with the Reorganized Debtor’s attorneys’ fees, costs, and expenses incurred in doing so, if any, to be paid only if and to the extent provided under the Insurance Policies.”
- **The Insurance Neutrality Provisions Must be Expanded.** At a minimum, the Debtors should disclose that the insurers do not agree with the insurance neutrality provisions in the plan in the event the plan is confirmed as a litigation plan. The insurers assert that Section 15.1 of the Plan must be expanded to reflect complete Insurance Neutrality in the event the Plan is confirmed as a Litigation Plan. The insurers have proposed language to make the insurance neutrality language consistent with the decision of the Third Circuit in the *Combustion Engineering*, 391 F.3d 190, 218 (3d Cir. 2004). Likewise, Section 15.4 should be expanded to confirm that no rights of insurers are being affected whatsoever in the context of confirmation of the Plan as a Litigation Plan. The insurers have provided the Debtor with language to include in this section. Moreover, Section 15.8 of the Plan should be revised to make clear that “Nothing in the Plan, any Plan Document or Confirmation Order creates a right of direct action not otherwise permitted by applicable non-bankruptcy law or the applicable Insurance Policy.”
- **Solicitation Procedures must be expanded to provide notice to all Protected Parties** Some of the numerous Protected Parties have not filed claims against the Debtor. It is imperative, however, that the Protected Parties received notice of the Disclosure Statement and Plan along with an explanation that, in consideration of the channeling injunction and their respective treatment as Protected Parties under the Plan, that they will be deemed to grant releases to the Settling Insurers and all other Protected Parties. To give effect to this deemed release, specific clear and explanatory language should be sent to all Protected Parties and/or their counsel as part of any solicitation of the Plan,

advising them of their status as Protected Parties, the existence of the Channeling Injunction, their protection from Abuse Claims, their release of coverage under the Debtor's insurance policies, and their consent to sale of the insurance policies pursuant to the Insurance Settlement and Buyback Agreements, and their right to object to the same.



## Exhibit C

DRAFT

**SETTLEMENT AGREEMENT, RELEASE AND POLICY  
BUYBACK OF USAG POLICIES AND SETTLEMENT  
AGREEMENT AND PARTIAL RELEASE AS TO USOPC POLICIES**

This Settlement Agreement, Release and Policy Buyback of Policies issued to USAG (“Agreement”) is hereby made between and among the USA Gymnastics, a 501(c)(3) not-for-profit organization incorporated in Texas (“USAG”), and \_\_\_\_\_. The United States Olympic Committee & Paralympic Committee, a federally chartered nonprofit corporation (“USOPC”), is also a Party to this Agreement.

WHEREAS, numerous individuals have asserted claims against USAG, USOPC, and additional Other Releasing Parties (as defined herein) for injuries allegedly suffered due to Sexual Abuse by individuals allegedly negligently hired, supervised, or under the control of USAG and/or other defendants; and

WHEREAS, \_\_\_\_\_ issued or allegedly issued certain insurance policies to or for the benefit of USAG and/or USOPC and additional Other Releasing Parties (the “Policies” as defined herein); and

WHEREAS, certain disputes have arisen and may arise in the future concerning \_\_\_\_\_’s position regarding the nature and scope of its responsibilities, if any, to provide coverage to USAG, USOPC and/or any additional Other Releasing Parties for Abuse Claims (the “Coverage Disputes”); and

WHEREAS, USAG filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code (as herein defined) on December 5, 2018 (the “Petition Date”), in the United States Bankruptcy Court for the Southern District of Indiana (the “Reorganization Case” as defined herein); and

WHEREAS; USAG filed an adversary proceeding against \_\_\_\_\_ on February 1, 2019, in the United States Bankruptcy Court for the Southern District of Indiana (the “Adversary Coverage Proceeding”) and had previously, on April 6, 2018, filed a declaratory judgment action against \_\_\_\_\_ in the Marion Superior Court of the State of Indiana, which was subsequently removed to the United States District Court for the Southern District of Indiana (the “Declaratory Coverage Action”); and

WHEREAS, USAG and \_\_\_\_\_, without any admission of liability or concession of the validity of the positions or arguments advanced by each other, now wish fully

and finally to compromise and resolve any and all Coverage Disputes and any and all other disputes between them; and

WHEREAS, USOPC and \_\_\_\_\_, without any admission of liability or concession of the validity of the positions or arguments advanced by each other, now wish fully and finally to compromise and resolve any and all Coverage Disputes relating to Abuse Claims; and

WHEREAS, through this Agreement, USAG and USOPC intend to provide \_\_\_\_\_ with a buyback and release with respect to the USAG Policies (as defined herein) and to provide as set forth herein that \_\_\_\_\_ shall have no further obligations now or in the future with respect to the USAG Policies; and

WHEREAS, through this Agreement USOPC intends to provide \_\_\_\_\_ as set forth herein with a release as to Abuse Claims under the USOPC Policies and to provide that \_\_\_\_\_ shall have no further obligations now or in the future with respect to Abuse Claims, but only to the extent that the Abuse Claimant has provided a release to USOPC pursuant to Section 11.1 of the Plan; and

WHEREAS, as part of the compromise and resolution of such disputes, USAG and USOPC and \_\_\_\_\_ wish to effect a sale of the USAG Policies pursuant to Sections 363(b)(f) and (m) and 1123(a)(5) and (b)(6) of the Bankruptcy Code; and

WHEREAS, each Party has received the advice of counsel in the preparation, drafting, and execution of this Agreement, which was negotiated at arm's length;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, and intending to be legally bound, subject to the approval of the Bankruptcy Court, the Parties hereby agree as follows:

## **1. DEFINITIONS AND CONSTRUCTION**

1.1 As used in this Agreement, the following terms shall have the meanings set forth below. Terms not defined below shall have the meanings given to them in the Bankruptcy Code.

1.1.1 "Abuse Claim" means Sexual Abuse Claims and Non-Sexual Abuse Claims, as defined in the Plan.

1.1.2 "Abuse Claimant" means any Holder (as defined the Plan) of an Abuse Claim, including any Person whose Interests are, have been, or may be represented by the Future Claimants Representative appointed pursuant to Order entered May 17, 2019 [Doc 516].

- 1.1.3 “Adversary Coverage Proceeding” means the lawsuit USAG filed against \_\_\_\_\_ on February 1, 2019, in the United States Bankruptcy Court for the Southern District of Indiana, Adv. Proc. No. \_\_\_\_\_.
- 1.1.4 “Approval Motion” means the motion seeking entry of the Approval Order.
- 1.1.5 “Approval Order” means a Final Order in substantially the form attached hereto as Exhibit 1, with only such modifications as are acceptable to \_\_\_\_\_ and USAG (and to USOPC where it is affected) in each Party’s respective sole discretion, entered by the Bankruptcy Court under Bankruptcy Code Sections 363, 1123 and 105 and Bankruptcy Rule 9019 and/or under such other provisions as the Bankruptcy Court may order, approving this Agreement and authorizing the Parties to undertake the settlement and the transactions contemplated by this Agreement.
- 1.1.6 “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101 *et. seq.*
- 1.1.7 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Indiana and any other court in which the Reorganization Case may be pending or which has jurisdiction over the Reorganization Case.
- 1.1.8 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.
- 1.1.9 “Claim” means any past, present or future claim, demand, action, requests, cause of action, suit or liability of any kind or nature whatsoever, whether at law or equity, known or unknown, asserted or unasserted, anticipated or unanticipated, accrued or unaccrued, fixed or contingent, which has been or may be asserted by or on behalf of any person, whether seeking damages, including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, causes of action or orders, and any claim within the definition of Section 101(5) of the Bankruptcy Code.
- 1.1.10 “ \_\_\_\_\_ ” means [insurer and related persons].
- 1.1.11 “ \_\_\_\_\_ Released Parties” means \_\_\_\_\_, as defined above, and all employees, officers, directors, shareholders, principals, parents, agents, managing agents, third-party administrators, attorneys, and representatives, as well as the predecessors, successors, assignors, and assigns of each of the foregoing, in their capacity as such.

- 1.1.12 “Conditional Payment” means any payment made pursuant to Section 1395y(b)(2)(B) of the MSPA (Medicare Secondary Payer Act, as defined in § 1.1.16 of this Agreement).
- 1.1.13 “Effective Date” means the (i) date on which this Agreement becomes effective, which shall be the day upon which the Approval Order entered by the Bankruptcy Court has become a Final Order, which shall be after each of the Parties has executed this Agreement and delivered evidence of that execution, through delivery of an executed signature page, to the other Parties, and (ii) the Effective Date (as defined in the Plan) of the Plan has occurred.
- 1.1.14 “Extra-Contractual Claim” means any Claim against \_\_\_\_\_, seeking any type of relief, including compensatory, exemplary, or punitive damages, or attorneys’ fees, costs, or any other type of relief, on account of alleged bad faith; failure to act in good faith; violation of any duty of good faith and fair dealing; violation of an unfair claims practices act or similar statute, regulation, or code; any type of alleged misconduct; or any other act or omission of the insurer of any type for which the claimant seeks relief other than coverage or benefits under a Policy. Extra-Contractual Claims include without limitation: (i) any Claim arising out of or relating to \_\_\_\_\_’s handling of any request for insurance coverage relating to (a) the USAG Policies for any Claim, including, without limitation, any Abuse Claim; or (b) coverage for Abuse Claims under a USOPC Policy or any other Policy; and (ii) the conduct of the Parties with respect to the negotiation of this Agreement. However, this limitation shall not include fraud in the inducement of this Agreement.
- 1.1.15 “Final Order” means an order, judgment, or other decree (including any modification or amendment thereof) that remains in effect and has not been reversed, withdrawn, vacated, or stayed, and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired or, if such an appeal or review has been taken, (i) it has been resolved and no longer remains pending, or (ii) an appeal or review has been taken timely but such order has not been stayed and USAG and \_\_\_\_\_ have mutually agreed in writing that the order from which such appeal or review is taken should be deemed to be a Final Order within the meaning of this Agreement.
- 1.1.16 “Insurance Coverage Claim” means any Claim for insurance coverage under the USAG Policies or for coverage for Abuse Claims under any USOPC Policy or any other Policy, that allegedly applies to Abuse Claims.
- 1.1.17 “Interests” means all liens, Claims, encumbrances, interests, and other rights of any nature, whether at law or in equity, including any rights of

contribution, indemnity, defense, subrogation, or similar relief relating to the USAG Policies or to insurance coverage for Abuse Claims under USOPC Policies or any other Policy.

- 1.1.18 “Medicare Beneficiary” means an Abuse Claimant who is eligible to receive, is receiving, or has received Medicare benefits.
- 1.1.19 “MSPA” means Medicare Secondary Payor Act, codified at 42 U.S.C. § 1395y, and the regulations promulgated thereunder, found at 42 C.F.R. § 411.1 *et seq.*
- 1.1.20 “Other Releasing Parties” mean Non-Debtor CGL Settling Insurer Covered Persons, as defined in the Plan.
- 1.1.21 “Parties” means USAG, USOPC and \_\_\_\_\_, and “Party” means anyone of them.
- 1.1.22 “Person” means an individual, any corporation, including, without limitation, a corporation sole, a partnership, an association, a limited liability company, a proprietorship, joint venture, a trust, executor, legal representative, or any other entity or organization, as well as any federal, international, foreign, state, or local governmental or quasi-governmental entity, body, or political subdivision or any agency or instrumentality thereof.
- 1.1.23 “Petition Date” means December 5, 2018, the date upon which the USAG filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.
- 1.1.24 “Plan” means the Chapter 11 Plan filed by USAG on \_\_\_\_\_ as may be altered, amended or modified from time to time in accordance with the Bankruptcy Code and Bankruptcy Rules, provided that any alteration, amendment or modification affecting this Agreement is approved in writing by \_\_\_\_\_.
- 1.1.25 “Plan Confirmation Order” means a Final Order that: (i) approves a plan of reorganization as to USAG pursuant to Section 1129 and any other applicable provision of the Bankruptcy Code; (ii) contains the Channeling Injunction as defined in the Plan channeling all Abuse Claims to the Trust; (iii) the Settling Insurer Injunction (as set forth in the Plan); (iv) the Protected Party Release (as set forth in the Plan); (v) provides that this Agreement is binding on the Trust; and (iv) provides all protections and releases to \_\_\_\_\_ and the \_\_\_\_\_ Released Parties relating to Abuse Claims and Policies (including extra-contractual liability) that are afforded to Settling Insurers (as defined in the Plan) under the Plan.

- 1.1.26 “Policies” means all insurance policies, issued or allegedly issued, by \_\_\_\_\_ and providing insurance coverage to USAG, and/or any Other Releasing Party, as identified on Exhibit 2 to this Agreement, and any and all unknown insurance policies issued or allegedly issued by \_\_\_\_\_ to USAG and/or any Other Releasing Party Policies includes CGL Insurance Policies (as defined in the Plan).
- 1.1.27 “USAG Policy” means a Policy known or unknown issued to USAG.
- 1.1.28 “USOPC Policy” means a Policy known or unknown issued to USOPC or another Other Releasing Party but only with regard to defense and indemnity insurance coverage under such Policy for past, present and future known and unknown Abuse Claims.
- 1.1.29 “Reorganization Case” means the Chapter 11 case filed December 5, 2018, by the USAG in the United States Bankruptcy Court for the Northern District of Indiana, *In re USA Gymnastics*, Case No. 18-09188-RLM-11.
- 1.1.30 “Settlement Amount” means the payment to be made by \_\_\_\_\_ pursuant to Section 2.1 of this Agreement.
- 1.1.31 “Sexual Abuse” means Sexual Abuse as defined in the Plan.
- 1.1.32 “USAG” means USA Gymnastics, a 501(c)(3) not-for-profit organization, incorporated in Texas, and the Estate (pursuant to Section 541 of the Bankruptcy Code).
- 1.1.33 “Trust” means the Trust, established pursuant to a Plan and confirmed by the Plan Confirmation Order, to which all Abuse Claims are channeled as the sole and exclusive source of payment of any claims against USAG, USOPC, the Other Releasing Parties or \_\_\_\_\_.
- 1.2 The following rules of construction shall apply to this Agreement:
- 1.2.1 Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement; and (iv) the words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.”
- 1.2.2 References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions regardless of whether specifically referenced in this Agreement.



1.2.3 The wording of this Agreement was reviewed by legal counsel for each of the Parties, or other signatories to this Agreement, and each of them had sufficient opportunities to propose and negotiate changes prior to its execution. None of the Parties, the Other Releasing Parties, or the \_\_\_\_\_ Released Parties or other signatories to this Agreement will be entitled to have any wording of this Agreement construed against the other based on any contention as to which of the Parties drafted the language in question or which party is an insurer.

## 2. PAYMENT OF SETTLEMENT AMOUNT

- 2.1 Subject to all of the terms of this Agreement, in full and final settlement of all Claims and responsibilities under, arising out of, or relating to (i) the USAG Policies and (ii) coverage for Abuse Claims under the USOPC Policies or any other Policy, and in consideration of the sale of the USAG Policies free and clear of all Interests of any Person, and expressly subject to fulfillment of all conditions to payment identified in Section 3 below, \_\_\_\_\_ shall pay to the Trust or the Debtor (as provided in the Plan) the sum of \_\_\_\_\_ (\$\_\_\_\_\_) (the “Settlement Amount”) within fourteen (14) days after the Conditions Precedent to \_\_\_\_\_’s Payment set forth in Section 3 of this Agreement have been fulfilled, provided that \_\_\_\_\_ receives prior written notice of at least twenty one (21) days from the Trustee of the Trust that such conditions have been satisfied and direction as to transmission of the payment.
- 2.2 Subject only to paragraph 5.8 *infra*, The Parties expressly agree that it is intended: (i) that the Settlement Amount is the total amount \_\_\_\_\_ and the \_\_\_\_\_ Released Parties are obligated to pay on account of any and all Claims made under or relating to (a) the USAG Policies (including the Abuse Claims and any reimbursement obligations for Conditional Payments under the MSPA) or with respect to Extra-Contractual Claims relating to the USAG Policies, and (b) coverage issued for Abuse Claims under any USOPC Policy or any other Policies (including any reimbursement obligations for Conditional Payments under MSPA) or with respect to Extra-Contractual Claims relating to such coverage; (ii) that under no circumstance will \_\_\_\_\_ or the \_\_\_\_\_ Released Parties ever be obligated to make any additional payments to anyone in connection with the USAG Policies referenced in subparagraph (i)(a) above and coverage for Abuse Claims referenced in the subparagraph (i)(b) above, including any amounts allegedly owed under the MSPA and for Extra Contractual Claims; and (iii) that all limits of liability of the USAG Policies referenced in subparagraph (i)(a) above and coverage for Abuse Claims referenced in subparagraph (i)(b) above, including all per person, per occurrence, and aggregate limits, shall be deemed fully and properly exhausted. The Parties further agree that the Settlement Amount is the full purchase price of the Policies and coverages referenced in this paragraph.

2.3 The Parties agree that the Plan that is confirmed in the Plan Confirmation Order will provide that this Agreement is binding on the Trust and that before the Trustee of the Trust disburses any of the Settlement Amount to any Abuse Claimant the Trustee shall determine whether any Conditional Payment has been made to or on behalf of any Abuse Claimant. If any Conditional Payment has been made to or on behalf of any Abuse Claimant, the Trustee shall, within the respective time period called for by the MSPA, (i) reimburse the appropriate Medicare Trust Fund for the appropriate amount, and (ii) submit the required information for any Abuse Claimant to the appropriate agency of the United States government. Furthermore, the Parties agree that the Plan shall provide as follows: [citation to John Morganstern provisions on MSPA]

2.3.1 As a precondition to receiving any payment from the Trust, each Abuse Claimant, including Future Claimants (as defined in the Plan) shall execute and deliver to the Trust a full and complete release of \_\_\_\_\_ as provided in Section 11.1 of the Plan. In addition, each such Claimant shall dismiss with prejudice any lawsuit as provided in Section 11.1 of the Plan, and the Trustee shall promptly (within 10 days of its receipt) provide \_\_\_\_\_ with such release and evidence of dismissal.

### 3. CONDITIONS PRECEDENT TO \_\_\_\_\_'S PAYMENT

3.1 Timing of Payment. \_\_\_\_\_'s obligation to pay the Settlement Amount in Section 2.1 above is expressly conditioned on USAG having obtained both the Approval Order and the Plan Confirmation Order. Court deferral of entry of the Approval Order, in whole or in part, until entry of the Plan Confirmation Order is not a failure of this condition.

3.2 Approval Order. Within fourteen (14) days after USAG, USOPC, and \_\_\_\_\_ have executed this Agreement, USAG shall file the Approval Motion. The Approval Motion shall seek entry of the Approval Order.

3.2.1 If any objections to the Approval Motion are filed with the Bankruptcy Court, USAG shall file a written response, in a form acceptable to \_\_\_\_\_ and shall take all reasonable steps to defend against any appeal, petition, motion, or other challenge to the Bankruptcy Court's entry of the Approval Order. \_\_\_\_\_ will cooperate with USAG and USOPC, including making all appropriate submissions.

3.2.2 Written notice of the Approval Motion shall be provided to all known Claimants (including all Abuse Claimants and other Claimants who have filed proofs of Claim, all Abuse Claimants scheduled by USAG), counsel for the Official Committee of Unsecured Creditors, the Future Claimants Representative appointed pursuant to Order entered May 17, 2019 [Doc 516]), all Persons who have filed notices of appearance in the

Reorganization Case, all entities known to have provided general liability insurance to USAG, USOPC, and the additional Other Releasing Parties. All claimants, including Abuse Claimants, shall be served at the address shown on their proofs of claim or, if no proof of claim was filed, then at the address on USAG's schedules. Counsel for each Abuse Claimant shall also be served. Known Abuse Claimants shall be served even if not scheduled or the subject of a proof of claim, to the extent known to USAG. Any and all co-defendants and their counsel (to the extent of record) in any pre-petition litigation brought by Abuse Claimants shall also be given notice at the last address shown on any filed appearance or, if such co-defendant is proceeding *pro se*, then to the last address of record for such *pro se* co-defendant. The notice of the Approval Motion and intent to seek entry of the Approval Order also shall be published, twice in the *USA Today*, and \_\_\_\_\_, in a form and at a time agreed to by the Parties or as ordered by the Bankruptcy Court.

- 3.3 Plan Confirmation Order. In conjunction with the Reorganization Case, USAG shall seek and obtain entry of a Plan Confirmation Order, which order must be in all respects consistent with this Agreement and contain no provisions that diminish or impair the benefit of this Agreement to \_\_\_\_\_. In so doing, USAG's efforts shall include: (i) proposing the Plan and seeking a confirmation hearing on an appropriately timely basis; (ii) urging the Bankruptcy Court to overrule any objections and confirm the Plan; and (iii) taking all reasonable steps to defend against any appeal, petition, motion, or other challenge to the Bankruptcy Court's entry of a Plan Confirmation Order. Prior to entry of a Plan Confirmation Order, the USAG shall oppose any motion to lift any stay as to any Abuse Claim.
- 3.4 The Plan of Reorganization. The Plan must be in all respects consistent with this Agreement and contain no provisions that diminish or impair its benefit to \_\_\_\_\_. The Plan shall provide for damages, injunctive relief, attorneys' fees, costs, and expenses in favor of \_\_\_\_\_ and against the Trust in the event of a violation or breach of any undertaking in Section 2.3 of this Agreement.

#### 4. CONDITIONS. TO AGREEMENT

- 4.1 This Agreement shall be subject to the following conditions: in the event (i) the Bankruptcy Court dismisses the Reorganization Case or converts it to a case under Chapter 7 of the Bankruptcy Code prior to the entry of a Plan Confirmation Order; or (ii) one or more of the conditions ("Dismissal Conditions") identified in Section 4.2 below occurs, then USAG (subject to Court approval unless the Reorganization Case is dismissed), USOPC, or \_\_\_\_\_ may terminate this Agreement by prompt written notice to the other Party. Upon termination of this Agreement, the releases provided in Section 5 of this Agreement shall become null and void, and USAG, USOPC and

\_\_\_\_\_ shall retain all of their rights and obligations with respect to the Policies as existed prior to termination of this Agreement.

- 4.2 Dismissal Conditions for purposes of Section 4.1 of this Agreement are: (i) the failure of USAG, after a good faith effort, to obtain, by December 31, 2020, a Confirmation Order, provided, however, that this date shall be extended by up to one year by agreement of USAG, USOPC and \_\_\_\_\_; or (ii) the agreement of \_\_\_\_\_ and USOPC and USAG that the USAG should seek dismissal of the Reorganization Case.

## 5. RELEASES AND SALE FREE AND CLEAR

- 5.1 In consideration of the Channeling Injunction and \_\_\_\_\_'s payment of its share of the USOPC contribution to the Trust under the Plan, USOPC releases all of its rights to, and interests in, (a) the USAG Policies and (b) defense and indemnity insurance coverage for past, present and future known and unknown Abuse Claims under any USOPC Policy or any other Policy issued by \_\_\_\_\_ that allegedly applies to Abuse Claims, but only to the extent that the Abuse Claimant has provided a release to USOPC pursuant to Section 11.1 of the Plan. For purposes of effecting this settlement, USOPC consents to the sale of the USAG Policies to \_\_\_\_\_. Except as provided in this paragraph, USOPC's rights and interests in the USOPC Policies are not affected and will continue to be those provided by the terms and conditions of the USOPC Policies and applicable law.
- 5.2 In consideration of the Channeling Injunction and payment of their share of a Contribution to the Trust, each Other Releasing Party (other than USOPC, dealt with in the preceding paragraph), having been given due notice and having accepted the benefit of the Channeling Injunction, shall be deemed, through the Plan and Plan Confirmation Order and the Approval Order, to release all of its rights to, and interests in, defense and indemnity for past, present and future known and unknown Abuse Claims under the USAG Policies and any other Policy issued by \_\_\_\_\_ that allegedly applies to Abuse Claims. Each Other Releasing Party consents to the sale of the USAG Policies to \_\_\_\_\_.
- 5.3 From and after the Effective Date, neither the USAG nor any Other Releasing Party shall commence against \_\_\_\_\_ or the \_\_\_\_\_ Released Parties any action, suit, or proceeding of any nature whatsoever with respect to any matter, conduct, transaction, occurrence, fact, or other circumstance alleged in, arising out of, connected with, or in any way relating to any Abuse Claim, USAG Policy, coverage for Abuse Claims in any USOPC Policy or \_\_\_\_\_'s handling any Abuse Claim.
- 5.4 Subject to entry of the Approval Order and the Plan Confirmation Order as Final Orders, and the payment of the sum set forth in Section 2.1, and subject to Section 5.8 *infra*, and without any further action by the Parties, USAG, USOPC, and the

additional Other Releasing Parties, on the one hand, and \_\_\_\_\_ and the \_\_\_\_\_ Released Parties, on the other hand, each hereby fully, finally, and completely remises, releases, acquits, and forever discharges, as of the Effective Date, the other, and each of them, from any and all past, present, or future Claims in connection with, relating to or arising out of, in any manner or fashion, the USAG Policies and the coverage for Abuse Claims under any USOPC Policy or any other Policy issued by \_\_\_\_\_ that allegedly applies to Abuse Claims, including Claims that are actual or alleged, known or unknown, accrued or unaccrued, suspected or unsuspected (including Abuse Claims, Extra-Contractual Claims, reimbursement obligations for Conditional Payments under the MSPA, and all Claims relating to, or arising out of the Reorganization Case), whether such Claims seek compensatory damages, punitive damages, exemplary damages, statutorily multiplied damages, attorneys' fees, interest, costs, or any other type of monetary or nonmonetary relief.

- 5.5 Subject to paragraph 5.8 *infra*, USAG, USOPC and \_\_\_\_\_ agree that, as set forth in the Approval Order, \_\_\_\_\_ hereby buys back the USAG Policies, free and clear of all liens, encumbrances, and other Interests (as set forth in the Approval Order) of any Person, including all rights and Interests of USAG, USOPC, all additional Other Releasing Parties; and any other Person claiming by, through, or on behalf of the USAG; any other insurer; and any present or future Abuse Claimant. This sale is pursuant to Sections 363(b), 363(f), 1123(a)(5) and 1123(b)(6) of the Bankruptcy Code. The Parties acknowledge and agree that (i) \_\_\_\_\_ is a good faith purchaser of the USAG Policies and within the meaning of Section 363(m) of the Bankruptcy Code and (ii) the consideration exchanged constitutes a fair and reasonable settlement of the Parties' disputes and of their respective rights and obligations being released hereunder and constitutes reasonably equivalent value. The Parties agree (as set forth in the Approval Order) that the releases in this Agreement and the policy buyback comply with the Bankruptcy Code and applicable non-bankruptcy laws. Further, subject to paragraph 5.8 *infra*, the Parties agree: (A) (as set forth in the Approval Order) that, upon the payment of the Settlement Amount by \_\_\_\_\_, the USAG Policies and coverage under any USOPC Policy for Abuse Claims be terminated and of no further force and effect; (B) that \_\_\_\_\_'s payment of the Settlement Amount constitutes \_\_\_\_\_'s full and complete performance of any and all obligations under the USAG Policies and exhausts all limits of liability of the Policies, and exhausts all coverage for Abuse Claims under any USOPC Policy or other Policy; and (C) the Parties agree that all rights, title, or interest USAG or USOPC may have had, may presently have, or in the future may have in the USAG Policies or the coverage for Abuse Claims under any USOPC Policy or other Policy are released pursuant to the terms of this Agreement.
- 5.6 If, contrary to the specific intent of the Parties any Claims released pursuant to this Agreement, including any Insurance Coverage Claim, are deemed to survive this Agreement, even though they are encompassed by the terms of the release set

forth in this Section 5 of this Agreement, the Parties, and additional Other Releasing Parties, hereby forever, expressly, and irrevocably waive entitlement to and agree not to assert any and all such Claims.

- 5.7 The releases set forth in this Section 5, as well as all other provisions in this Agreement, are not intended to apply to or have any effect on \_\_\_\_\_'s right to reinsurance recoveries under reinsurance treaties, certificates, or contracts that cover losses arising under or in connection with the Policies.
- 5.8 Notwithstanding any other provision of this Agreement, USOPC's release of rights and interests in defense and indemnity insurance coverage for past, present and future, known or unknown, Abuse Claims under the USOPC Policies, USAG Policies and any other Policy issued by \_\_\_\_\_ that allegedly applies to Abuse Claims is a release only to the extent that the Abuse Claimant has provided a release to the USOPC pursuant to Section 11.1 of the Plan.
- 5.9 Nothing in this Section 5 is intended to, nor shall be construed to, release, waive, relinquish, or otherwise affect the Parties' rights and obligations under this Agreement.

## **6. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

- 6.1 Each of the Parties separately represents and warrants as follows:
- 6.1.1 To the extent it is a corporation, including a non-profit corporation, or other legal entity, it has the requisite power and authority to enter into this Agreement and to perform the obligations contemplated by this Agreement, subject only to approval of the Bankruptcy Court;
- 6.1.2 Subject to entry of the Approval Order and Plan Confirmation Order as Final Orders, the execution and delivery of, and the performance of the obligations contemplated by, this Agreement have been approved by duly authorized representatives of the Parties and by all other necessary actions of the Parties; and
- 6.1.3 This Agreement has been thoroughly negotiated and analyzed by counsel to the Parties and has been executed and delivered in good faith, pursuant to arm's length negotiations and for value and valuable consideration.
- 6.2 Each of the Parties has conducted and completed a thorough and good faith search for any policy of insurance that might exist, or other evidence of any such policy of insurance, under which \_\_\_\_\_ was or might be an insurer of USAG, USOPC or any additional Other Releasing Party for any Abuse Claim. Other than the Policies listed on Exhibit \_\_\_\_\_, no other policies of insurance have been located.

## **7. ACTIONS INVOLVING THIRD PARTIES**



7.1 For purposes of supporting the release granted in Section 5 and the extinguishment of any rights under the USAG Policies and coverage under any USOPC Policy effected by this Agreement, USAG and USOPC agrees as follows:

7.1.1 In the event that any other insurer of USAG, USOPC or additional Other Releasing Parties obtains a judicial determination or binding arbitration award that it is entitled to obtain a sum certain from \_\_\_\_\_ as a result of a claim for contribution, subrogation, indemnification, or other similar claim against \_\_\_\_\_ for \_\_\_\_\_'s alleged share or equitable share, or to enforce subrogation rights, if any, of the defense and/or indemnity obligation of \_\_\_\_\_ for any Claims or reimbursement obligations for Conditional Payments released or resolved pursuant to this Agreement, the USAG or USOPC or Other Releasing Party(ies), as applicable, shall voluntarily reduce its judgment or Claim against, or settlement with, such other insurer(s) to the extent necessary to effectuate such contribution, subrogation, indemnification, or other claims against \_\_\_\_\_. To ensure that such a reduction is accomplished, \_\_\_\_\_ shall be entitled to assert this Section as a defense to any action against \_\_\_\_\_ brought by any other insurer for any such portion of the judgment or Claim and shall be entitled to request the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect \_\_\_\_\_ and the \_\_\_\_\_ Released Parties from any liability for the judgment or Claim. Moreover, if a non-settling insurer asserts that it has a Claim for contribution, indemnity, subrogation, or similar relief against \_\_\_\_\_, such Claim may be asserted as a defense against the Trust in any coverage litigation (and the Trust may assert the legal and equitable rights of \_\_\_\_\_ in response thereto); and to the extent such a Claim is determined to be valid by the court presiding over such action, the liability of such non-settling insurer to the Trust (USAG) shall be reduced dollar for dollar by the amount so determined.

7.2 \_\_\_\_\_ shall not seek reimbursement for any payments it is obligated to make under this Agreement under theories of contribution, subrogation, indemnification, or similar relief from any other insurer of USAG or Other Released Party unless that other insurer first seeks contribution, subrogation, indemnification or similar relief from \_\_\_\_\_. USAG shall use its reasonable best efforts to obtain from all insurers with which it settles agreements similar to those contained in this Section 7; provided, however, that the failure of USAG, despite its reasonable best efforts, to obtain such an agreement from any insurer with which it settles will not be a basis to terminate this Agreement or excuse \_\_\_\_\_ from performing its obligations hereunder, including, without limitation, payment of the Settlement Amount.



## 8. MISCELLANEOUS

- 8.1 In the event that any proceedings are commenced to invalidate all or any part of this Agreement, the Parties agree to cooperate fully to oppose such proceedings. In the event that any action or proceeding of any type whatsoever is commenced or prosecuted by any Person not a Party to this Agreement to invalidate, interpret, or prevent the validation, enforcement, or carrying out of all or any of the provisions of this Agreement, the Parties mutually agree, represent, warrant, and covenant to cooperate fully in opposing such action or proceeding.
- 8.2 Within fourteen (14) days after payment by \_\_\_\_\_, USAG shall file a motion to dismiss the Adversary Coverage Proceeding and Declaratory Coverage Action with prejudice and with each Party to bear its own costs, expenses, and attorney's fees.
- 8.3 Each Party agrees to take such steps and to execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability.
- 8.4 The Parties shall cooperate with each other in connection with the Approval Motion, the Approval Order, and the Plan Confirmation Order. Such cooperation shall include consulting with each other upon request concerning the status of proceedings and providing each other with copies of requested pleadings, notices, proposed orders, and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court; provided, however, that nothing contained in this Section shall obligate any Party to provide to the other Party any information that is otherwise subject to the attorney-client privilege or work-product doctrine. It is understood and agreed that in addition to the protections set forth in Section 8.7 below, all negotiations leading up to this Agreement, and all prior drafts of this Agreement, are subject to the mediation order entered by the Bankruptcy Court in the Reorganization Case, any prior mediation agreements, and the any confidentiality agreement imposed by the mediator.
- 8.5 This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding between the Parties. Except as otherwise expressly provided herein, this Agreement supersedes all prior communications, settlements, and understandings between the Parties and their representatives, regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement or alter or supplement its terms. Any statements, promises, or inducements, whether made by any party or any agents of any party, that are not contained in this Agreement shall not be valid or binding. Any changes to this Agreement must be made in writing and with the consent of the Parties.

- 8.6 By entering into this Agreement, none of Parties has waived or shall be deemed to have waived any rights, obligations, or positions it or they have asserted or may in the future assert in connection with any matter or Person outside the scope of this Agreement. USAG's, USOPC's and the Other Releasing Parties' respective rights under policies of insurance issued by insurers other than \_\_\_\_\_ shall not be affected by this Agreement (except to the extent expressly stated in Section 7.1 of this Agreement). No part of this Agreement, its negotiation, or its performance may be used in any manner in any action, suit, or proceeding by any Person as evidence of the rights, duties, or obligations of any of the Parties with respect to matters or Persons outside the scope of this Agreement. All actions taken and statements made by the Parties or by their representatives, relating to this Agreement or participation in this Agreement, including its development and implementation, shall be without prejudice or value as precedent and shall not be used as a standard by which other matters may be judged.
- 8.7 This Agreement represents a compromise of disputed Claims and shall not be deemed an admission or concession by any Party of liability, culpability, wrongdoing, or insurance coverage. Settlement negotiations leading up to this Agreement and all related discussions and negotiations shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any parallel state law provisions, as well as all confidentiality provisions entered by the Bankruptcy Court and the mediators in the Reorganization Case, the Adversary Coverage Proceeding or the Declaratory Coverage Action. Any evidence of the negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in (i) an action or proceeding between or among the Parties to enforce the terms of this Agreement or (ii) any possible action or proceeding between \_\_\_\_\_ and any of its reinsurers. This Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret \_\_\_\_\_'s obligations under the Policies to the USAG or to any other Person or any Claims of any Party against \_\_\_\_\_.
- 8.8 Neither this Agreement nor the rights and obligations set forth in this Agreement shall be assigned without the prior written consent of the other Parties, except an assignment that occurs as a matter of law by virtue of a merger of a Party with another corporation or entity. USAG covenants that it has not and will not assign any right, interest, or action on the Policies to any Person and USOPC covenants that it has not and will not assign any right, interest, or action as to the coverage related in ¶ 5.1 to any person.
- 8.9 Section titles and/or headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

- 8.10 All notices, demands, or other communication to be provided pursuant to this Agreement shall be in writing and sent by FedEx or other overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other person or address as any of them may designate in writing from time to time:

If to \_\_\_\_\_

With a copy to:

If to the USAG:

With a copy to:

If to USOPC:

- 8.11 This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, which facsimile counterparts shall be deemed to be originals.
- 8.12 The Parties agree that nothing contained in this Agreement shall be deemed or construed to constitute (1) an admission by \_\_\_\_\_ that USAG, USOPC, the additional Other Releasing Parties, or any other Person was or is entitled to any insurance coverage under the Policies or as to the validity of any of the positions that have been or could have been asserted by USAG or USOPC, (2) an admission by USAG or USOPC as to the validity of any of the positions or defenses to coverage that have been or could have been asserted by \_\_\_\_\_ or any Claims that have been or could have been asserted by USAG or USOPC against \_\_\_\_\_, or (3) an admission by USAG, USOPC or \_\_\_\_\_ of any liability whatsoever with respect to any of the Abuse Claims.
- 8.13 All of the entities included in the definition of \_\_\_\_\_ and \_\_\_\_\_ Released Parties are intended beneficiaries of this Agreement. The Parties agree that, except as set forth in the preceding sentence or otherwise set forth in this Agreement, there are not third-party beneficiaries of this Agreement.
- 8.14 Except as otherwise provided in this Agreement, each Party shall be responsible for their own fees and costs incurred in conjunction with the Reorganization Case or this Agreement.
- 8.15 The Bankruptcy Court in the Reorganization Case shall retain exclusive jurisdiction to interpret and enforce the provisions of this Agreement, which shall be construed in accordance with Illinois law.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below,

On behalf of the USAG

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

Date:\_\_\_\_\_

Witness:\_\_\_\_\_

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below,

On behalf of USOPC

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

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the last date indicated below,

On behalf of \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_



**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2020, a copy of the foregoing *Objection of National Casualty Company and Other Joining Insurers to Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Dated: June 10, 2020

/s/ Carl N. Kunz, III  
Carl N. Kunz, III (DE Bar No. 3201)

**18-09108-RLM-11 Notice will be electronically mailed to:**

Nancy D Adams on behalf of Defendant Liberty Insurance Underwriters Inc.  
[ndadams@mintz.com](mailto:ndadams@mintz.com)

Annemarie C Alonso on behalf of Creditor M. DOE, a minor child  
[annie@slawfirm.com](mailto:annie@slawfirm.com)

Annemarie C Alonso on behalf of Creditor Erin Kaufman  
[annie@slawfirm.com](mailto:annie@slawfirm.com)

Annemarie C Alonso on behalf of Creditor kelly cutright  
[annie@slawfirm.com](mailto:annie@slawfirm.com)

Martin Beeler on behalf of Creditor United States Olympic Committee  
[mbeeler@cov.com](mailto:mbeeler@cov.com)

Thomas R. Behm on behalf of Creditor Sexual Abuse Survivors  
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