

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

In re:

HGRL,

Debtor.

Chapter 11

Bk. No. 20-10892-MAF

**JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE UNITED  
STATES BANKRUPTCY CODE**

Dated: September 24, 2021

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## I.

### INTRODUCTION<sup>1</sup>

HGRL, formerly known as LRGHealthcare, the debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), and the Official Committee of Unsecured Creditors appointed in this case on October 23, 2020 by the Office of the U.S.Trustee pursuant to section 1102 of the Bankruptcy Code (the “Committee”), jointly propose this Plan pursuant to the provisions of chapter 11 of the Bankruptcy Code.

Pursuant to the Plan, the Debtor and the Committee (collectively, the “Plan Proponents”) propose an orderly liquidation of the Debtor’s remaining Assets. The Plan provides that all funds realized from the collection and liquidation of the Debtor’s Assets will be paid to Creditors on account of their Allowed Claims in accordance with the distributive priorities of the Bankruptcy Code and this Plan. The Plan Proponents propose to implement the Plan by establishing, inter alia, a Liquidating Trust that will be administered by the Liquidating Trustee. On the Effective Date, certain of the Debtor’s Assets will be transferred to the Liquidating Trust for the benefit of Creditors and certain assets will be administered by a Debtor Representative. Thereafter, the Liquidating Trustee will be responsible for liquidating the Assets, including the proceeds of assets administered by the Debtor Representative, and making distributions to Creditors in accordance with the terms of the Plan.

Transmitted with this Plan is a copy of the Disclosure Statement required by section 1125 of the Bankruptcy Code. The Disclosure Statement is provided to help Creditors understand this Plan. The Disclosure Statement contains, among other things, a discussion of the Debtor’s history, business and operations, risk factors, and other related matters. The Disclosure Statement also provides a summary of this Plan. All Creditors and other parties-in-interest are encouraged to carefully review the Disclosure Statement prepared by the Plan Proponents before voting to accept or reject this Plan.

The Plan Proponents urge all Creditors and other parties-in-interest to read this Plan and the Disclosure Statement in their entirety. No solicitation materials other than the Disclosure Statement and any documents, schedules, exhibits, or letters attached thereto or referenced therein have been authorized by the Plan Proponents or the Bankruptcy Court for use in soliciting acceptances or rejections of this Plan.

The Voting Deadline to accept or reject this Plan will be set by order of the United States Bankruptcy Court for the District of New Hampshire.

The Plan Proponents believe that this Plan will enable the Estate to efficiently liquidate its Assets for the benefit of the Creditors and accomplish the objectives of chapter 11 of the Bankruptcy Code. The Plan Proponents further believe the Plan presents the most advantageous outcome for all the Debtor’s Creditors and, therefore, confirmation of the Plan is in the best

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<sup>1</sup>Any capitalized terms otherwise undefined in this Introduction shall have the meanings subsequently ascribed to them in this Plan.

interests of the Estate. The Plan Proponents accordingly recommend that Creditors vote to accept the Plan.

## II.

### DEFINITIONS AND RULES OF CONSTRUCTION

#### A. Definitions

In addition to such other terms as are defined in other sections of the Plan, the following terms (which appear in the Plan as capitalized terms) have the following meanings as used in the Plan:

**“Administrative Expense Claim”** means any Claim against the Debtor or the Estate that has been timely filed pursuant to the deadlines and procedures set forth herein and in the Confirmation Order and is entitled to priority under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, but not limited to: (i) the actual and necessary costs and expenses incurred after the Petition Date and through and including the Effective Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries, or commissions for services, and payments for goods and other services and leased premises); (ii) Allowed Professional Compensation and Reimbursement Claims; (iii) Section 503(b)(9) Claims; and (iv) all fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

**“Allowed”** means, with reference to a Claim against the Debtor or its Estate, a Claim that is allowed under Article IX.

**“APA”** means the Asset Purchase Agreement between Concord Hospital, Inc., Concord Hospital – Laconia, Concord Hospital – Franklin, Capital Region Development Corporation, and Capital Region Ventures Corporation and the Debtor dated October 19, 2020 as approved by the Order of the Bankruptcy Court entered at docket number 405 (as same may have been amended or modified from time to time).

**“Assets”** means each and every item of property and interest of the Debtor or its Estate as of the Effective Date, whether tangible or intangible, legal or equitable, liquidated or unliquidated, and includes, without limitation, (i) all Excluded Assets (as defined in the APA), (ii) all Cash (including, without limitation, all proceeds of the Sale), (iii) all rights in and proceeds of Insurance Policies applicable the Debtor, and (iv) any other rights, privileges, deferred taxes, Claims, Causes of Action, or defenses of the Debtor and its Estate, whether arising by statute or common law, and whether arising under the laws of the United States, other countries, or applicable state or local law, but excluding Claims and Causes of Action related to Acquired Assets (as defined in the APA), including Accounts Receivable (as defined in the APA) acquired by the Buyers.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as now in effect or hereafter amended.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of New Hampshire or any other court having jurisdiction over the Chapter 11 Case.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, and the general, local, and chambers rules of the Bankruptcy Court, as the context may require.

**“Bar Date”** means, collectively or individually, as applicable, (i) the deadline for filing proofs of claim established by the General Bar Date Order; (ii) the deadline for filing proofs of claim and/or requests for payment established by the Interim Administrative Bar Date Order; (iii) the Final Administrative Bar Date Order; (iv) any deadline for filing proofs of claim for damages arising from the rejection of Executory Contracts, under Article VI(B) of this Plan or otherwise; and (v) any other deadline for filing proofs of claim or requests for payment established in this Chapter 11 Case by the Plan or any Order of the Bankruptcy Court.

**“Beneficiary”** means a “beneficiary,” as defined in the Liquidating Trust Agreement.

**“Business Day”** means any day that is not a Saturday, Sunday, or “legal holiday” as defined in Bankruptcy Rule 9006(a).

**“Buyers”** means the Buyers as defined in the APA.

**“Cash”** means cash constituting legal tender of the United States of America, cash equivalents and other readily marketable direct obligations of the United States of America, and fully FDIC-insured certificates of deposit issued by a bank.

**“Causes of Action”** means any and all Claims, actions, causes of action, choses in action, rights, demands, suits, liabilities, encumbrances, lawsuits, adverse consequences, debts, damages, dues, sums of money, accounts, reckonings, deficiencies, bonds, bills, disbursements, expenses, losses, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of setoff, rights of recoupment, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims (including those of the Debtor and/or the Estate), whether known or unknown, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, and whether held in a personal or representative capacity, that are or may be pending as of the Effective Date or instituted hereafter against any Entity, based in law or equity, including under the Bankruptcy Code or any under any other federal or state statute, whether direct, indirect, derivative, or otherwise, and whether asserted or unasserted as of the Effective Date, including, without limitation, (i) the right to object to, challenge or otherwise contest any Claims, whether or not any such Claim is the subject of a proof of claim; (ii) all Claims, causes of action (avoidance actions or otherwise), objections, rights, and remedies arising under Chapter 5 of the Bankruptcy Code pursuant to, among others, sections 502, 510, 542 through 545 and 548 through 553 or 558 thereof (but excluding all Preference Claims), including all Chapter 5 Actions, or similar or equivalent Claims, causes of action, objections, rights, and remedies arising under state law; (iii) all Tort Claims and D&O Claims; (iv) Claims under any Insurance Policies applicable to the Debtor; (v) all Claims of any kind or nature arising under state or federal law against any of the Debtor’s consultants, managers (current or past), advisors, auditors, or other professionals relating to services rendered prior to the Petition Date; (vi) all Claims, causes of action, and other rights (including rights to challenge any asserted Lien)

of any kind or nature against any Creditor asserting secured claim in this case, other than Claims or Causes of Action released or otherwise waived during the case; (vii) all legal and equitable defenses against any Claim or Cause of Action asserted against the Debtor; (viii) all Claims, causes of action, and other rights (including rights to challenge any asserted Lien) of any kind or nature against any Creditor asserting secured claim in this case, other than Claims or Causes of Action released or otherwise waived during the case; (ix) all Claims and/or Causes of Action of any kind or nature arising under state or federal law arising under a theory of negligence, professional negligence, and/or malpractice; (x) all Claims and/or Causes of Action of any kind or nature arising under state or federal law arising under based upon the formation and capitalization of the Debtor; (xi) all Claims and/or Causes of Action of any kind or nature arising state law based fraudulent conveyance theories; and (xii) all Claims and/or Causes of Action of any kind or nature arising from the payment and/or repayment of Claims by and/or to any Affiliate of the Debtor. The foregoing definition shall be construed in accordance with its broadest possible meaning, and any doubts or ambiguities shall be resolved in favor of inclusivity. **Except as otherwise expressly provided in the Plan, any and all Causes of Action of the Debtor and the Estate are preserved under the Plan.**

**“Chapter 5 Actions”** means any and all Claims and causes of action arising under chapter 5 of the Bankruptcy Code and any and all fraudulent conveyance or avoidable transfer Claims or causes of action that, in any instance, could be brought under state or federal law, excluding any Preference Claims.

**“Chapter 11 Case”** means the case commenced by the Debtor under chapter 11 of the Bankruptcy Code styled *In re HGRL*, Case No. 20-10892-MAF, pending before the Bankruptcy Court.

**“Claim”** has the meaning as set forth in section 101(5) of the Bankruptcy Code.

**“Claims Register”** means the claims register maintained by Epiq.

**“Class”** means a group of Holders of Claims classified together under the Plan.

**“Collateral”** means any property or interest in property of the Debtor or its Estate subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or otherwise.

**“Committee”** shall have the meaning attributed to such term in Article I of this Plan.

**“Committee’s Professionals”** means (i) the law firm of Sills Cummis & Gross P.C., (ii) the law firm of Drummond Woodsum, (iii) CBIZ Accounting, Tax and Advisory of New York, LLC, and (iv) any and all other professionals that the Committee has retained or may retain, with Bankruptcy Court approval, to assist in the conduct of the Chapter 11 Case, or to provide professional services for a specified purpose.

**“Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.



**“Confirmation Hearing”** means the hearing held by the Bankruptcy Court, pursuant to section 1128 of the Bankruptcy Code, to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

**“Confirmation Order”** means the Order of confirmation pursuant to Fed. R. Bankr. P. 3020(c) entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which shall be in form and substance satisfactory to the Plan Proponents.

**“Consummation”** means the occurrence of the Effective Date.

**“Convenience Claim”** means any General Unsecured Claim (including interest accrued only as of the Petition Date) that is either (a) in the amount of five thousand dollars (\$5,000.00) or less or (b) in an amount greater than five thousand dollars (\$5,000.00) and whose Holder elects to reduce in amount to five thousand dollars (\$5,000.00) and have treated as a Claims in Class 5 under this Plan.

**“Creditor”** means a “creditor,” as defined in section 101(10) of the Bankruptcy Code.

**“Cure”** means, with respect to the assumption of an Executory Contract or Unexpired Lease pursuant to section 365(b) of the Bankruptcy Code, (i) the distribution of Cash, or the distribution of such other property as may be agreed upon by the parties or Ordered by the Bankruptcy Court, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law, or (ii) the taking of such other actions as may be agreed upon by such parties or Ordered by the Bankruptcy Court.

**“D&O Claims”** means any and all rights, Causes of Action and Claims arising under state and/or federal law against the Debtor’s current and former directors, trustees, managers and/or officers, including Claims for breach of fiduciary duty, and the proceeds of any such rights and Claims, including from any Insurance Policies associated therewith.

**“D&O Policies”** means, collectively, any “Directors and Officers” and other fiduciary liability insurance policies belonging to the Debtor or under which the Debtor is named as an insured or additional insured, including, without limitation, the applicable policy issued by AIG.

**“Debtor”** shall have the meaning attributed to such term in Article I of this Plan.

**“Debtor’s Professionals”** means (i) Nixon Peabody LLP, (ii) Deloitte, (iii) Kaufman Hall Associates, (iv) Epiq, (v) any professional retained by the Debtor pursuant to the Ordinary Course Professionals Order; and (vi) any and all other professionals that the Debtor has retained or may retain, with Bankruptcy Court approval, to assist in the conduct of the Chapter 11 Case, or to provide professional services for a specified purpose.

**“Debtor Representative”** means the Person appointed pursuant to section 1123(b)(3) of the Bankruptcy Code and vested with all power and authority granted to the Debtor Representative under this Plan. The identity of the Debtor Representative will be set forth in the Plan Supplement.

**“Deficiency Claim”** means, with respect to any Claim asserted as a Secured Claim (other than any Secured Claim asserted by HUD, whose Claims shall be treated as set forth in Article IV(B)(2) of this Plan), a Claim in an amount equal to the difference between the total Allowed amount of the Claim and the value of the Holder’s interest in any Collateral securing such Claim (*i.e.*, the total Allowed Claim amount minus the allowed Secured Claim amount), as determined consistent with section 506(a) of the Bankruptcy Code or otherwise agreed to by the Holder of the Claim.

**“DIP Claim”** means any Claim of the DIP Lender arising under the “DIP Facility” as such term is defined in the DIP Order.

**“DIP Lender”** means Concord Hospital, Inc. in its capacity as lender under the “DIP Facility” as such term is defined in the DIP Order.

**“DIP Order”** means the Bankruptcy Court’s *Final Order (a) (i) Authorizing the Debtor to Obtain Postpetition Financing, (ii) Granting Liens on Property of the Debtor’s Estate and Superpriority Claims to the Postpetition Lender, and (iii) Granting Related Relief* [Docket No. 580].

**“Disallowed”** means, with reference to any Claim, a Claim or any portion thereof that is or has been disallowed or expunged by Order of the Bankruptcy Court.

**“Disclosure Statement”** means the disclosure statement relating to this Plan, including, without limitation, all exhibits, schedules, supplements, and modifications thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

**“Disputed Claim”** means any Claim that both (1) has not been Allowed by a Final Order of the Bankruptcy Court and (2) either:

- i. has not been listed in the Schedules, regardless of whether or not a Proof of Claim or request for payment of Administrative Expense Claims, as applicable, has been filed with respect to such Claim;
- ii. has been or hereafter is listed in the Schedules (as a result of a past or future amendment of the Schedules, or otherwise) as unliquidated, disputed, or contingent, in whole or in part, regardless of whether or not a Proof of Claim or request for payment of Administrative Expense Claim, as applicable, has been filed with respect to such Claim;
- iii. has been or hereafter is listed on in the Schedules (as a result of a past or future amendment of the Schedules, or otherwise), but not as disputed, unliquidated, or contingent, and as to which (i) a Proof of Claim or request for payment of Administrative Expense Claim, as applicable, has been timely filed with the Bankruptcy Court, and (ii) the amount set forth in the Proof of Claim or the request for payment of Administrative Expense Claim, as applicable, exceeds the amount indicated in the Schedules and/or the Proof of Claim or the request for payment of Administrative Expense Claim, as applicable, asserts priority greater than the priority set forth in the Schedules; or

- iv. as to which the Debtor or the Liquidating Trustee or, if not prohibited by the Plan, any other party-in-interest has interposed or hereafter interposes a timely objection and/or request for estimation in accordance with the terms of this Plan, section 502(c) of the Bankruptcy Code, and Bankruptcy Rule 3007, which objection and/or request for estimation has not been withdrawn or determined by a Final Order.

**“Distribution Reserve”** shall have the meaning attributed to such term in Article VII(F) of this Plan.

**“Effective Date”** means the first Business Day after the Confirmation Order becomes a Final Order and all conditions to the Effective Date as set forth in Article XII(A) of this Plan have been satisfied or, if waivable, jointly waived by the Debtor and the Committee.

**“Entity”** means an “entity,” as defined in section 101(15) of the Bankruptcy Code.

**“Epiq”** means Epiq Corporate Restructuring, LLC.

**“Estate”** means the estate of the Debtor created upon the commencement of the Chapter 11 Case under section 541 of the Bankruptcy Code.

**“Exclusions”** means (i) any purchase price adjustments required under the APA; (ii) any amounts required to satisfy the Debtor’s DIP Claim obligations; (iii) any amounts paid by the Debtor from the Estate prior to the Effective Date; (iv) the funds held in the Mortgage Reserve Fund (as defined in the *United States’ Motion for Relief from the Automatic Stay* (the “Stay Relief Motion”) [Docket No. 771], the “MRF”); (v) the aggregate amount of the Allowed Administrative Expense Claims and Priority Claims; (vi) the aggregate amount of any fees payable to the U.S. Trustee under 28 U.S.C. § 1930; (vii) any amounts payable to any Secured Creditors other than HUD; and (viii) the costs of administering the Plan and the Liquidating Trust.

**“Exculpated Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtor’s Professionals from and after the Petition Date; (b) the Debtor’s trustees and officers who have served in such capacity from and after the Petition Date, solely with respect to conduct occurring from and after the Petition Date; and (c) the Committee and its members in their capacity as such. With respect to the parties identified in subsection (c), each and all of their respective Professionals (including, but not limited to, the Committee’s Professionals) are also Exculpated Parties under the Plan.

**“Executory Contract”** means any executory contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code, specifically excluding contracts and agreements entered into pursuant to this Plan or subject to section 1113 of the Bankruptcy Code.

**“Fee Application”** means an application by a Professional for Allowance of a Professional Compensation and Reimbursement Claim.

**“Final Administrative Bar Date”** means, and is hereby established as, the date that is thirty (30) days after the Effective Date, or such other date that is established by Order of the Bankruptcy Court, and is the date by which requests for payment of Administrative Expense

Claims other than (i) Professional Compensation and Reimbursement Claims and (ii) Administrative Expense Claims that were subject to a previously established Bar Date must be filed, subject to any exceptions specifically set forth in this Plan. For purposes of clarity, the Final Administrative Bar date does not amend or otherwise alter any other deadlines previously set by the Bankruptcy Court which may be applicable to a particular claim.

**“Final Distribution Date”** means the date on which the distribution is made from the Liquidating Trust that finally and fully exhausts the assets of the Liquidating Trust.

**“Final Order”** means an Order of the Bankruptcy Court or any other adjudicative body, which Order has not been stayed, and as to which the time to appeal or to move for reargument or rehearing has expired and no appeal, or motion for reargument or rehearing shall then be pending; provided, however, that the Confirmation Order shall be deemed a Final Order upon its entry unless it has been stayed.

**“General Bar Date Order”** means the Bankruptcy Court’s *Order (a) Establishing Bar Dates for Filing Proofs of Claim, (b) Approving the Form and Manner of Notice Thereof, and (c) Authorizing Payment of Related Publication Expenses* [Docket No. 239] establishing, among other things, February 16, 2021 at 4:00 p.m. (Eastern Time) as the deadline to file proofs of claim for Claims (other than Claims of Governmental Units) arising prior to the Petition Date and April 19, 2021 at 4:00 p.m. (Eastern Time) as the deadline to file proofs of claim for Claims of Governmental Units arising prior to the Petition Date.

**“General Unsecured Claim”** means any Claim against the Debtor that is not an Unclassified Claim, a Priority Non-Tax Claim, a HUD Claim, a Secured Claim, or an Insured Claim.

**“Governmental Unit”** means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

**“GUC Cause of Action Share”** means forty percent (40%) of the Net Cause of Action Proceeds.

**“GUC Distribution Date”** means: (i) such interim date(s) that the Liquidating Trustee deems appropriate based on, among other things, the amount of the proceeds of the Liquidating Trust Estate on hand, whether there remain any other unpaid obligations under this Plan, the time and the status of pending or potential litigation, if any, affecting payment of such obligations, and the amount of any necessary reserves; and (ii) thereafter, the Final Distribution Date.

**“GUC Share”** means eleven and one half percent (11.5%) of the Net Distributable Assets.

**“Holder”** means the legal or beneficial holder of any Claim against the Estate.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“HUD Cause of Action Share”** means sixty percent (60%) of the Net Cause of Action Proceeds.

**“HUD Claims”** means all Claims by HUD and/or KeyBank against the Debtor and/or the Debtor’s estate. The HUD Claims shall be deemed Allowed upon the Effective Date and treated as set forth in Article IV(B)(2) below. For the avoidance of doubt, HUD shall not receive any payment in the Chapter 11 Case or under this Plan other than as set forth in Article IV(B)(2) below.

**“HUD Share”** means eighty eight and one half percent (88.5%) of the Net Distributable Assets.

**“Impaired”** means, with respect to any Class, a Class that is impaired as set forth in section 1124 of the Bankruptcy Code.

**“Insurance Policy”** means and includes any policy of insurance coverage of any kind (including any and all amendments, endorsements, renewals, and extensions thereof) that belongs or at any time belonged to or includes or at any time included the Debtor as a named insured, additional insured, beneficiary, or assignee, including, without limitation, any D&O Policies.

**“Insured Claim”** means a General Unsecured Claim arising prior to the Confirmation Date involving personal injury, medical malpractice, or wrongful death (including slip-and-fall and medical malpractice Claims) that are covered by the terms of the Debtor’s various insurance policies (including the Insurance Policies), or any other General Unsecured Claim against the Debtor for which the Debtor is entitled to indemnification, reimbursement, contribution or other payment under a policy of insurance (including the Insurance Policies) under which the Debtor is an insured or beneficiary of the coverage provided under the applicable policy. All Insured Claims are Disputed Claims. Some of the Insured Claims may be fully insured, and no deductible amount would be payable by the Debtor under the terms of the applicable insurance policy. As to other Insured Claims, a deductible or self-insured retention obligation may be applicable. For the avoidance of doubt, all Claims for such deductibles and self-insured retention obligations shall be treated as Class 4 General Unsecured Claims to the extent Allowed. Further, no insurance carrier shall, or shall be entitled to, deny coverage under any insurance policy (including any Insurance Policy) based upon (i) any failure of the Debtor, the Estate, the Liquidating Trust, or the Liquidating Trust Estate to pay any deductible or self-insured retention in full or (ii) the treatment of any Claim for a deductible or self-insured retention obligation as a Class 4 General Unsecured Claims.

**“Interim Administrative Bar Date Order”** means the *Order (i) Fixing an Interim Deadline for Filing Requests for Allowance of Administrative Expense Claims, (ii) Designating Form and Manner of Notice Thereof, and (iii) Granting Related Relief* [Docket No. 671] establishing June 11, 2021 at 5:00 p.m. (Eastern Time) as the Bar Date for filing a request for allowance of Administrative Expense Claims pursuant to section 503(b) of the Bankruptcy Code (other than claims arising under section 503(b)(9) of the Bankruptcy Code) that arose during the period from October 19, 2020 through and including May 31, 2021.

**“KeyBank”** means KeyBank National Association.

**“Lien”** means a “lien” as such term is defined in section 101(37) of the Bankruptcy Code.

**“Liquidating Trust”** means the trust to be established pursuant to this Plan and the Liquidating Trust Agreement that will effectuate the wind down of the Debtor’s Estate and make

distributions pursuant to the terms of this Plan and Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other Person authorized to take such action in accordance with the Liquidating Trust Agreement. In the event of any conflict between the terms of this Plan and the terms of the Liquidating Trust Agreement, the terms of this Plan shall govern.

**“Liquidating Trust Agreement”** means that certain agreement which will be entered into prior to the Effective Date by the Debtor and the Liquidating Trustee pursuant to Article VII of the Plan, will be subject to approval by the Bankruptcy Court, and will become part of the Plan pursuant to the Confirmation Order. The Liquidating Trust Agreement will be filed with the Bankruptcy Court as part of the Plan Supplement.

**“Liquidating Trust Assets”** means all Assets and other corpus of the Liquidating Trust Estate available for distribution to Holders of Allowed General Unsecured Claims after payment of all other amounts required by this Plan, including, but not limited to (i) payments to holders of Allowed Unclassified Claims, Allowed Priority Non-Tax Claims, the HUD Claims, Allowed Secured Claims, and Allowed Convenience Claims; (ii) all required statutory fees; and (iii) all costs and expenses of administration of the Liquidating Trust, including all Post-Effective Date Expenses.

**“Liquidating Trust Estate”** means collectively, (i) all Assets transferred to the Liquidating Trust pursuant to this Plan on the Effective Date or at any time thereafter pursuant to this Plan, (ii) such additional or different corpus as the Liquidating Trustee may from time to time acquire and hold in trust pursuant to the Liquidating Trust Agreement, and (iii) all proceeds of all of the foregoing.

**“Liquidating Trust Documents”** means the Liquidating Trust Agreement and any other documents or instruments concerning or relating to the Liquidating Trust.

**“Liquidating Trust Expense Reserve”** means the reserve established by the Liquidating Trustee to pay the Post-Effective Date Expenses.

**“Liquidating Trustee”** means the Person (and any successor) appointed as and vested with all power and authority granted to the Liquidating Trustee under this Plan and the Liquidating Trust Agreement. The identity of the Liquidating Trustee will be set forth in the Plan Supplement.

**“Liquidating Trustee Professional”** means any professional retained or employed by the Liquidating Trustee for carrying out the objectives of the Liquidating Trust Agreement.

**“Net Cause of Action Proceeds”** means any proceeds of the Causes of Action of the Debtor and/or its Estate retained under this Plan, minus the costs, expenses, and fees of the Debtor Representative and/or the Liquidating Trustee relating to the investigation, prosecution, negotiation, settlement, or other pursuit or resolution of such Causes of Action (including, but not limited to the related, expenses, and fees of the Debtor Representative and/or the Liquidating Trustee’s attorneys, financial advisors, consultants, and other professionals). Upon the realization of any Net Cause of Action Proceeds, such Net Cause of Action Proceeds shall be transferred to or retained by the Liquidating Trust, as applicable, for distribution consistent with the terms of this Plan (including, but not limited to, Article IV(B)(2)).



**“Net Distributable Assets”** all Assets of the Debtor and the Estate (excluding (a) any Causes of Action belonging to the Debtor or the Estate and (b) the Exclusions) and their proceeds.

**“Order”** means an order or judgment of the Bankruptcy Court or other adjudicative body.

**“Other Lienholders”** means the holders of Liens against property of the Debtor or its Estate other than any Lien held by KeyBank or HUD.

**“Person”** means a “person,” as such term is defined in section 101(41) of the Bankruptcy Code.

**“Petition Date”** means October 19, 2020, the date on which the Debtor filed its voluntary petition for relief commencing the Chapter 11 Case.

**“Plan”** means, collectively, this plan of orderly liquidation for the Debtor under chapter 11 of the Bankruptcy Code and all exhibits, supplements, appendices, and schedules hereto (including, but not limited to, the Plan Supplement), either in its present form or as it may be altered, amended, or modified from time to time.

**“Plan Proponents”** shall have the meaning attributed to such term in Article I of this Plan.

**“Plan Supplement”** means the supplemental appendix to this Plan, as same may be amended from time to time on or prior to the Voting Deadline, which will contain the Liquidating Trust Agreement, list of the members of the POC, and set forth the identities of the Debtor Representative and the Liquidating Trustee. The Plan Supplement will be filed and served on or before the date that is at least ten (10) days before the Voting Deadline.

**“POC”** means the committee of Persons or Entities appointed as of the Effective Date to advise the Liquidating Trustee in the performance of the Liquidating Trustee’s duties and obligations under the Plan with respect to the liquidation of Assets for the benefit of the Holders of Allowed General Unsecured Claims.

**“Post-Effective Date Expense(s)”** means all voluntary and involuntary costs, expenses, charges, obligations, or liabilities of any kind or nature, whether unmatured, contingent, or unliquidated incurred by the Liquidating Trust or the Debtor Representative after the Effective Date until the Liquidating Trust is dissolved, including, but not limited to, those expenses described in Article VII(F) of this Plan.

**“Post-Effective Date Notice List”** means the list, created pursuant to Article XII(G) of the Plan, of persons who desire to receive notices after the Effective Date of the Plan.

**“Preference Claims”** means any and all Claims and causes of action arising under section 547 of the Bankruptcy Code or any similar avoidable preference Claims or causes of action that, in any instance, could be brought under state or federal law. **All Preference Claims shall be deemed waived and released upon the occurrence of the Effective Date.**

**“Priority Claim”** means any Priority Non-Tax Claim or Priority Tax Claim.

**“Priority Non-Tax Claim”** means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

**“Priority Tax Claim”** means any claim of a Governmental Unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that respective Class.

**“Professional”** means a Person or Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and/or 331 of the Bankruptcy Code, or for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code, including but not limited to the Debtor’s Professionals and the Committee’s Professionals.

**“Professional Compensation and Reimbursement Claim”** means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred from and after the Petition Date through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

**“Proof of Claim”** means a proof of claim filed by a Holder of a Claim (or by anyone authorized by the Bankruptcy Code to file a proof of claim on behalf of such Holder) by the applicable Bar Date.

**“Record Date”** means the Confirmation Date.

**“Released Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtor’s Professionals as of or after the Petition Date, solely with respect to conduct occurring from and after the Petition Date or otherwise concerning preparation for or administration of the Chapter 11 Case, (b) the Debtor’s trustees and officers who have served in such capacity from and after the Petition Date, solely with respect to conduct occurring from and after the Petition Date and solely to the extent not otherwise covered by an applicable insurance policy, and (c) the Committee and its members in their capacity as such. With respect to the parties identified in subsection (c), each and all of their respective Professionals (including, but not limited to, the Committee’s Professionals) are also Exculpated Parties under the Plan.

**“Retiree Benefits”** means any “retiree benefits” offered by the Debtors as of the Petition Date as defined in section 1114(a) of the Bankruptcy Code.

**“Sale”** means the sale of substantially all of the Debtor’s assets to Concord Hospital, Inc., Concord Hospital – Laconia, Concord Hospital – Franklin, Capital Region Development Corporation, and Capital Region Ventures Corporation as approved by the Bankruptcy Court’s *Order (i) Approving the Sale of Substantially All of the Debtor’s Estate Free and Clear of All*



*Interests, (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (iii) Granting Related Relief* [Docket No. 405].

**“Schedules”** means, collectively, the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and Statement of Financial Affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521(a) of the Bankruptcy Code, Bankruptcy Rule 1007(b), and the Official Bankruptcy Forms, as same may be amended from time to time.

**“Section 503(b)(9) Claim”** means a Claim against the Debtor alleged to be entitled to an administrative expense priority under section 503(b)(9) of the Bankruptcy Code for the value of goods sold to the Debtor in the ordinary course of the Debtor’s business and received by such Debtor within twenty (20) days before the Petition Date.

**“Secured Claim”** means a Claim that is secured by a Lien on property in which the Debtor or its Estate has or had an interest, which Lien is valid, perfected, and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Debtor or its Estate’s interest in such property, or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; provided, however, that a Secured Claim shall not include any portion of the Claim to the extent that the value of such entity’s Collateral is less than the amount of such Claim. Nothing herein revives or preserves any Lien on property sold free and clear interests in such property in the Sale or any other sale in the Chapter 11 Case.

**“Secured Creditor”** means a Creditor that holds a Secured Claim in the Chapter 11 Case.

**“Statement of Financial Affairs”** means the *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* [Docket No. 157] filed by the Debtor in the Chapter 11 Case.

**“Tort Claims”** means any and all claims of the Debtor based on any tort, including but not limited to any D&O Claims.

**“Unclassified Claim”** means any Claim that is not part of any Class, including Administrative Expense Claims, Priority Tax Claims, and the DIP Claim.

**“Unexpired Lease”** means any unexpired lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**“U.S. Trustee”** means the United States Trustee for the District of New Hampshire.

**“Voting Deadline”** means the date fixed by the Bankruptcy Court Order after approval of the Disclosure Statement.

**“Wind-Down Committee”** means the committee, as described in paragraph two (2) of the *Supplement to Debtor’s Emergency Motion for Entry of an Order Authorizing the Appointment of Stephen E. Miller as Debtor’s Transition Consultant* [Docket No. 635], consisting of former trustees of the Debtor who will be responsible for certain matters of corporate governance for the Debtor following the Effective Date as set forth in this Plan.

## **B. Interpretation, Rules of Construction, Computation of Time**

### **1. Defined Terms**

Any term used in the Plan that is not defined in the Plan, but that is used in the Bankruptcy Code or Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable, unless the context requires otherwise.

### **2. Rules of Interpretation**

For purposes of this Plan:

**a.** whenever from the context it is appropriate, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender include the masculine, feminine, and the neutral gender;

**b.** any reference in this Plan to a contract, lease, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

**c.** 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 through and including the Confirmation Date, which, after they are filed, may be amended, modified, or supplemented only with the express written consent of the Plan Proponents;

**d.** unless otherwise specified in a particular reference, all references in the Plan to sections, articles, and exhibits are references to sections, articles, and exhibits of or to the Plan;

**e.** the words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

**f.** captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan;

**g.** the Plan Supplement and all exhibits to the Plan are incorporated herein, regardless of when the Plan supplement and exhibits are filed;

**h.** except as expressly set forth in this Plan, to the extent any discrepancy exists between the description contained herein of a document or agreement that is an exhibit to the Plan and with the provisions of that exhibit, the actual agreement or document shall govern; and

**i.** the words “includes” and “including” are not limiting;

**j.** any reference to an Entity or a Person as a Holder of a Claim includes that Entity’s or Person’s successors and assigns;

k. any immaterial effectuating provisions may be interpreted by the Plan Proponents in a manner that is consistent with the overall purpose and intent of the Plan, all without further order of the Bankruptcy Court;

l. all references to monetary figures shall refer to currency of the United States of America;

m. except as otherwise expressly provided, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; and

n. the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

### 3. Time Periods

a. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

b. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter.

## III.

### DESIGNATION OF CLASSES OF CLAIMS

The following is a designation of the Classes of Claims for all purposes, including voting, confirmation, and distribution pursuant to the Plan and sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that the Claim is an Allowed Claim and has not been paid, released, or otherwise satisfied before the Effective Date. Further, the provision in this Plan for a Class of Claims does not presume, and does not constitute any admission or determination regarding, the existence or validity of any Claim (including any purported Secured Claim) within such Class.

This Plan is intended to deal with all Claims against the Debtor of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously Allowed by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code. **However, only Holders of Allowed Claims will receive any distribution under this Plan, and no Holder of a Claim shall receive any distribution unless and until such Claim is Allowed.** For purposes of determining Pro Rata distributions under this Plan, Disputed Claims shall be included in the Class in which such Claims would be included if Allowed, until such Claims are finally Disallowed. This Plan will not provide any distributions on account of a Claim to the extent that such Claim has been Disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date. Classified, Allowed Claims shall receive the treatment described in Article IV(B) below.

**A. Classes of Claims**

**Class 1** consists of all Priority Non-Tax Claims.

**Class 2** consists of all HUD Claims.

**Class 3** consists of all Secured Claims of Other Lienholders.

**Class 4** consists of all General Unsecured Claims.

**Class 5** consists of Convenience Claims.

**Class 6** consists of all Insured Claims.

**B. Impaired Classes**

Classes 2, 4, 5, and 6 are Impaired under the Plan. The treatment of Allowed Claims in the Impaired Classes under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed Claim in each such Impaired Class. Subject to the provisions of any Order approving the Disclosure Statement, Holders of Claims in the Impaired Classes are entitled to vote on the Plan. In the event the Holders of Claims in Class 2 fail to vote to accept or reject the Plan, they shall be deemed to have voted in favor of accepting the Plan.

All Classes other than Classes 2, 4, 5, and 6 are unimpaired, deemed to accept the Plan, and not entitled to vote on the Plan.

**C. Terms of Confirmed Plan Control Unless Otherwise Specified**

If the Plan is confirmed by the Bankruptcy Court, except as specifically set forth in this Plan and the Confirmation Order, the treatment of Claims set forth in the Plan and the Confirmation Order supersedes and replaces any agreements or rights the Holders of the Claims have in or against the Debtor or its estate. **EXCEPT AS SPECIFICALLY SET FORTH IN THIS PLAN OR IN THE CONFIRMATION ORDER, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM, WHETHER AN ALLOWED CLAIM OR NOT.**

**D. Holders of Claims as of Record Date**

All distributions under the Plan will be tendered to the Persons or Entities that are the Holders of the relevant Claims as of the Record Date unless the distributing party, in its sole discretion, elects to tender such distribution to a transferee of such Claim or successor to such Holder.

## IV.

### TREATMENT OF CLAIMS

#### A. **Unclassified Claims**

Certain types of Claims are not placed into Classes; instead, such Claims are Unclassified Claims. Such Unclassified Claims are not considered Impaired, and their Holders are not entitled to vote on the Plan because they automatically receive specific treatment provided for them in the Bankruptcy Code. As such, the Plan Proponents did not place the following Claims in a Class. The respective treatment for these Claims is provided below.

##### 1. **Administrative Expense Claims**

###### a. **General**

Subject to the allowance procedures and the deadlines provided in this Plan and any applicable Bar Date previously established by the Bankruptcy Court, except to the extent any entity entitled to payment of an Allowed Administrative Expense Claim has received payment on account of such Claim prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive, in full and final satisfaction of its Allowed Administrative Expense Claim, Cash in an amount equal to the amount of such Allowed Administrative Expense Claim, on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date or (ii) the date such Administrative Expense Claim becomes Allowed, or as soon thereafter as is practicable.

Except with respect to (i) Professional Compensation and Reimbursement Claims (which are treated as set forth in Article IV(A)(1)(b) below); (ii) Section 503(b)(9) Claims (which are subject to the Bar Date established by the General Bar Date Order); (iii) Administrative Expense Claims that arose from October 19, 2020 through and including May 31, 2021; and (iv) any other Administrative Expense Claim with respect to which a Bar Date was previously established by the Bankruptcy Court, failure to File a request for payment of Administrative Expense Claim on or before the Final Administrative Bar Date (the date that is thirty (30) days after the Effective Date) shall result in such Administrative Expense Claim being forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Any Administrative Expense Claim for which a Bar Date was previously established that was not timely filed or otherwise asserted as directed on or before the applicable Bar Date shall be forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

###### b. **Professional Compensation and Reimbursement Claims**

All Professionals seeking payment of Professional Compensation and Reimbursement Claims shall file their respective final Fee Applications no later than sixty (60) days after the Effective Date. All Professional Compensation and Reimbursement Claims shall be treated as Administrative Expense Claims as set forth in Article IV(A)(1)(a) above, or shall be paid on such other terms as may be mutually agreed upon between the Holder of an Allowed Professional Compensation and Reimbursement Claim and the Debtor, or the Liquidating Trustee, as

applicable. Failure to timely file a final Fee Application shall result in the Professional Fee Compensation and Reimbursement Claim being forever Disallowed, barred, and expunged in its entirety.

**2. Priority Tax Claims**

In full and final satisfaction of each Allowed Priority Tax Claim, if any, except to the extent any entity entitled to payment of any Allowed Priority Tax Claim has received payment on account of such Claim prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Tax Claim on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Priority Tax Claim becomes Allowed, or as soon thereafter as is practicable.

**3. DIP Claim**

The DIP Claim has been satisfied in full. The DIP Lender shall not receive any further payments or distributions on account of the DIP Claim.

**4. Statutory Fees**

On or before the date that is thirty (30) days after the Effective Date, or as soon thereafter as is practicable, the Liquidating Trustee shall make all payments required to be paid to the U.S. Trustee pursuant to section 1930 of title 28 of the United States Code as of the Effective Date from the Liquidating Trust. All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date shall be paid by the Liquidating Trustee from the Liquidating Trust on a quarterly basis until the Chapter 11 Case is closed, converted, or dismissed.

**B. Classified Claims**

The Allowed Claims classified under this Plan shall be deemed fully and finally satisfied in the manner set forth herein unless a Holder agrees to less favorable treatment of its claim.

**1. Class 1 – Priority Non-Tax Claims**

Each Holder of an Allowed Priority Non-Tax Claim will receive, in full and final satisfaction of such Claim, Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Priority Non-Tax Claim becomes Allowed, or as soon thereafter as is practicable.

**2. Class 2 –HUD Claims**

All HUD Claims, including any Secured Claim of HUD and any unsecured deficiency claim of HUD, shall be deemed fully and finally satisfied through the following:

**a.** Following the payment of all (i) Allowed Administrative Expense and Allowed Priority Claims; (ii) fees payable to the U.S. Trustee under 28 U.S.C. § 1930; (iii) any

amounts payable to any Secured Creditors other than HUD under the Plan; and (iv) the costs of administering the Plan and the Liquidating Trust, the Liquidating Trustee shall determine the Net Distributable Assets and pay the HUD Share to HUD, retaining the GUC Share for distribution consistent with the terms of this Plan.

**b.** In addition to the foregoing, upon the realization of any Net Cause of Action Proceeds, the Liquidating Trustee shall pay the HUD Cause of Action Share to HUD, retaining the GUC Cause of Action Share for distribution consistent with the terms of this Plan.

**c.** In addition to the foregoing, HUD has already applied, or may apply, the MRF (as defined in the definition of “Exclusions” in Article II(A) above) as described in the Stay Relief Motion (consistent with the Order of the Bankruptcy Court granting the Stay Relief Motion entered at docket number 806). For purposes of clarity, the treatment of the MRF is not contingent upon confirmation of the Plan and HUD may proceed in accordance with the Bankruptcy Court’s Order regardless of the ultimate disposition of the Plan.

### **3. Class 3 – Secured Claims of Other Lienholders**

To the extent a Secured Claim of an Other Lienholder is Allowed, it will be treated, in the sole discretion of the Liquidating Trustee, in one of the following ways:

**a.** as of the Effective Date, the legal, equitable, and contractual rights of the Holder of the Allowed Secured Claim shall be reinstated in accordance with the provisions of section 1124(2) of the Bankruptcy Code notwithstanding any contractual provision or applicable non-bankruptcy law that entitles such Holder to demand or receive payment of such Claim before the stated maturity of such Claim from and after the occurrence of a default; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, covenants regarding corporate existence, or covenants prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be enforceable as to any breach that occurred on or prior to the Effective Date or any breach determined by reference back to a date preceding the Effective Date;

**b.** the Holder of the Allowed Secured Claim shall (i) retain a Lien securing such Claim from and after the Effective Date and (ii) receive deferred Cash payments from the Liquidating Trust totaling at least the value of such Claim as of the Effective Date in full and final satisfaction of such Claim;

**c.** on the Effective Date, or as soon thereafter as reasonably practicable, the Collateral securing the Allowed Secured Claim shall be surrendered to the Holder of such Claim in full satisfaction of such Claim; or

**d.** the Holder of the Allowed Secured Claim shall be paid, in Cash, an amount equal to such Claim, on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Secured Claim becomes Allowed, or as soon thereafter as is practicable, in full and final satisfaction of such Claim. To the extent the Collateral securing any Allowed Secured Claim of an Other Lienholder has been or is to be sold



pursuant to an Order of the Bankruptcy Court, any amount to be paid to the Holder of such Claim pursuant to the preceding sentence shall be net of the costs of sale of such Collateral and otherwise subject to the rights of the Debtor (in consultation with the Committee) and/or the Liquidating Trustee pursuant to section 506(c) of the Bankruptcy Code.

**4. Class 4 – General Unsecured Claims**

Each Holder of an Allowed General Unsecured Claim will receive, in full and final satisfaction of such Claim, on one or more GUC Distribution Dates, a Pro Rata share of the net Liquidating Trust Assets.

**5. Class 5 -- Convenience Claims.**

Each Holder of an Allowed Convenience Claim will receive, in full and final satisfaction of such Claim, Cash equal to ten percent (10%) of their Allowed Claim on the later of (i) the Effective Date or (ii) ten (10) days after an Order allowing such Claim becomes a Final Order, or as soon thereafter as reasonably practicable.

**6. Class 6 – Insured Claims**

Subject to the terms and conditions set forth in Article IV(C)(8)(c) below, each Holder of an Allowed Insured Claim will recover only from the available insurance coverage of the Debtor (including any Insurance Policy), and the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate will have no liability of any kind or nature with respect to any amount that a Claim is alleged or determined to exceed the amount of available insurance coverage. Such treatment shall be in full and final satisfaction of such Claim.

**C. General Claim Treatment Provisions**

**1. Objections**

The failure of any party to object to any Claim in the Chapter 11 Case prior to the occurrence of the Effective Date shall be without prejudice to the right of the Liquidating Trustee, as applicable, to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by the Holder of such Claim. Procedures for objections to Claims are set forth in Article VII(N) of this Plan.

**2. Attachment of Liens**

No Lien with respect to any Secured Claim shall attach to any property sold free and clear of interests of such property in the Sale or any other sale in this Chapter 11 Case.

**3. Survival and Release of Liens**

Notwithstanding section 1141(c) or any other provision of the Bankruptcy Code, all pre-petition Liens on property of the Debtor held with respect to any Allowed Secured Claim (other than any Secured Claim that is a HUD Claim) shall survive the Effective Date and continue in accordance with the contractual terms or statutory provisions governing such Claim until such



Allowed Secured Claim is satisfied, at which time such Lien shall be released, shall be deemed null and void, and shall be unenforceable for all purposes; provided, however, that the Liquidating Trustee may condition delivery of any final payment upon receipt of an executed release of the Lien.

Any and all Liens securing any Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Nothing in this Plan shall preclude Debtor or the Liquidating Trustee from challenging the validity of any alleged Lien on any asset of the Debtor or the value of the property that secures any alleged Lien, and all such rights are expressly preserved.

#### **4. Surcharge Under Section 506(c) of the Bankruptcy Code.**

All rights of Holders of Secured Claims (other than HUD) under this Plan are subject to the rights of the Debtor (in consultation with the Committee) and/or the Liquidating Trustee to surcharge the applicable Collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

#### **5. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to that Class.

#### **6. Estimation of Claims**

Before or after the Effective Date, the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether a Proof of Claim has been filed or any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars and treated as having a value of zero dollars for all purposes under the Plan, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim that is disputed, contingent, or unliquidated, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as specified by the Bankruptcy Court, for all purposes under the Plan, including for purposes of distributions. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection,

estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

## **7. Untimely Claims**

Consistent with VII(O) below, any Claim for which a Bar Date has been established that is not timely filed or otherwise asserted as directed on or before the applicable Bar Date shall be forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court, irrespective of whether such claim was filed prior to, on, or following the Confirmation Date.

## **8. Claims Paid or Payable by Third Parties**

Subject to the terms of Article IV(B)(6) above, Claims paid and/or payable by third parties, irrespective of classification, shall be treated as follows:

### **a. Claims Paid by Third Parties**

A Claim shall be reduced in full, and such Claim shall be Disallowed without a Claim objection having to be filed and without further notice to any party, or action, approval, or Order of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee. To the extent a Holder of a Claim receives a distribution under the Plan on account of such Claim and receives payment from a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of such Claim, such Holder shall, within two weeks of such Holder's receipt thereof, repay the distribution to the Debtor or the Liquidating Trust, as applicable, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim determined as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the holder owing the Debtor or the Liquidating Trust, as applicable, annualized interest at the federal judgment rate which was in effect as of the Petition Date on such amount owed for each day after the two-week grace period specified above until the amount is repaid.

### **b. Claims Payable by Third Parties**

No distribution under the Plan shall be made on account of an Allowed Claim that is payable by a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee, including pursuant to any insurance policy (including any Insurance Policy), until the Holder of such Allowed Claim has exhausted all remedies with respect to such third party or insurance policy. To the extent that one or more of the Debtor's insurers or another third party agrees to satisfy in full or in part an Allowed Claim, then immediately upon such agreement, the applicable portion of such Claim may be Disallowed and expunged without a Claim objection having to be filed and without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Unless and until the Holder of a Claim that is payable by a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee exhausts all remedies with respect to such third party or insurance policy, such

Claim shall be deemed estimated at zero dollars (\$0) for all purposes of the Plan and Liquidating Trust Agreement without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**c. Special Issues Regarding Insured Claims**

Under the terms of the Debtor's various insurance policies, the Debtor may owe a deductible amount or self-insured retention obligation on account of Insured Claims. After the Effective Date of the Plan (unless an applicable Order modifying the automatic stay has been entered at an earlier date), Holders of Insured Claims shall be enjoined by the injunctions established by the Confirmation Order and this Plan from commencing or continuing any action to assert or collect any alleged Claims relating to any deductible or self-insured retention obligation against the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate.

Consistent with the foregoing, distributions under the Plan to each Holder of an Allowed Insured Claim shall be recoverable only from available insurance, and the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate will have no liability of any kind or nature with respect to any amount that a Claim is alleged or determined to exceed the amount of available insurance coverage. Further, the Plan shall not expand the scope of, or alter in any other way, the rights and obligations of the Debtor's insurers under their policies, and the Debtor's insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest and/or litigate with any party, including the Debtor, the existence, primacy, and/or scope of available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims that the Debtor's insurers have asserted or may assert in any proof of Claim, or the rights and defenses of the Debtor, the Estate, the Liquidating Trust, and the Liquidating Trust Estate to such Claims.

**9. Distributions to be Applied First to Administrative and Priority Claims**

To the extent any Holder of an Allowed Claim receives any distribution(s) under this Plan by the Liquidating Trustee on account of such Claims, said distribution(s) shall be applied by the recipient first to satisfy any Allowed Administrative Claims, Allowed Priority Tax Claims, or other Allowed Claims of the recipient against the Debtor which are entitled to priority under Bankruptcy Code sections 503 or 507 and, only after all such priority Claims are fully satisfied, to any Allowed Claims not entitled to such priority

**10. Distribution Record Date**

Except as otherwise provided in a Final Order of the Bankruptcy Court or as otherwise stipulated by the Debtor or Liquidating Trustee, as applicable, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Debtor and Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any distribution with respect to any Claim, the Debtor and the Liquidating Trustee shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the Proof of Claim Filed with respect thereto or on the Schedules

as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to the Debtor or the Liquidating Trustee, as applicable, as of the Record Date.

**11. Third-Party Agreements**

Except as set forth herein, all subordination agreements entered into by any parties in interest shall be enforceable to the extent permitted by applicable law.

**12. Distribution Cap**

In no event shall any Holder of an Allowed Claim receive a distribution of a value exceeding one hundred percent (100%) of the amount of such Holder's Allowed Claim.

**V.**

**ACCEPTANCE OR REJECTION OF THIS PLAN**

**A. Voting Classes**

Subject to the provisions of any Order approving the Disclosure Statement, Holders of Claims in each Impaired Class, or their designees, shall be entitled to vote such Claims separately to accept or reject the Plan. Classes 2, 4, 5, and 6 are Impaired under the Plan.

**B. Non-Voting Classes**

Holders of Claims in Classes that are not Impaired are not entitled to vote such Claims to accept or reject this Plan. Each such Holder is conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 1 and 3 are not Impaired under this Plan.

**C. Controversy Concerning Impairment**

In the event of a controversy as to whether any Holder of an Allowed Claim or a Class is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

**D. Acceptance by Impaired Classes**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Claims actually voting in such Class have voted to accept the Plan. A Class of Claims in for which no Holder votes to accept or reject the Plan shall be deemed to have accepted the Plan.

**E. Non-Consensual Confirmation**

At the request of the Plan Proponents, this Plan may be confirmed under the so-called “cram down” provisions set forth in section 1129(b) of the Bankruptcy Code if, in addition to satisfying the other requirements for confirmation (other than section 1129(a)(8) of the Bankruptcy Code), this Plan “does not discriminate unfairly” and is determined to be “fair and equitable” with respect to each Class of Claims that has not accepted this Plan (*i.e.*, dissenting Classes). The Plan Proponents will request confirmation under this provision for any Impaired Class that rejects the Plan. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any amendment or supplement thereto, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary, in accordance with section 1127 of the Bankruptcy Code and this Plan.

**VI.****TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES****A. Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date and subject to Article VI(C) below, all Executory Contracts and Unexpired Leases of the Debtor will be deemed rejected as of May 1, 2021, other than Executory Contracts and Unexpired Leases that were previously assumed, assumed and assigned, or rejected by Final Order of the Bankruptcy Court (which contracts will be treated in accordance with such Final Order). The Confirmation Order will constitute an Order approving the foregoing rejection.

**B. Bar Date for Claims for Rejection Damages**

If the rejection of an Executory Contract or Unexpired Lease pursuant to this Plan and the Confirmation Order or a previous or subsequent Order of the Bankruptcy Court gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever Disallowed, barred, and expunged in its entirety, and shall not be enforceable against the Debtor, the Liquidating Trust, or the Estate, without further notice to any party, or action, approval, or Order of the Bankruptcy Court, unless a proof of claim is filed and served on the Debtor, the Liquidating Trust, and their respective counsel within thirty (30) days after the Effective Date. Notwithstanding the foregoing, to the extent that any such Claim is or was subject to a previously established Bar Date in the Chapter 11 Case, such previously established Bar Date shall be deemed operative and will not be deemed extended by virtue of this Article VI(B). All Claims arising from the rejection of an Executory Contract or Unexpired Lease for which proofs of claim are required to be filed, if Allowed, will be classified and treated as General Unsecured Claims, subject to the provisions of this Plan.

**C. Insurance Policies**

For the avoidance of doubt, on the Effective Date, the Debtor’s rights with respect to all Insurance Policies under which the Debtor may be a beneficiary or assignee (including all Insurance Policies that may have expired prior to the Petition Date, all Insurance Policies in existence on the Petition Date, all Insurance Policies entered into by the Debtor after the Petition Date, and all Insurance Policies under which the Debtor holds rights to make, amend, prosecute,

and benefit from claims) shall revert in the Debtor as necessary for the Debtor Representative to pursue and prosecute any Causes of Action, and to the extent that any Insurance Policies are not necessary for the pursuit and prosecution of any Causes of Action by the Debtor Representative, all such Insurance Policies shall be transferred to the Liquidating Trust from the Effective Date until its dissolution, unless any such Insurance Policy is otherwise canceled by the Liquidating Trustee in the Liquidating Trustee's discretion. Notwithstanding any provision providing for the rejection of Executory Contracts, any Insurance Policy that is deemed to be an Executory Contract shall neither be rejected nor assumed by operation of this Plan and shall be the subject of a specific motion by the Liquidating Trustee or Debtor Representative, as applicable, who shall retain the right to assume or reject any such Executory Contracts pursuant to and subject to the provisions of section 365 of the Bankruptcy Code following the Effective Date.

The Confirmation Order shall constitute a determination that no default by the Debtor exists with respect to any of the Insurance Policies requiring Cure, and that nothing in any prior Order, any prior agreements, or this Plan shall be construed or applied to modify, impair, or otherwise affect the enforceability of the Insurance Policies or any coverage thereunder with regard to any Claims or Causes of Action, including the D&O Claims. The Plan shall be liberally construed to protect the interests of all Creditors in all Causes of Action and to limit any Claims against the Estate.

#### **D. Retiree Benefits.**

For the avoidance of doubt, to the extent not previously terminated by the Debtors, as of the Effective Date, the Retiree Benefits shall be terminated and no further payments shall be made under such Retiree Benefits.

## **VII.**

### **MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

#### **A. Overview**

This Plan provides for the disposition of substantially all the Assets and the distribution of the net proceeds thereof to Holders of Allowed Claims, consistent with the priority provisions of the Bankruptcy Code. This Plan further provides for the winding down of the Debtor and its affairs by the Liquidating Trustee and the Wind-Down Committee. This Plan also creates a mechanism for the Liquidating Trustee and Debtor Representative to pursue Claims and Causes of Action, including D&O Claims and Tort Claims, to enable recoveries to Creditors.

#### **B. Establishment of Liquidating Trust; Appointment of Liquidating Trustee and Debtor Representative; Revesting of D&O Claims and Tort Claims**

Prior to the Effective Date, the Debtor shall execute the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, but not limited to, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust.



On the Effective Date, and in accordance with the Confirmation Order, the Estate's title to all the Assets (other than the D&O Claims and Tort Claims, which shall revert in the Debtor and may be pursued by the Debtor Representative) shall automatically pass to the Liquidating Trust, free and clear of all Claims and equity interests in accordance with section 1141 of the Bankruptcy Code. Notwithstanding the foregoing, the Plan Proponents reserve the right to modify the Plan to exclude certain Assets from transfer to the Liquidating Trust as necessary to preserve rights and claims of the Estate and maximize value for the Creditors. The Confirmation Order shall constitute a determination that the transfers of the Assets to the Liquidating Trust are legal and valid and consistent with the laws of the State of New Hampshire.

All parties shall execute any documents or other instruments as necessary to cause title to the applicable Assets to be transferred to the Liquidating Trust. The Assets will be held in trust for the benefit of all Holders of Allowed Claims pursuant to the terms of the Plan and the Liquidating Trust Agreement.

The Liquidating Trustee will be appointed as of the date of execution of the Liquidating Trust Agreement. The Liquidating Trustee will pay or otherwise make distributions on account of all Allowed Claims against the Debtor in accordance with the terms of the Plan.

On the Effective Date, the Debtor Representative shall be deemed appointed pursuant to section 1123(b)(3) of the Bankruptcy Code and vested with all power and authority granted to the Debtor Representative under this Plan.

On the Effective Date, the Estate's interest in any D&O Claims, Tort Claims, and rights in and proceeds of any Insurance Policies necessary for the prosecution of all such Causes of Action will revert in the Debtor. The Debtor Representative shall be authorized to institute and to prosecute through final judgment or settle the D&O Claims and Tort Claims in the Debtor Representative's discretion. Upon the entry of a final judgment or settlement, the relevant proceeds of the D&O Claims and Tort Claims shall be transferred to the Liquidating Trust for the benefit of the Holders of Allowed Claims in accordance with the provisions of this Plan. For the avoidance of doubt, subject to the assignment of any D&O Claims and/or Tort Claims to the Liquidating Trust pursuant to this Article VII(B), upon the occurrence of the Effective Date, the Debtor Representative shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring any D&O Claims and Tort Claims in any court of competent jurisdiction, (ii) prosecute the D&O Claims and Tort Claims, (iii) negotiate and settle the D&O Claims and Tort Claims, and/or (iv) otherwise resolve the D&O Claims and Tort Claims. For the further avoidance of doubt, subject to any assignment of any D&O Claims and/or Tort Claims to the Liquidating Trust pursuant to this Article VII(B), upon the occurrence of the Effective Date, the Debtor Representative shall automatically be (a) deemed a representative of the Debtor with respect to the D&O Claims, Tort Claims, and any related Insurance Policies and (b) granted and have to right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to the D&O Claims and Tort Claims. Nothing in this Plan shall require the Debtor Representative to prosecute or pursue any D&O Claims or Tort Claims.

In addition to the foregoing, to the extent any D&O Claims and Tort Claims are assignable under applicable law, the Debtor Representative is expressly authorized, in their discretion, to assign such D&O Claims and Tort Claims to the Liquidating Trust for prosecution and/or

settlement by the Liquidating Trustee upon the occurrence of the Effective Date or at any time thereafter. To the extent necessary for the Liquidating Trustee to pursue and prosecute any such D&O Claims and Tort Claims, all rights in and proceeds of any applicable Insurance Policies shall be deemed transferred to the Liquidating Trust upon the assignment of such D&O Claims and Tort Claims. Upon the assignment of any D&O Claims or Tort Claims to the Liquidating Trust, the Liquidating Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring the assigned D&O Claims and Tort Claims in any court of competent jurisdiction, (ii) prosecute the assigned D&O Claims and Tort Claims, (iii) negotiate and settle the assigned D&O Claims and Tort Claims, and/or (iv) otherwise resolve the assigned D&O Claims and Tort Claims. In addition, upon the assignment of any D&O Claims or Tort Claims to the Liquidating Trust, the Liquidating Trustee shall automatically be (a) deemed a representative of the Debtor with respect to the assigned D&O Claims and Tort Claims and any related Insurance Policies and (b) granted and have to right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to the assigned D&O Claims and Tort Claims. Nothing in this Plan shall require the Debtor Representative to prosecute or pursue any D&O Claims or Tort Claims.

**This Plan shall be interpreted so as to afford, for the benefit of all Holders of Allowed Claims, the greatest opportunity for maximum recovery by the Liquidating Trustee and the Debtor Representative on the Assets, D&O Claims, Tort Claims, and rights in and proceeds of any Insurance Policies. The Proceeds of all Causes of Action are material to the implementation of this Plan and the recoveries to Creditors.**

### **C. Income Tax Status**

For federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries of the Liquidating Trust Estate) shall treat the Liquidating Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124. For federal income tax purposes, the transfer of Assets to the Liquidating Trust under the Plan shall be treated as a deemed transfer to the Beneficiaries of the Liquidating Trust Estate in satisfaction of their Claims followed by a deemed transfer of the Assets by the Beneficiaries to the Liquidating Trust. For federal income tax purposes, the Beneficiaries will be deemed to be the grantors and owners of the Liquidating Trust and its assets. For federal income tax purposes, the Liquidating Trust will be taxed as a grantor trust within the meaning of IRC sections 671-677 (a non-taxable pass-through tax entity) owned by the Beneficiaries. The Liquidating Trust will file federal income tax returns as a grantor trust under IRC section 671 and Treasury Income Tax Regulation section 1.671-4 and report, but not pay tax on, the Liquidating Trust's tax items of income, gain, loss deductions, and credits ("**Tax Items**"). The Beneficiaries will report such Tax Items on their federal income tax returns and pay any resulting federal income tax liability. All parties will use consistent valuations of the assets transferred to the Liquidating Trust for all federal income tax purposes. The assets shall be valued based on the Liquidating Trustee's good faith determination of their fair market value. The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. The beneficial interests in the Liquidating Trust shall not be certificated, except as otherwise provided in the Liquidating Trust Documents.



#### **D. Powers and Authority of the Liquidating Trustee**

The powers of the Liquidating Trustee are set forth in full in the Liquidating Trust Agreement and shall include, among other things: (a) the power to sell, lease, license, abandon, or otherwise dispose of all remaining Assets of the Liquidating Trust Estate subject to the terms of this Plan; (b) subject to the provisions of Article VII(I) below, the power to wind down the Debtor and its affairs, including by filing final cost reports and taking such other actions as are necessary after the Effective Date to bring about and orderly wind down of the Debtor's operations; (c) the power to effect distributions under this Plan to the Holders of Allowed Claims; (d) the authority to pay all costs and expenses of administering the Liquidating Trust Estate after the Effective Date (including the Post-Effective Date Expenses), including the power to employ and compensate Persons and Entities to assist the Liquidating Trustee in carrying out the Liquidating Trustee's duties hereunder, and to obtain and pay premiums for insurance and any other powers necessary or incidental thereto; (e) the power to implement this Plan including any other powers necessary or incidental thereto; (f) the authority to waive, pursue, and/or settle Claims, applicable Causes of Action or disputes as to amounts owing to or from the Estate; (g) the authority to participate in any post-Effective Date motions to amend or modify this Plan or the Liquidating Trust Agreement, or appeals from the Confirmation Order; (h) the authority to participate in actions to enforce or interpret this Plan; and (i) the power to bind the Liquidating Trust. Each of the foregoing powers may be exercised by the Liquidating Trustee without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Notwithstanding any of the foregoing, the Liquidating Trustee may not unilaterally materially amend or alter the terms and provisions of this Plan.

For the avoidance of doubt, upon the occurrence of the Effective Date or the assignment of any D&O Claims or Tort Claims to the Liquidating Trust pursuant to Article VII(B) of this Plan, as applicable, the Liquidating Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring any Causes of Action in any court of competent jurisdiction, (ii) prosecute any Causes of Action, (iii) negotiate and settle any Causes of Action, and/or (iv) otherwise resolve any Causes of Action. For the further avoidance of doubt, upon the occurrence of the Effective Date or the assignment of any D&O Claims or Tort Claims to the Liquidating Trust pursuant to Article VII(B) of this Plan, as applicable, the Liquidating Trustee shall automatically be (a) deemed a representative of the Debtor with respect to all applicable Causes of Action and any related Insurance Policies and (b) granted and have the right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to all applicable Causes of Action. Nothing in this Plan shall require the Liquidating Trustee to prosecute or pursue any Causes of Action.

#### **E. Funding of the Liquidating Trust**

The funding of the Liquidating Trust for the payments to be made to Holders of Allowed Claims under the Plan and the payment of Post-Effective Date Expenses will be from (i) the Liquidating Trust Expense Reserve, (ii) the Debtor's Cash on hand as of the Effective Date, which will be transferred to the Liquidating Trust as of the Effective Date and proceeds from the investment of such Cash, and (iii) the proceeds of the liquidation of the Assets, including, without limitation, any Claims or Causes of Action.

The Liquidating Trustee, in the Liquidating Trustee's sole discretion, shall have the authority to allocate and reallocate Assets of the Estate and Liquidating Trust Estate (including Cash, and including with respect to any reserves provided for under this Plan) as necessary to effectuate the Plan without further notice to any party, or action, approval, or Order of the Bankruptcy Court, to the extent such allocation or reallocation would not be inconsistent with the terms of this Plan; provided, however, that the Liquidating Trustee may, but is not required to, apply to the Bankruptcy Court on notice to parties included on the Post-Effective Date Notice List prior to making any such allocation or reallocation. In the event that the Liquidating Trustee determines that effectuation of the Plan or an equitable distribution to Holders of Allowed Claims requires allocation or reallocation of Assets of the Estate or the Liquidating Trust Estate in a manner that would otherwise be inconsistent with any term of this Plan (including for the purposes of distribution under the Plan), the Liquidating Trustee shall have the authority to make such allocation or reallocation with approval of the Bankruptcy Court upon application to the Bankruptcy Court on notice to parties included in the Post-Effective Date Notice List.

#### **F. Liquidating Trust's Post-Effective Date Expenses**

All expenses related to implementation of the Plan incurred from and after the Effective Date through the date on which the Liquidating Trust is dissolved will be expenses of the Liquidating Trust, and the Liquidating Trustee will disburse funds from the Liquidating Trust Expense Reserve or other Liquidating Trust Assets as appropriate for purposes of paying the Post-Effective Date Expenses of the Liquidating Trust without further notice to any party, or action, approval, or Order of the Bankruptcy Court. The Post-Effective Date Expenses shall include, but are not limited to, the fees and expenses of the Liquidating Trustee, the fees and expenses of the Debtor Representative, the fees and expenses of the professionals employed by the Liquidating Trustee and/or the Debtor Representative (including the Liquidating Trustee Professionals), and other costs, expenses, and obligations of the Liquidating Trust until the date the Liquidating Trust is terminated in accordance with Article VII(M) and the Liquidating Trust Agreement. The Liquidating Trustee, in the Liquidating Trustee's sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Liquidating Trust Expense Reserve, as reasonably necessary and appropriate, to account for and pay the Post-Effective Date Expenses.

Prior to making a distribution to any Holders of Allowed Claims under the Plan, the Liquidating Trustee may place in reserve and/or in a separate account any funds that may be needed to pay Claims that are Disputed and Claims that have otherwise not been Allowed in the event that all or a portion of such Claims become Allowed (the "Distribution Reserve"). When a Claim is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Claim shall be released from the Distribution Reserve and shall be available for distribution in accordance with the terms of this Plan to either (i) the Holder of the Claim that has become an Allowed Claim, or (ii) if Disallowed, the Holders of Allowed Claims. The Liquidating Trustee, in the Liquidating Trustee's sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Distribution Reserve, as reasonably necessary and appropriate, and upon satisfaction of all Allowed Claims required to be paid from the Distribution Reserve, to transfer amounts held therein for distribution pursuant to the Plan.

**G. Use of Existing Accounts**

The Liquidating Trustee may use the Debtor's existing bank accounts (as of the Effective Date) for the purposes set forth herein, to the extent possible and desired. The Liquidating Trustee also may close the Debtor's existing bank accounts, in the Liquidating Trustee's sole discretion, and transfer all amounts therein to one or more accounts, in accordance with the terms of this Plan. Alternatively, notwithstanding any provisions to the contrary in this Plan, the Liquidating Trustee may invest some or all the funds that would otherwise be deposited into the accounts established pursuant to the Plan in allowed investments under applicable non-bankruptcy law.

**H. Employment and Compensation**

The Liquidating Trustee shall serve without bond and shall receive compensation for serving as Liquidating Trustee as set forth in the Liquidating Trust Agreement. At any time after the Effective Date and without further notice to any party, or action, approval, or Order of the Bankruptcy Court, the Liquidating Trustee may employ and compensate Persons or Entities, including professionals (which may, but need not, include Professionals previously or currently employed in the Chapter 11 Case) reasonably necessary to assist the Liquidating Trustee in the performance of the Liquidating Trustee's duties under the Liquidating Trust Agreement and this Plan. Such Persons or Entities shall be compensated and reimbursed by the Liquidating Trustee for their reasonable and necessary fees and out of pocket expenses on a monthly basis in arrears.

**I. The Wind-Down Committee**

The Wind-Down Committee will be responsible for certain matters of corporate governance for the Debtor set forth in this Plan until the earlier of (i) the date that the Debtor is dissolved in accordance with applicable state law pursuant to the terms of this Plan and (ii) the date that the Chapter 11 Case is closed. Specifically, (a) the Liquidating Trustee, with the assistance of the Wind-Down Committee, if necessary, shall prepare all tax returns, cost reports, and similar filings required for the Debtor (but not, for the avoidance of doubt, the Liquidating Trust) and, subject to the approval of the Liquidating Trustee and/or Debtor Representative, as applicable, file such documents with the applicable Governmental Unit or Entity; and (b) the Wind-Down Committee may, subject to the approval of the Liquidating Trustee, take such actions as are necessary to dissolve the Debtor in accordance with applicable state law. The members of the Wind-Down Committee shall serve without compensation; provided, however, that the Wind-Down Committee may be reimbursed for reasonable expenses incurred in the performance of its duties under the Plan. Further, with the Liquidating Trustee's approval, the Wind-Down Committee may utilize professionals retained by the Liquidating Trustee under the terms of this Plan to assist the Wind-Down Committee in the preparation and filing of any documents identified in (a) or (b) above, and the associated fees and costs of such professionals shall constitute Post-Effective Date Expenses.

**J. Vesting of Authority in Debtor Representative**

The Debtor Representative shall be deemed appointed as of the Effective Date, and, except as otherwise set forth in this Plan, shall be responsible for effectuating transfers of Assets in accordance with this Plan and otherwise satisfying the Debtor's obligations under the terms of

this Plan. On and after the Effective Date, unless otherwise expressly set forth in this Plan, the Debtor Representative shall have full and complete authority to act on behalf of and bind the Debtor without further action or approval of the Bankruptcy Court, the Debtor's board of trustees, or the Wind-Down Committee. After the D&O Claims and Tort Claims are liquidated and any proceeds of such Causes of Action are transferred to the Liquidating Trust Estate in accordance with this Plan, the Debtor Representative shall be empowered, but not directed, to effectuate the dissolution of the Debtor in accordance with the laws of the State of New Hampshire, subject to the approval of the Wind-Down Committee. For the avoidance of doubt, on the Effective Date, the Debtor Representative shall be deemed granted standing and authority to prosecute all applicable Causes of Action, including the D&O Claims and Tort Claims, preserved under this Plan.

**K. Termination of the Committee; Creation of POC**

On the Effective Date, the Committee shall be deemed dissolved, the retention and employment of the Committee's Professionals shall be deemed terminated, and the members of the Committee shall be deemed released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Case, other than for purposes of filing and/or objecting to final Fee Applications filed in the Chapter 11 Case.

On the Effective Date, to the extent Beneficiaries of the Liquidating Trust are willing to serve, the Committee shall be replaced by the POC consisting of not less than three (3) Persons or Entities that are Beneficiaries of the Liquidating Trust. The identities of the Persons and/or Entities that will serve on the POC as of the Effective Date will be filed by the Committee with the Bankruptcy Court as part of the Plan Supplement. The POC's sole function and responsibility shall be to advise the Liquidating Trustee in the performance of the Liquidating Trustee's duties and obligations under the Plan with respect to the liquidation of Assets for the benefit of Holders of Allowed Claims. In the Liquidating Trustee's discretion, members of the POC may be paid compensation in the amount of up to one thousand dollars (\$1,000) for each meeting of the POC such members attend; provided, however, that compensation for any single member of the POC shall not exceed three thousand dollars (\$3,000) in a single month unless otherwise ordered by the Bankruptcy Court. Members of the POC may also be reimbursed for reasonable expenses incurred in the performance of their duties as members of the POC. All such compensation and reimbursement shall be paid from the Liquidation Trust.

**L. Termination of the Liquidating Trust Estate**

The existence of the Liquidating Trust and the authority of the Liquidating Trustee will commence as of the Effective Date and will remain and continue in full force and effect until the earlier of (a) the date on which all of the Assets are liquidated in accordance with the Plan, the funds in the Liquidating Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities, and the Order closing the Chapter 11 Case is a Final Order or (b) five (5) years after the date of creation of the Liquidating Trust, unless extended by the Bankruptcy Court as provided in the Liquidating Trust Agreement.

At such time as the Liquidating Trust has been fully administered (*i.e.*, when all things requiring action by the Liquidating Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final Distribution Date, the Liquidating Trustee will file an application for approval of his final report and the entry of the final decree by the Bankruptcy Court.

**M. Liquidating Trustee as Successor in Interest to the Debtor and Committee**

Subject to Article VII(I) above, except as to the D&O Claims and the Tort Claims and any other Assets that revert in the Debtor upon the Effective Date, the Liquidating Trustee is the successor in interest to the Debtor and the Committee, and thus, after the Effective Date, to the extent this Plan requires an action by the Debtor (and except as it relates to the D&O Claims and Tort Claims or other Assets reverted in the Debtor upon the Effective Date, or is otherwise delegated to the Debtor Representative), the action shall be taken by the Liquidating Trustee on behalf of the Debtor and the Committee, as applicable.

For federal and applicable state income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries of the Liquidating Trust Estate) shall treat the transfer of Assets to the Liquidating Trust in accordance with the terms of this Plan, as a sale by the Debtor of such Assets to the Liquidating Trust Estate at a selling price equal to the fair market value of such Assets on the Effective Date. The Liquidating Trust shall be treated as the owner of all Assets that it holds.

**N. Objections to Claims**

From and after the Effective Date, the Liquidating Trustee shall have the exclusive authority, right, and standing (but shall not be obligated) to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further notice to any party, or action, approval, or Order of the Bankruptcy Court; and (iii) litigate to final resolution objections to Claims.

**No distribution shall be made pursuant to this Plan to a Holder of Claim, Disputed or otherwise, unless and until such Claim is or becomes an Allowed Claim.**

All objections to Claims shall be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the one hundred eightieth (180th) day after the Effective Date. The time period for filing objections to Claims shall automatically renew for successive periods of one hundred eighty (180) days each until the earlier of (i) the date upon which all Claims have been Allowed or Disallowed or (ii) the date fixed by the Bankruptcy Court upon motion of the Liquidating Trustee or a Holder of a Claim.

Until such time as an unliquidated Claim, contingent Claim, or unliquidated or contingent portion of a Claim becomes Allowed or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to distributions. The Holder of an unliquidated Claim, contingent Claim, or unliquidated or contingent portion of a Claim will be entitled to a distribution under the Plan only when and if such unliquidated or contingent Claim becomes an Allowed Claim.

**O. Disallowance of Untimely Claims**

Except as otherwise agreed by the Liquidating Trustee, any and all Holders of Claims (i) for which proofs of claim were not timely filed on or before the applicable Bar Date(s) or (ii) that were not otherwise asserted as directed on or before the applicable Bar Date(s) shall not be treated as Creditors for purposes of voting and distribution pursuant to Bankruptcy Rule 3003(c)(2).

Claims for which proofs of claim or requests for allowance were required to be filed by a Bar Date occurring before the Effective Date, and with respect to which no proof of claim or request for allowance was filed before the applicable Bar Date, shall be forever Disallowed, barred, and expunged in their entirety as of the Effective Date, and shall not be enforceable against the Debtor, the Liquidating Trust, or the Estate, all without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

Claims for which proofs of claim or requests for allowance are required to be filed after the Effective Date pursuant to a Bar Date established by this Plan, and with respect to which no proof of claim or request for allowance is filed by the applicable Bar Date, shall be forever Disallowed, barred, and expunged in their entirety as of the applicable Bar Date, and shall not be enforceable against the Debtor's, the Liquidating Trust, or the Estate, all without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**P. Continued Corporate Existence**

Notwithstanding anything to the contrary in the Plan or Confirmation Order, the Debtor shall continue to exist solely for the purpose of implementing the Plan unless and until the Debtor is dissolved in accordance with applicable state law pursuant to the terms of the Plan.

Subject to Article VII(I) above, the winding down of the Debtor's affairs, filing of any necessary documentation to dissolve the Debtor, and adoption of any and all corporate documents or resolutions necessary or appropriate to implement the Plan are hereby deemed authorized and approved in all respects without further action under any applicable law, regulation, order or rule.

**VIII.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Delivery of Distributions**

With respect to each Claim, distributions to the applicable Holder shall be made at the address of the Holder of such Claim as indicated on the records of the Debtor, or a filed proof of claim, as applicable.

**B. Undeliverable Distributions**

If any Allowed Claim Holder's distribution is returned as undeliverable, no further distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address. Subject to Article VIII(C) below, undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a



distribution becomes deliverable. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind. Any check that is not cashed or otherwise deposited within three months after the check's date shall be deemed an undeliverable distribution under this Plan.

### **C. Failure to Claim Undeliverable Distributions**

In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, the Liquidating Trustee will maintain a list of unclaimed distribution Holders. This list will be maintained and updated as needed for as long as the Chapter 11 Case stays open. Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution within three (3) months after the first attempted delivery shall have its Claim for such undeliverable distribution expunged and shall be forever barred from asserting any such Claim against the Debtor, its Estate, the Liquidating Trust Estate, the Liquidating Trustee, or their respective property. In such cases, any Cash held for distribution on account of such Claims shall be property of the Liquidating Trust Estate, free of any restrictions thereon, and shall revert to the account from which such payment was originally issued to be distributed pursuant to the Plan. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. Similarly, checks or drafts issued pursuant to this Plan to Persons holding Allowed Claims and not presented for payment within three (3) months following mailing thereof to the last known address of such Person shall be deemed nonnegotiable thereafter. Any Claim in respect of such distribution shall be discharged and forever barred from assertion against the Debtor, the Liquidating Trust, their property, and the Liquidating Trustee. Any distribution which is deemed nonnegotiable shall re-vest in the Liquidating Trust and be available for distribution consistent with the Plan.

### **D. Compliance with Tax Requirements**

In connection with the Plan, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued on such Claims.

**Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon any disbursing agent in connection with such distribution. Any property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution under this Plan.**

**E. Minimum Distributions**

If the amount of Cash to be distributed to the Holder of an Allowed Claim is less than fifty dollars (\$50) on a particular Distribution Date, the Liquidating Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than fifty dollars (\$50). Notwithstanding the preceding sentence, if the aggregate amount of Cash distribution owed to any Holder of an Allowed Claim never equals or exceeds fifty dollars (\$50), then the Liquidating Trustee shall not be required to distribute Cash to any such Holder.

**F. Rounding**

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

**G. Setoffs and Recoupments**

The Liquidating Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made on account of such Claim), the Claims, rights, and Causes of Action of any nature that the Debtor, Estate, or Liquidating Trust may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee of any such Claims, rights, or Causes of Action that the Debtor, Estate, or Liquidating Trust may possess against such Holder.

**H. Settlement of Claims and Controversies**

Pursuant to sections 363 and 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim (including, but not limited to, the HUD Claims), or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and Holders of Claims, and is fair, equitable, and reasonable.

**I. Distributions Free and Clear**

Except as otherwise provided herein, any distributions under the Plan shall be free and clear of any Liens, Claims, and encumbrances, and no other Entity, including the Debtor, shall have any interest (legal, beneficial or otherwise) in any Estate property distributed pursuant to the Plan.



**J. Not Securities; Section 1145 Exemption**

The respective rights of the Holders of Claims arising under the Plan are not intended to be “securities” under applicable laws, but the Debtor does not represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Debtor intends for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

**IX.**

**ALLOWANCE OF CLAIMS & PROCEDURES FOR TREATMENT OF DISPUTED CLAIMS AND CLAIMS THAT HAVE OTHERWISE NOT BEEN ALLOWED**

**A. Allowance**

1. Any Claim that is not a Disputed Claim shall be Allowed as of the expiration of the time to object to Claims set forth in Article VII(N) except as provided in this Article IX(A) or in Article IV(C), VII(O), VIII(G), or VIII(H).

2. Any Claim as to which liability and amount are determined by a Final Order of the Bankruptcy Court (or such other court or forum as the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Claim agree to or as the Bankruptcy Court may direct) shall be Allowed in such amount.

3. No Disputed Claim shall be Allowed except in the amount either agreed upon between the Holder of such Claim and the Debtor or the Liquidating Trustee, as applicable, or as determined by a Final Order of the Bankruptcy Court (or such other court or forum as the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Claim agree to or as the Bankruptcy Court may direct).

4. Any Claim allowed pursuant to an Order of the Bankruptcy Court or an express agreement between the Holder of such Claim and the Debtor, in consultation with the Committee, solely for the purpose of voting to accept or reject the Plan will not be considered an “Allowed” Claim under the Plan; provided, however, that any Claim expunged or disallowed under the Plan, by Order of the Bankruptcy Court, or otherwise shall not be an Allowed Claim. If a Claim is Allowed only in part, references to “Allowed” Claims in this Plan include, and are limited to, the portion of such Claim that is Allowed.

5. Notwithstanding anything to the contrary herein, no Claim that is disallowed in accordance with section 502(d) of the Bankruptcy Code is Allowed, and each such Claim shall be expunged without further action by the Debtor, and without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**B. Payments and Distributions on Disputed Claims and Claims That Have Otherwise Not Been Allowed**

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Liquidating Trustee, in the Liquidating Trustee's sole discretion, no partial payments and no partial distributions will be made with respect to a Disputed Claim or Claim that has otherwise not been Allowed until such disputes are resolved by settlement or Final Order and the Claim, or some portion thereof, has been Allowed. Notwithstanding the foregoing, any Person or Entity who holds both an Allowed Claim and a separate and distinct Disputed Claim or Claim that has otherwise not been Allowed will receive the appropriate payment or distribution on account of the Allowed Claim, although, except as otherwise agreed by the Liquidating Trustee in the Liquidating Trustee's sole discretion, no payment or distribution will be made on the Disputed Claim or Claim that has otherwise not been Allowed until such dispute is resolved by settlement or Final Order and the Claim has been Allowed. In the event there is a Disputed Claim or Claim that has otherwise not been Allowed requiring adjudication and resolution, the Liquidating Trustee reserves the right to, or upon order of the Bankruptcy Court shall, establish appropriate reserves for potential payment of such Claim. To the extent a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan, without any interest to be paid on account of the time period during which such Claim was a Disputed Claim.

**C. Safekeeping of Distributable Property**

Pending entry of a Final Order determining an objection to any Disputed Claim or Allowing a Claim that has not otherwise been Allowed, the Liquidating Trustee shall take appropriate steps to safeguard the Cash, notes, or other instruments that would be distributed on account of such Claim if Allowed, but the Liquidating Trustee shall not be required to establish any formal escrow or reserve for such distributable property unless it determines, or the Bankruptcy Court orders, that an escrow or reserve is necessary to ensure that such property is available if and when such Claim is Allowed.

**D. Allowance of Claims**

Except as expressly provided herein or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim. Except as expressly provided in the Plan or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Liquidating Trust Estate (including the Liquidating Trustee on behalf of such estate), on and after the Effective Date, will have and retain any and all rights and defenses the Debtor had with respect to any Claim as of the Petition Date.

**X.**

**JURISDICTION**

**A. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, to the maximum extent permitted by applicable law, retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to issue any other Order necessary to administer the Estate or the Liquidating Trust Estate and enforce the terms of this Plan, and/or the Liquidating Trust Agreement pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation, jurisdiction to:

**a.** Allow, disallow, liquidate, classify, estimate, establish the priority, secured or unsecured status, and determine the type, allowance and payment of any Claims upon any objections thereto (or other appropriate proceedings) by the Liquidating Trustee or any other party-in-interest entitled to proceed in that manner, including the resolution of any request for payment of any Administrative Claim;

**b.** Except as may otherwise be limited herein, recover all Assets of the Debtor and property of the Debtor's Estate, wherever located;

**c.** Hear and determine any issue arising under or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement; provided, however, any action, controversy, dispute, claim, or question arising out of or relating to the right of any party to enforce, contest, and/or litigate the existence, primacy, and/or scope of available coverage and/or any defenses to coverage under the Insurance Policies shall be referred to and resolved solely in accordance with the terms and conditions of the Insurance Policies and applicable non-bankruptcy law, including, but not limited to, any choice of law, forum, or jurisdiction provision therein;

**d.** Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

**e.** Hear and determine any other matter not inconsistent with the Bankruptcy Code;

**f.** Enter a final decree concluding or closing the Chapter 11 Case;

**g.** Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising or related to distributions under the Plan;

**h.** Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor

that may be pending on the Effective Date or that may be instituted by the Liquidating Trustee or Debtor Representative after the Effective Date;

**i.** Issue injunctions, enter and implement other Orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the Consummation or enforcement of the Plan, except as otherwise provided herein;

**j.** Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement and to enter an implement such orders as may be necessary or appropriate to execute, implement or consummate any of the foregoing;

**k.** Enforce, interpret, and determine any disputes arising in connection with any stipulations, Orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case have been closed), including, without limitation, resolving any dispute, case, controversy, suit with respect to whether or not the Debtor is bankrupt or out of business pursuant to any statute including without limitation pursuant to 42 CFR 433.312(b) and/or 42 CFR 433.318(e);

**l.** Adjudicate any adversary proceeding or other proceeding which may be commenced against any Person or Entity arising from, related to, or in connection with (i) the D&O Claims; (ii) the Tort Claims; (iii) any Chapter 5 Actions; and (iv) claims against third parties relating to the facts and circumstances surrounding the same that the Debtor Representative or Liquidating Trustee is legally entitled to assert; provided, however, that nothing in this Plan or the Confirmation Order shall vest the Bankruptcy Court with exclusive jurisdiction over any claims identified in subclauses (i), (ii), or (v) of this subparagraph (l) or over any dispute relating to coverage under the D&O Policies;

**m.** Resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof, including, without limitation, any case, controversy, suit, dispute or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim for amounts not timely repaid;

**n.** Resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder, or for any other purpose;

**o.** Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

**p.** Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code ; (b) any

potential contractual obligation arising under any executory contract or unexpired lease that is assumed; and (c) any dispute regarding whether or not a contract or lease is or was executory or expired;

**q.** Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code, including, without limitation, any and all orders entered in connection with or related to the Sale;

**r.** Resolve any case, controversies, suits, disputes, or Causes of Action that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any Entity or Persons obligations incurred in connection with the Plan;

**s.** Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason, modified, stayed, reversed, revoked, or vacated;

**t.** Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Order, including the Confirmation Order;

**u.** Adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code, including, without limitation, hearing and determining all disputes involving or relating to any liability arising out of the termination of employment or the termination of any employee or retirement benefit program, regardless of whether or not such termination occurred prior to or after the Effective Date.

## **B. Consent to Jurisdiction**

All creditors who have filed or otherwise asserted Claims in the Chapter 11 Case shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for purposes of the Causes of Action.

# **XI.**

## **EXCULPATIONS, RELEASES, AND RELATED PROVISIONS**

### **A. Term of Bankruptcy Injunction or Stay**

All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Except as otherwise expressly provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order, or a separate Order of the Bankruptcy Court, as of the Effective Date, all entities who have held, hold, or may hold Claims against the Debtor, are permanently enjoined, on and after the Confirmation Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee with respect to any such Claim or taking any act to recover such Claim outside of the claims allowance procedure discussed in this Plan and the Bankruptcy Code and Bankruptcy Rules; (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or Order against the Debtor, the Debtor's

property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim; and (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtor, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee, or against the property or interests in property of the Debtor, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim. Such injunction shall extend for the benefit of the Debtor Representative, the Liquidating Trustee, and any successors of the Debtor, and to any property and interests in property subject to this Plan.

## **B. Exculpation**

Except as otherwise specifically provided in the Plan, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim (including Claims of the Estate) for any postpetition act or omission in connection with, related to, or arising out of the Chapter 11 Case, the Plan, the Disclosure Statement, the pursuit of Confirmation, the Consummation of the Plan, the administration of the Plan, the property to be liquidated and/or distributed under the Plan or any other postpetition act taken or omitted from being taken in connection with the Plan or the liquidation of the Debtor (other than for gross negligence, willful misconduct, or fraud as determined by a Final Order of a court of competent jurisdiction) and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## **C. Release**

**PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES SHALL BE DEEMED RELEASED BY THE DEBTOR AND THE ESTATE FROM ANY AND ALL CLAIMS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION), INCLUDING DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ANY OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, ASSET, RIGHT, OR INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR**



**EVENTS GIVING RISE TO, ANY CLAIM THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTOR OR THE ESTATE.**

**For the avoidance of doubt, except as set specifically forth herein, nothing in this Plan or any related document shall impair any rights with respect to any D&O Claims, and all D&O Claims are expressly reserved and preserved.**

**ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE IS: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR OR THE ESTATE; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO THE DEBTOR OR THE ESTATE ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE BY THE DEBTOR OR THE ESTATE.**

**D. Limitation on Liability of Liquidating Trustee and Debtor Representative**

The Liquidating Trustee, the Debtor Representative, the POC, the Wind-Down Committee and its individual members, will not be liable for any act they may do or omit to do as in such capacity under the Plan and the Liquidating Trust Agreement, as applicable, while acting in good faith and in the exercise of their reasonable business judgment; nor will any of them be liable in any event except for gross negligence, willful misconduct, or fraud as determined by a Final Order of a court of competent jurisdiction. The foregoing limitation on liability also will apply to any Person or Entity (including any Liquidating Trustee Professional) employed by the any such party and acting on behalf of such party in the fulfillment of their respective duties hereunder or under the Liquidating Trust Agreement. Also, the Debtor Representative, the Liquidating Trustee, the POC , the Wind-Down Committee (and its individual members) and any Person or Entity (including any Liquidating Trustee Professional) employed by such parties and acting on behalf of such a party shall be entitled to indemnification out of the assets of the Liquidating Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes,

suits, or claims that they may incur or sustain by reason of being, having been, or being employed by such party, or for performing any functions incidental to such service.

**E. Injunction in Aid of Confirmation**

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE EXCULPATIONS, LIMITATIONS OF LIABILITY, AND RELEASES GRANTED IN THIS PLAN, ALL PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE EXCULPATED PARTIES, THE RELEASED PARTIES, OR PARTIES WHOSE LIABILITY IS LIMITED (COLLECTIVELY, THE “**PROTECTED PARTIES**”), AND THEIR RESPECTIVE ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY WITH RESPECT TO WHICH SUCH PROTECTED PARTIES ARE EXCULPATED OR RELEASED OR WITH RESPECT TO WHICH SUCH PROTECTED PARTIES’ LIABILITY IS OTHERWISE LIMITED.

**F. Release and Injunction Limitation with Respect to the United States of America**

Except to the extent provided in the Bankruptcy code, nothing in the Plan shall (i) effect a release of any claim by the United States of America against parties other than the Debtor or the Debtor’s post-petition trustees or officers, or (ii) enjoin the United States of America from bringing any claim, suit, action, or other proceedings asserting any liability arising against parties other than the Debtor or the Debtor’s post-petition trustees or officers (together, the “Release and Injunction Limitation”); provided, however, that the Release and Injunction limitation shall not nullify, limit, or otherwise impair the exculpation set forth in Article XI(B), the limitation of liability set forth in Article XI(D), or the injunction set forth in Article XI(E) (to the extent such injunction pertains to the exculpation set forth in Article XI(B) and the limitation of liability set forth in Article XI(D)).

**G. Nondischarge of the Debtor**

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Confirmation Order will not discharge Claims. However, no Holder of a Claim may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Holder pursuant to the Plan. As of the Confirmation Date, all Persons and Entities are enjoined from asserting against any property that is to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

**H. Cancellation of Documents**

On the Effective Date, except to the extent otherwise provided in this Plan, any and all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtor shall be deemed inoperative and unenforceable solely as against the Debtor and its Estate.

**I. Effect of Plan on Released Claims and Liens**

Nothing contained in this Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to any prior Order of the Bankruptcy Court.

**XII.**

**MISCELLANEOUS PROVISIONS**

**A. Conditions Precedent to the Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

**a.** the Confirmation Order, authorizing and directing that the Debtor take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, and other agreements or documents created in connection with the Plan and the transactions contemplated thereby, including, without limitation, the transactions contemplated by the Liquidating Trust Agreement, shall have been entered and become a Final Order;

**b.** the Liquidating Trustee shall have accepted, in writing, the terms of the Liquidating Trustee's service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order;

**c.** the Liquidating Trust shall have been established; and

**d.** all other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtor and the Committee or, if waivable, waived by the Person or Persons (or Entity or Entities) entitled to the benefit thereof.

**B. Effect of Failure of Condition**

If each condition to the Effective Date has not been satisfied or duly waived within sixty (60) days after the Confirmation Date, then (unless the period for satisfaction or waiver of conditions has been extended at the joint option of the Plan Proponents for a period not exceeding ninety (90) days) upon motion by any party in interest, made before the time that each of the conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Plan Proponents or the Liquidating Trustee, as the case may be, before the Bankruptcy Court enters a Final Order granting such motion. If the Confirmation Order is vacated pursuant to this Plan, the Plan shall be deemed null and void in all respects, and nothing contained herein shall (i) constitute a waiver or release of any Claims by or against the Debtor or (ii) prejudice in any manner the rights of the Debtor or the Committee.

**C. Waiver of Conditions to the Effective Date**

The Debtor and the Committee, jointly and in their sole discretion, may waive any or all of the conditions to the Effective Date (except those set forth in Article XII(A)(a)-(c) above), in whole or in part, at any time, without notice, leave or an Order of the Bankruptcy Court. In that event, the Debtor and the Committee will be entitled to render any or all of their performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived, including, but not limited to, the right to perform under any circumstances which would moot any appeal, review, or other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review, or other challenge. The failure to satisfy or to waive any condition may be asserted by the Debtor or the Committee regardless of the circumstances giving rise to failure of such condition to be satisfied (including any action or inaction by the Debtor). The failure of the Debtor or the Committee to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

**D. Modification of the Plan**

The Plan (including the Plan Supplement and any exhibits to the Plan) may be modified jointly by the Plan Proponents, or the Liquidating Trustee, as applicable, from time to time in accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019. The Plan (including the Plan Supplement and any exhibits to the Plan) may be modified at any time before the entry of the Confirmation Order pursuant to section 1127(a) of the Bankruptcy Code; and after the entry of the Confirmation Order, the Plan Proponents, or the Liquidating Trustee, as applicable may, upon Order of the Bankruptcy Court, amend or modify the Plan (including the Plan Supplement and any exhibits to the Plan) in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan (as and to the extent permitted hereby) filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, at <https://dm.epiq11.com/case/lrghealthcare/info>. The documents annexed to the Disclosure Statement or contained in any modification or supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

**E. Adjustment of Claims Register**

Epiq is authorized and directed to adjust the Claims Register at the direction of the Liquidating Trustee to reflect the disallowance, reduction, reclassification, modification, or other resolution of any Claim pursuant to the terms of this Plan (whether or documented in a Final Order, written agreement, or otherwise) or any Final Order of the Bankruptcy Court without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**F. Extension of Time**

For cause shown, any deadlines herein that are applicable to the Debtor, the Committee, the Liquidating Trustee, the Debtor Representative, or the Liquidating Trust Estate and which are not otherwise extendable, may be extended by the Bankruptcy Court.

**G. Post-Effective Date Notice List**

Because certain Persons may not desire to continue to receive notices after the Effective Date, this Plan provides for the establishment of a Post-Effective Date Notice List. Persons on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under this Plan (as described herein). Any Person desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Liquidating Trustee and the Liquidating Trustee's counsel. Those parties set forth in Article XII(K) of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request.

**H. Revocation of Plan**

The Plan Proponents reserve the right to jointly seek revocation of the Confirmation Order pursuant to section 1144 of the Bankruptcy Code. If the Bankruptcy Court revokes the Confirmation Order pursuant to section 1144 of the Bankruptcy Code, or if confirmation or the Effective Date of the Plan does not occur, then (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or leases affected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and except as herein provided; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against the Debtor or any other person, (b) prejudice in any manner the Debtor's, the Committee's, or any Person or Entity's rights, or (c) constitute the Debtor's or the Committee's or any Person or Entity's admission of any sort.

**I. Successors and Assigns**

The rights, benefits, and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, and lawful successor or assign of such Person or Entity.

**J. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect until the Bankruptcy Court has entered the Confirmation Order. Neither the filing of the Plan, any statement or provision contained in the Plan, nor the Debtor's taking of any action with respect to the Plan or the Disclosure Statement shall be or shall be deemed to be an admission or waiver of any of the Debtor's rights with respect to the Holders of Claims prior to the Effective Date.

**K. Service of Documents**

Any pleading, notice, or other document required or permitted to be made in accordance with this Plan shall be made in writing and shall be delivered personally, by facsimile transmission, electronic mail or by first class U.S. mail, postage prepaid, as follows:

To the Debtor:

Nixon Peabody LLP  
Attn: Victor G. Milione  
Christopher M. Desiderio  
Christopher J. Fong  
55 West 46<sup>th</sup> Street  
New York, NY 10036

Nixon Peabody LLP  
Attn: Morgan Nighan  
900 Elm Street  
Manchester, NH 03101

To the Committee:

Sills Cummis & Gross P.C.  
Attn: Andrew H. Sherman  
Boris I. Mankovetskiy  
Lucas F. Hammonds  
One Riverfront Plaza  
Newark, NJ 07102

Drummond Woodsum  
Attn: Jeremy R. Fischer  
670 N. Commercial Street, Suite 207  
Manchester, NH 03101

**L. Filing of Additional Documents and Notice of Effective Date**

On or before the Effective Date, the Debtor and/or the Committee may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Liquidating Trustee shall file a notice of the Effective Date as soon as practicable after the Effective Date and shall serve such notice on all parties that are entitled to notice under Bankruptcy Rule 2002.

**M. Severability**

The provisions of the Plan shall not be severable unless the Plan Proponents agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.



**N. Entire Agreement**

The Plan, and any supplements or amendments hereto, supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects (other than the Liquidating Trust Agreement), all of which have become merged and integrated into the Plan.

**O. Governing Law**

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire, without giving effect to the principles of conflicts of law of such jurisdiction.

**P. Corporate Dissolution.**

Upon the distribution of all Assets pursuant to this Plan and the filing by the Liquidating Trustee of a statement to that effect with the Court (which may be included in the application for the entry of the final decree), the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of Debtor or payments to be made in connection therewith, provided, however, that the Debtor may take appropriate action to dissolve under applicable law. From and after the Effective Date, the Debtor shall not be required to file any document, or take any action, to withdraw their business operations from any states where the Debtor previously conducted business.

**Q. Closing of the Chapter 11 Case**

Consistent with the other terms of this Plan, the Liquidating Trustee shall promptly, upon the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable Order of the Bankruptcy Court to close the Chapter 11 Case.

Dated: September 24, 2021

**HGRL**

By: /s/ Victor Milione

Name: Victor Milione

Title: Counsel for the Debtor

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By: /s/ Andrew Sherman

Name: Andrew Sherman

Title: Counsel for the Committee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

In re:

HGRL,

Debtor.

Chapter 11

Bk. No. 20-10892-MAF

**JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE UNITED  
STATES BANKRUPTCY CODE**

Dated: September ~~20~~24, 2021

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## I.

### INTRODUCTION<sup>1</sup>

HGRL, formerly known as LRGHealthcare, the debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”), and the Official Committee of Unsecured Creditors appointed in this case on October 23, 2020 by the Office of the U.S. Trustee pursuant to section 1102 of the Bankruptcy Code (the “Committee”), jointly propose this Plan pursuant to the provisions of chapter 11 of the Bankruptcy Code.

Pursuant to the Plan, the Debtor and the Committee (collectively, the “Plan Proponents”) propose an orderly liquidation of the Debtor’s remaining Assets. The Plan provides that all funds realized from the collection and liquidation of the Debtor’s Assets will be paid to Creditors on account of their Allowed Claims in accordance with the distributive priorities of the Bankruptcy Code and this Plan. The Plan Proponents propose to implement the Plan by establishing, inter alia, a Liquidating Trust that will be administered by the Liquidating Trustee. On the Effective Date, certain of the Debtor’s Assets will be transferred to the Liquidating Trust for the benefit of Creditors and certain assets will be administered by a Debtor Representative. Thereafter, the Liquidating Trustee will be responsible for liquidating the Assets, including the proceeds of assets administered by the Debtor Representative, and making distributions to Creditors in accordance with the terms of the Plan.

Transmitted with this Plan is a copy of the Disclosure Statement required by section 1125 of the Bankruptcy Code. The Disclosure Statement is provided to help Creditors understand this Plan. The Disclosure Statement contains, among other things, a discussion of the Debtor’s history, business and operations, risk factors, and other related matters. The Disclosure Statement also provides a summary of this Plan. All Creditors and other parties-in-interest are encouraged to carefully review the Disclosure Statement prepared by the Plan Proponents before voting to accept or reject this Plan.

The Plan Proponents urge all Creditors and other parties-in-interest to read this Plan and the Disclosure Statement in their entirety. No solicitation materials other than the Disclosure Statement and any documents, schedules, exhibits, or letters attached thereto or referenced therein have been authorized by the Plan Proponents or the Bankruptcy Court for use in soliciting acceptances or rejections of this Plan.

The Voting Deadline to accept or reject this Plan will be set by order of the United States Bankruptcy Court for the District of New Hampshire.

The Plan Proponents believe that this Plan will enable the Estate to efficiently liquidate its Assets for the benefit of the Creditors and accomplish the objectives of chapter 11 of the Bankruptcy Code. The Plan Proponents further believe the Plan presents the most advantageous outcome for all the Debtor’s Creditors and, therefore, confirmation of the Plan is in the best

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<sup>1</sup>Any capitalized terms otherwise undefined in this Introduction shall have the meanings subsequently ascribed to them in this Plan.



interests of the Estate. The Plan Proponents accordingly recommend that Creditors vote to accept the Plan.

## II.

### DEFINITIONS AND RULES OF CONSTRUCTION

#### A. Definitions

In addition to such other terms as are defined in other sections of the Plan, the following terms (which appear in the Plan as capitalized terms) have the following meanings as used in the Plan:

**“Administrative Expense Claim”** means any Claim against the Debtor or the Estate that has been timely filed pursuant to the deadlines and procedures set forth herein and in the Confirmation Order and is entitled to priority under sections 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, but not limited to: (i) the actual and necessary costs and expenses incurred after the Petition Date and through and including the Effective Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries, or commissions for services, and payments for goods and other services and leased premises); (ii) Allowed Professional Compensation and Reimbursement Claims; (iii) Section 503(b)(9) Claims; and (iv) all fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

**“Allowed”** means, with reference to a Claim against the Debtor or its Estate, a Claim that is allowed under Article IX.

**“APA”** means the Asset Purchase Agreement between Concord Hospital, Inc., Concord Hospital – Laconia, Concord Hospital – Franklin, Capital Region Development Corporation, and Capital Region Ventures Corporation and the Debtor dated October 19, 2020 as approved by the Order of the Bankruptcy Court entered at docket number 405 (as same may have been amended or modified from time to time).

**“Assets”** means each and every item of property and interest of the Debtor or its Estate as of the Effective Date, whether tangible or intangible, legal or equitable, liquidated or unliquidated, and includes, without limitation, (i) all Excluded Assets (as defined in the APA), (ii) all Cash (including, without limitation, all proceeds of the Sale), (iii) all rights in and proceeds of Insurance Policies applicable the Debtor, and (iv) any other rights, privileges, deferred taxes, Claims, Causes of Action, or defenses of the Debtor and its Estate, whether arising by statute or common law, and whether arising under the laws of the United States, other countries, or applicable state or local law, but excluding Claims and Causes of Action related to Acquired Assets (as defined in the APA), including Accounts Receivable (as defined in the APA) acquired by the Buyers.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as now in effect or hereafter amended.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of New Hampshire or any other court having jurisdiction over the Chapter 11 Case.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case, promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, and the general, local, and chambers rules of the Bankruptcy Court, as the context may require.

**“Bar Date”** means, collectively or individually, as applicable, (i) the deadline for filing proofs of claim established by the General Bar Date Order; (ii) the deadline for filing proofs of claim and/or requests for payment established by the Interim Administrative Bar Date Order; (iii) the Final Administrative Bar Date Order; (iv) any deadline for filing proofs of claim for damages arising from the rejection of Executory Contracts, under Article VI(B) of this Plan or otherwise; and (v) any other deadline for filing proofs of claim or requests for payment established in this Chapter 11 Case by the Plan or any Order of the Bankruptcy Court.

**“Beneficiary”** means a “beneficiary,” as defined in the Liquidating Trust Agreement.

**“Business Day”** means any day that is not a Saturday, Sunday, or “legal holiday” as defined in Bankruptcy Rule 9006(a).

**“Buyers”** means the Buyers as defined in the APA.

**“Cash”** means cash constituting legal tender of the United States of America, cash equivalents and other readily marketable direct obligations of the United States of America, and fully FDIC-insured certificates of deposit issued by a bank.

**“Causes of Action”** means any and all Claims, actions, causes of action, choses in action, rights, demands, suits, liabilities, encumbrances, lawsuits, adverse consequences, debts, damages, dues, sums of money, accounts, reckonings, deficiencies, bonds, bills, disbursements, expenses, losses, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of setoff, rights of recoupment, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims (including those of the Debtor and/or the Estate), whether known or unknown, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, and whether held in a personal or representative capacity, that are or may be pending as of the Effective Date or instituted hereafter against any Entity, based in law or equity, including under the Bankruptcy Code or any under any other federal or state statute, whether direct, indirect, derivative, or otherwise, and whether asserted or unasserted as of the Effective Date, including, without limitation, (i) the right to object to, challenge or otherwise contest any Claims, whether or not any such Claim is the subject of a proof of claim; (ii) all Claims, causes of action (avoidance actions or otherwise), objections, rights, and remedies arising under Chapter 5 of the Bankruptcy Code pursuant to, among others, sections 502, 510, 542 through 545 and 548 through 553 or 558 thereof (but excluding all Preference Claims), including all Chapter 5 Actions, or similar or equivalent Claims, causes of action, objections, rights, and remedies arising under state law; (iii) all Tort Claims and D&O Claims; (iv) Claims under any Insurance Policies applicable to the

Debtor; (v) all Claims of any kind or nature arising under state or federal law against any of the Debtor's consultants, managers (current or past), advisors, auditors, or other professionals relating to services rendered prior to the Petition Date; (vi) all Claims, causes of action, and other rights (including rights to challenge any asserted Lien) of any kind or nature against any Creditor asserting secured claim in this case, other than Claims or Causes of Action released or otherwise waived during the case; (vii) all legal and equitable defenses against any Claim or Cause of Action asserted against the Debtor; (viii) all Claims, causes of action, and other rights (including rights to challenge any asserted Lien) of any kind or nature against any Creditor asserting secured claim in this case, other than Claims or Causes of Action released or otherwise waived during the case; (ix) all Claims and/or Causes of Action of any kind or nature arising under state or federal law arising under a theory of negligence, professional negligence, and/or malpractice; (x) all Claims and/or Causes of Action of any kind or nature arising under state or federal law arising under based upon the formation and capitalization of the Debtor; (xi) all Claims and/or Causes of Action of any kind or nature arising state law based fraudulent conveyance theories; and (xii) all Claims and/or Causes of Action of any kind or nature arising from the payment and/or repayment of Claims by and/or to any Affiliate of the Debtor. The foregoing definition shall be construed in accordance with its broadest possible meaning, and any doubts or ambiguities shall be resolved in favor of inclusivity. **Except as otherwise expressly provided in the Plan, any and all Causes of Action of the Debtor and the Estate are preserved under the Plan.**

**"Chapter 5 Actions"** means any and all Claims and causes of action arising under chapter 5 of the Bankruptcy Code and any and all fraudulent conveyance or avoidable transfer Claims or causes of action that, in any instance, could be brought under state or federal law, excluding any Preference Claims.

**"Chapter 11 Case"** means the case commenced by the Debtor under chapter 11 of the Bankruptcy Code styled *In re HGRL*, Case No. 20-10892-MAF, pending before the Bankruptcy Court.

**"Claim"** has the meaning as set forth in section 101(5) of the Bankruptcy Code.

**"Claims Register"** means the claims register maintained by Epiq.

**"Class"** means a group of Holders of Claims classified together under the Plan.

**"Collateral"** means any property or interest in property of the Debtor or its Estate subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or otherwise.

**"Committee"** shall have the meaning attributed to such term in Article I of this Plan.

**"Committee's Professionals"** means (i) the law firm of Sills Cummis & Gross P.C., (ii) the law firm of Drummond Woodsum, (iii) CBIZ Accounting, Tax and Advisory of New York, LLC, and (iv) any and all other professionals that the Committee has retained or may retain, with

Bankruptcy Court approval, to assist in the conduct of the Chapter 11 Case, or to provide professional services for a specified purpose.

**“Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

**“Confirmation Hearing”** means the hearing held by the Bankruptcy Court, pursuant to section 1128 of the Bankruptcy Code, to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

**“Confirmation Order”** means the Order of confirmation pursuant to Fed. R. Bankr. P. 3020(c) entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which shall be in form and substance satisfactory to the Plan Proponents.

**“Consummation”** means the occurrence of the Effective Date.

**“Convenience Claim”** means any General Unsecured Claim (including interest accrued only as of the Petition Date) that is either (a) in the amount of five thousand dollars (\$5,000.00) or less or (b) in an amount greater than five thousand dollars (\$5,000.00) and whose Holder elects to reduce in amount to five thousand dollars (\$5,000.00) and have treated as a Claims in Class 5 under this Plan.

**“Creditor”** means a “creditor,” as defined in section 101(10) of the Bankruptcy Code.

**“Cure”** means, with respect to the assumption of an Executory Contract or Unexpired Lease pursuant to section 365(b) of the Bankruptcy Code, (i) the distribution of Cash, or the distribution of such other property as may be agreed upon by the parties or Ordered by the Bankruptcy Court, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable bankruptcy law, or (ii) the taking of such other actions as may be agreed upon by such parties or Ordered by the Bankruptcy Court.

**“D&O Claims”** means any and all rights, Causes of Action and Claims arising under state and/or federal law against the Debtor’s current and former directors, trustees, managers and/or officers, including Claims for breach of fiduciary duty, and the proceeds of any such rights and Claims, including from any Insurance Policies associated therewith.

**“D&O Policies”** means, collectively, any “Directors and Officers” and other fiduciary liability insurance policies belonging to the Debtor or under which the Debtor is named as an insured or additional insured, including, without limitation, the applicable policy issued by AIG.

**“Debtor”** shall have the meaning attributed to such term in Article I of this Plan.

**“Debtor’s Professionals”** means (i) Nixon Peabody LLP, (ii) Deloitte, (iii) Kaufman Hall Associates, (iv) Epiq, (v) any professional retained by the Debtor pursuant to the Ordinary Course Professionals Order; and (vi) any and all other professionals that the Debtor has retained

or may retain, with Bankruptcy Court approval, to assist in the conduct of the Chapter 11 Case, or to provide professional services for a specified purpose.

**“Debtor Representative”** means the Person appointed pursuant to section 1123(b)(3) of the Bankruptcy Code and vested with all power and authority granted to the Debtor Representative under this Plan. The identity of the Debtor Representative will be set forth in the Plan Supplement.

**“Deficiency Claim”** means, with respect to any Claim asserted as a Secured Claim (other than any Secured Claim asserted by HUD, whose Claims shall be treated as set forth in Article IV(B)(2) of this Plan), a Claim in an amount equal to the difference between the total Allowed amount of the Claim and the value of the Holder’s interest in any Collateral securing such Claim (*i.e.*, the total Allowed Claim amount minus the allowed Secured Claim amount), as determined consistent with section 506(a) of the Bankruptcy Code or otherwise agreed to by the Holder of the Claim.

**“DIP Claim”** means any Claim of the DIP Lender arising under the “DIP Facility” as such term is defined in the DIP Order.

**“DIP Lender”** means Concord Hospital, Inc. in its capacity as lender under the “DIP Facility” as such term is defined in the DIP Order.

**“DIP Order”** means the Bankruptcy Court’s *Final Order (a) (i) Authorizing the Debtor to Obtain Postpetition Financing, (ii) Granting Liens on Property of the Debtor’s Estate and Superpriority Claims to the Postpetition Lender, and (iii) Granting Related Relief* [Docket No. 580].

**“Disallowed”** means, with reference to any Claim, a Claim or any portion thereof that is or has been disallowed or expunged by Order of the Bankruptcy Court.

**“Disclosure Statement”** means the disclosure statement relating to this Plan, including, without limitation, all exhibits, schedules, supplements, and modifications thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

**“Disputed Claim”** means any Claim that both (1) has not been Allowed by a Final Order of the Bankruptcy Court and (2) either:

- i. has not been listed in the Schedules, regardless of whether or not a Proof of Claim or request for payment of Administrative Expense Claims, as applicable, has been filed with respect to such Claim;
- ii. has been or hereafter is listed in the Schedules (as a result of a past or future amendment of the Schedules, or otherwise) as unliquidated, disputed, or contingent, in whole or in part, regardless of whether or not a Proof of Claim or request for payment of Administrative Expense Claim, as applicable, has been filed with respect to such Claim;
- iii. has been or hereafter is listed on in the Schedules (as a result of a past or future amendment of the Schedules, or otherwise), but not as disputed, unliquidated, or

contingent, and as to which (i) a Proof of Claim or request for payment of Administrative Expense Claim, as applicable, has been timely filed with the Bankruptcy Court, and (ii) the amount set forth in the Proof of Claim or the request for payment of Administrative Expense Claim, as applicable, exceeds the amount indicated in the Schedules and/or the Proof of Claim or the request for payment of Administrative Expense Claim, as applicable, asserts priority greater than the priority set forth in the Schedules; or

- iv. as to which the Debtor or the Liquidating Trustee or, if not prohibited by the Plan, any other party-in-interest has interposed or hereafter interposes a timely objection and/or request for estimation in accordance with the terms of this Plan, section 502(c) of the Bankruptcy Code, and Bankruptcy Rule 3007, which objection and/or request for estimation has not been withdrawn or determined by a Final Order.

**“Distribution Reserve”** shall have the meaning attributed to such term in Article VII(F) of this Plan.

**“Effective Date”** means the first Business Day after the Confirmation Order becomes a Final Order and all conditions to the Effective Date as set forth in Article XII(A) of this Plan have been satisfied or, if waivable, jointly waived by the Debtor and the Committee.

**“Entity”** means an “entity,” as defined in section 101(15) of the Bankruptcy Code.

**“Epiq”** means Epiq Corporate Restructuring, LLC.

**“Estate”** means the estate of the Debtor created upon the commencement of the Chapter 11 Case under section 541 of the Bankruptcy Code.

**“Exclusions”** means (i) any purchase price adjustments required under the APA; (ii) any amounts required to satisfy the Debtor’s DIP Claim obligations; (iii) any amounts paid by the Debtor from the Estate prior to the Effective Date; (iv) the funds held in the Mortgage Reserve Fund (as defined in the *United States’ Motion for Relief from the Automatic Stay* (the “Stay Relief Motion”) [Docket No. 771], the “MRF”); (v) the aggregate amount of the Allowed Administrative Expense Claims and Priority Claims; (vi) the aggregate amount of any fees payable to the U.S. Trustee under 28 U.S.C. § 1930; (vii) any amounts payable to any Secured Creditors other than HUD; and (viii) the costs of administering the Plan and the Liquidating Trust.

**“Exculpated Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtor’s Professionals from and after the Petition Date; (b) the Debtor’s trustees and officers who have served in such capacity from and after the Petition Date, solely with respect to conduct occurring from and after the Petition Date; and (c) the Committee and its members in their capacity as such. With respect to the parties identified in subsection (c), each and all of their respective Professionals (including, but not limited to, the Committee’s Professionals) are also Exculpated Parties under the Plan.



**“Executory Contract”** means any executory contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code, specifically excluding contracts and agreements entered into pursuant to this Plan or subject to section 1113 of the Bankruptcy Code.

**“Fee Application”** means an application by a Professional for Allowance of a Professional Compensation and Reimbursement Claim.

**“Final Administrative Bar Date”** means, and is hereby established as, the date that is thirty (30) days after the Effective Date, or such other date that is established by Order of the Bankruptcy Court, and is the date by which requests for payment of Administrative Expense Claims other than (i) Professional Compensation and Reimbursement Claims and (ii) Administrative Expense Claims that were subject to a previously established Bar Date must be filed, subject to any exceptions specifically set forth in this Plan. For purposes of clarity, the Final Administrative Bar date does not amend or otherwise alter any other deadlines previously set by the Bankruptcy Court which may be applicable to a particular claim.

**“Final Distribution Date”** means the date on which the distribution is made from the Liquidating Trust that finally and fully exhausts the assets of the Liquidating Trust.

**“Final Order”** means an Order of the Bankruptcy Court or any other adjudicative body, which Order has not been stayed, and as to which the time to appeal or to move for reargument or rehearing has expired and no appeal, or motion for reargument or rehearing shall then be pending; provided, however, that the Confirmation Order shall be deemed a Final Order upon its entry unless it has been stayed.

**“General Bar Date Order”** means the Bankruptcy Court’s *Order (a) Establishing Bar Dates for Filing Proofs of Claim, (b) Approving the Form and Manner of Notice Thereof, and (c) Authorizing Payment of Related Publication Expenses* [Docket No. 239] establishing, among other things, February 16, 2021 at 4:00 p.m. (Eastern Time) as the deadline to file proofs of claim for Claims (other than Claims of Governmental Units) arising prior to the Petition Date and April 19, 2021 at 4:00 p.m. (Eastern Time) as the deadline to file proofs of claim for Claims of Governmental Units arising prior to the Petition Date.

**“General Unsecured Claim”** means any Claim against the Debtor that is not an Unclassified Claim, a Priority Non-Tax Claim, a HUD Claim, a Secured Claim, or an Insured Claim.

**“Governmental Unit”** means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

**“GUC Cause of Action Share”** means forty percent (40%) of the Net Cause of Action Proceeds.

**“GUC Distribution Date”** means: (i) such interim date(s) that the Liquidating Trustee deems appropriate based on, among other things, the amount of the proceeds of the Liquidating Trust Estate on hand, whether there remain any other unpaid obligations under this Plan, the time

and the status of pending or potential litigation, if any, affecting payment of such obligations, and the amount of any necessary reserves; and (ii) thereafter, the Final Distribution Date.

**“GUC Share”** means eleven and one half percent (11.5%) of the Net Distributable Assets.

**“Holder”** means the legal or beneficial holder of any Claim against the Estate.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“HUD Cause of Action Share”** means sixty percent (60%) of the Net Cause of Action Proceeds.

**“HUD Claims”** means all Claims by HUD and/or KeyBank against the Debtor and/or the Debtor’s estate. The HUD Claims shall be deemed Allowed upon the Effective Date and treated as set forth in Article IV(B)(2) below. For the avoidance of doubt, HUD shall not receive any payment in the Chapter 11 Case or under this Plan other than as set forth in Article IV(B)(2) below.

**“HUD Share”** means eighty eight and one half percent (88.5%) of the Net Distributable Assets.

**“Impaired”** means, with respect to any Class, a Class that is impaired as set forth in section 1124 of the Bankruptcy Code.

**“Insurance Policy”** means and includes any policy of insurance coverage of any kind (including any and all amendments, endorsements, renewals, and extensions thereof) that belongs or at any time belonged to or includes or at any time included the Debtor as a named insured, additional insured, beneficiary, or assignee, including, without limitation, any D&O Policies.

**“Insured Claim”** means a General Unsecured Claim arising prior to the Confirmation Date involving personal injury, medical malpractice, or wrongful death (including slip-and-fall and medical malpractice Claims) that are covered by the terms of the Debtor’s various insurance policies (including the Insurance Policies), or any other General Unsecured Claim against the Debtor for which the Debtor is entitled to indemnification, reimbursement, contribution or other payment under a policy of insurance (including the Insurance Policies) under which the Debtor is an insured or beneficiary of the coverage provided under the applicable policy. All Insured Claims are Disputed Claims. Some of the Insured Claims may be fully insured, and no deductible amount would be payable by the Debtor under the terms of the applicable insurance policy. As to other Insured Claims, a deductible or self-insured retention obligation may be applicable. For the avoidance of doubt, all Claims for such deductibles and self-insured retention obligations shall be treated as Class 4 General Unsecured Claims to the extent Allowed. Further, no insurance carrier shall, or shall be entitled to, deny coverage under any insurance policy (including any Insurance Policy) based upon (i) any failure of the Debtor, the Estate, the Liquidating Trust, or the Liquidating Trust Estate to pay any deductible or

self-insured retention in full or (ii) the treatment of any Claim for a deductible or self-insured retention obligation as a Class 4 General Unsecured Claims.

**“Interim Administrative Bar Date Order”** means the *Order (i) Fixing an Interim Deadline for Filing Requests for Allowance of Administrative Expense Claims, (ii) Designating Form and Manner of Notice Thereof, and (iii) Granting Related Relief* [Docket No. 671] establishing June 11, 2021 at 5:00 p.m. (Eastern Time) as the Bar Date for filing a request for allowance of Administrative Expense Claims pursuant to section 503(b) of the Bankruptcy Code (other than claims arising under section 503(b)(9) of the Bankruptcy Code) that arose during the period from October 19, 2020 through and including May 31, 2021.

**“KeyBank”** means KeyBank National Association.

**“Lien”** means a “lien” as such term is defined in section 101(37) of the Bankruptcy Code.

**“Liquidating Trust”** means the trust to be established pursuant to this Plan and the Liquidating Trust Agreement that will effectuate the wind down of the Debtor’s Estate and make distributions pursuant to the terms of this Plan and Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other Person authorized to take such action in accordance with the Liquidating Trust Agreement. In the event of any conflict between the terms of this Plan and the terms of the Liquidating Trust Agreement, the terms of this Plan shall govern.

**“Liquidating Trust Agreement”** means that certain agreement which will be entered into prior to the Effective Date by the Debtor and the Liquidating Trustee pursuant to Article VII of the Plan, will be subject to approval by the Bankruptcy Court, and will become part of the Plan pursuant to the Confirmation Order. The Liquidating Trust Agreement will be filed with the Bankruptcy Court as part of the Plan Supplement.

**“Liquidating Trust Assets”** means all Assets and other corpus of the Liquidating Trust Estate available for distribution to Holders of Allowed General Unsecured Claims after payment of all other amounts required by this Plan, including, but not limited to (i) payments to holders of Allowed Unclassified Claims, Allowed Priority Non-Tax Claims, the HUD Claims, Allowed Secured Claims, and Allowed Convenience Claims; (ii) all required statutory fees; and (iii) all costs and expenses of administration of the Liquidating Trust, including all Post-Effective Date Expenses.

**“Liquidating Trust Estate”** means collectively, (i) all Assets transferred to the Liquidating Trust pursuant to this Plan on the Effective Date or at any time thereafter pursuant to this Plan, (ii) such additional or different corpus as the Liquidating Trustee may from time to time acquire and hold in trust pursuant to the Liquidating Trust Agreement, and (iii) all proceeds of all of the foregoing.

**“Liquidating Trust Documents”** means the Liquidating Trust Agreement and any other documents or instruments concerning or relating to the Liquidating Trust.

**“Liquidating Trust Expense Reserve”** means the reserve established by the Liquidating Trustee to pay the Post-Effective Date Expenses.

**“Liquidating Trustee”** means the Person (and any successor) appointed as and vested with all power and authority granted to the Liquidating Trustee under this Plan and the Liquidating Trust Agreement. The identity of the Liquidating Trustee will be set forth in the Plan Supplement.

**“Liquidating Trustee Professional”** means any professional retained or employed by the Liquidating Trustee for carrying out the objectives of the Liquidating Trust Agreement.

**“Net Cause of Action Proceeds”** means any proceeds of the Causes of Action of the Debtor and/or its Estate retained under this Plan, minus the costs, expenses, and fees of the Debtor Representative and/or the Liquidating Trustee relating to the investigation, prosecution, negotiation, settlement, or other pursuit or resolution of such Causes of Action (including, but not limited to the related, expenses, and fees of the Debtor Representative and/or the Liquidating Trustee’s attorneys, financial advisors, consultants, and other professionals). Upon the realization of any Net Cause of Action Proceeds, such Net Cause of Action Proceeds shall be transferred to or retained by the Liquidating Trust, as applicable, for distribution consistent with the terms of this Plan (including, but not limited to, Article IV(B)(2)).

**“Net Distributable Assets”** all Assets of the Debtor and the Estate (excluding (a) any Causes of Action belonging to the Debtor or the Estate and (b) the Exclusions) and their proceeds.

**“Order”** means an order or judgment of the Bankruptcy Court or other adjudicative body.

**“Other Lienholders”** means the holders of Liens against property of the Debtor or its Estate other than any Lien held by KeyBank or HUD.

**“Person”** means a “person,” as such term is defined in section 101(41) of the Bankruptcy Code.

**“Petition Date”** means October 19, 2020, the date on which the Debtor filed its voluntary petition for relief commencing the Chapter 11 Case.

**“Plan”** means, collectively, this plan of orderly liquidation for the Debtor under chapter 11 of the Bankruptcy Code and all exhibits, supplements, appendices, and schedules hereto (including, but not limited to, the Plan Supplement), either in its present form or as it may be altered, amended, or modified from time to time.

**“Plan Proponents”** shall have the meaning attributed to such term in Article I of this Plan.

**“Plan Supplement”** means the supplemental appendix to this Plan, as same may be amended from time to time on or prior to the Voting Deadline, which will contain the Liquidating Trust Agreement, ~~contain the liquidation analysis and schedule of estimated~~

~~potential range of recovery to Holders of Allowed Claims in Impaired Classes described in the Disclosure Statement~~, list of the members of the POC, and set forth the identities of the Debtor Representative and the Liquidating Trustee. The Plan Supplement will be filed and served on or before the date that is at least ten (10) days before the Voting Deadline.

**“POC”** means the committee of Persons or Entities appointed as of the Effective Date to advise the Liquidating Trustee in the performance of the Liquidating Trustee’s duties and obligations under the Plan with respect to the liquidation of Assets for the benefit of the Holders of Allowed General Unsecured Claims.

**“Post-Effective Date Expense(s)”** means all voluntary and involuntary costs, expenses, charges, obligations, or liabilities of any kind or nature, whether unmatured, contingent, or unliquidated incurred by the Liquidating Trust or the Debtor Representative after the Effective Date until the Liquidating Trust is dissolved, including, but not limited to, those expenses described in Article VII(F) of this Plan.

**“Post-Effective Date Notice List”** means the list, created pursuant to Article XII(G) of the Plan, of persons who desire to receive notices after the Effective Date of the Plan.

**“Preference Claims”** means any and all Claims and causes of action arising under section 547 of the Bankruptcy Code or any similar avoidable preference Claims or causes of action that, in any instance, could be brought under state or federal law. **All Preference Claims shall be deemed waived and released upon the occurrence of the Effective Date.**

**“Priority Claim”** means any Priority Non-Tax Claim or Priority Tax Claim.

**“Priority Non-Tax Claim”** means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

**“Priority Tax Claim”** means any claim of a Governmental Unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**“Pro Rata”** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that respective Class.

**“Professional”** means a Person or Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and/or 331 of the Bankruptcy Code, or for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code, including but not limited to the Debtor’s Professionals and the Committee’s Professionals.

**“Professional Compensation and Reimbursement Claim”** means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred from and after the Petition Date through and including the

Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

**“Proof of Claim”** means a proof of claim filed by a Holder of a Claim (or by anyone authorized by the Bankruptcy Code to file a proof of claim on behalf of such Holder) by the applicable Bar Date.

**“Record Date”** means the Confirmation Date.

**“Released Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtor’s Professionals as of or after the Petition Date, solely with respect to conduct occurring from and after the Petition Date or otherwise concerning preparation for or administration of the Chapter 11 Case, (b) the Debtor’s trustees and officers who have served in such capacity from and after the Petition Date, solely with respect to conduct occurring from and after the Petition Date and solely to the extent not otherwise covered by an applicable insurance policy, and (c) the Committee and its members in their capacity as such. With respect to the parties identified in subsection (c), each and all of their respective Professionals (including, but not limited to, the Committee’s Professionals) are also Exculpated Parties under the Plan.

**“Retiree Benefits”** means any “retiree benefits” offered by the Debtors as of the Petition Date as defined in section 1114(a) of the Bankruptcy Code.

**“Sale”** means the sale of substantially all of the Debtor’s assets to Concord Hospital, Inc., Concord Hospital – Laconia, Concord Hospital – Franklin, Capital Region Development Corporation, and Capital Region Ventures Corporation as approved by the Bankruptcy Court’s *Order (i) Approving the Sale of Substantially All of the Debtor’s Estate Free and Clear of All Interests, (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (iii) Granting Related Relief* [Docket No. 405].

**“Schedules”** means, collectively, the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and Statement of Financial Affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521(a) of the Bankruptcy Code, Bankruptcy Rule 1007(b), and the Official Bankruptcy Forms, as same may be amended from time to time.

**“Section 503(b)(9) Claim”** means a Claim against the Debtor alleged to be entitled to an administrative expense priority under section 503(b)(9) of the Bankruptcy Code for the value of goods sold to the Debtor in the ordinary course of the Debtor’s business and received by such Debtor within twenty (20) days before the Petition Date.

**“Secured Claim”** means a Claim that is secured by a Lien on property in which the Debtor or its Estate has or had an interest, which Lien is valid, perfected, and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Debtor or its Estate’s interest in such property, or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; provided, however, that a Secured Claim shall not include any portion of the Claim to the extent that the value of such entity’s Collateral is less than the amount of such Claim. Nothing herein revives or preserves



any Lien on property sold free and clear interests in such property in the Sale or any other sale in the Chapter 11 Case.

**“Secured Creditor”** means a Creditor that holds a Secured Claim in the Chapter 11 Case.

**“Statement of Financial Affairs”** means the *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* [Docket No. 157] filed by the Debtor in the Chapter 11 Case.

**“Tort Claims”** means any and all claims of the Debtor based on any tort, including but not limited to any D&O Claims.

**“Unclassified Claim”** means any Claim that is not part of any Class, including Administrative Expense Claims, Priority Tax Claims, and the DIP Claim.

**“Unexpired Lease”** means any unexpired lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**“U.S. Trustee”** means the United States Trustee for the District of New Hampshire.

**“Voting Deadline”** means the date fixed by the Bankruptcy Court Order after approval of the Disclosure Statement.

**“Wind-Down Committee”** means the committee, as described in paragraph two (2) of the *Supplement to Debtor’s Emergency Motion for Entry of an Order Authorizing the Appointment of Stephen E. Miller as Debtor’s Transition Consultant* [Docket No. 635], consisting of former trustees of the Debtor who will be responsible for certain matters of corporate governance for the Debtor following the Effective Date as set forth in this Plan.

## **B. Interpretation, Rules of Construction, Computation of Time**

### **1. Defined Terms**

Any term used in the Plan that is not defined in the Plan, but that is used in the Bankruptcy Code or Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable, unless the context requires otherwise.

### **2. Rules of Interpretation**

For purposes of this Plan:

**a.** whenever from the context it is appropriate, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine, or neutral gender include the masculine, feminine, and the neutral gender;

**b.** any reference in this Plan to a contract, lease, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means

that such document shall be substantially in such form or substantially on such terms and conditions;

c. 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 through and including the Confirmation Date, which, after they are filed, may be amended, modified, or supplemented only with the express written consent of the Plan Proponents;

d. unless otherwise specified in a particular reference, all references in the Plan to sections, articles, and exhibits are references to sections, articles, and exhibits of or to the Plan;

e. the words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

f. captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan;

g. the Plan Supplement and all exhibits to the Plan are incorporated herein, regardless of when the Plan supplement and exhibits are filed;

h. except as expressly set forth in this Plan, to the extent any discrepancy exists between the description contained herein of a document or agreement that is an exhibit to the Plan and with the provisions of that exhibit, the actual agreement or document shall govern; and

i. the words “includes” and “including” are not limiting;

j. any reference to an Entity or a Person as a Holder of a Claim includes that Entity’s or Person’s successors and assigns;

k. any immaterial effectuating provisions may be interpreted by the Plan Proponents in a manner that is consistent with the overall purpose and intent of the Plan, all without further order of the Bankruptcy Court;

l. all references to monetary figures shall refer to currency of the United States of America;

m. except as otherwise expressly provided, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; and

n. the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

### 3. Time Periods

a. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

b. Whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter.

### III.

#### DESIGNATION OF CLASSES OF CLAIMS

The following is a designation of the Classes of Claims for all purposes, including voting, confirmation, and distribution pursuant to the Plan and sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that the Claim is an Allowed Claim and has not been paid, released, or otherwise satisfied before the Effective Date. Further, the provision in this Plan for a Class of Claims does not presume, and does not constitute any admission or determination regarding, the existence or validity of any Claim (including any purported Secured Claim) within such Class.

This Plan is intended to deal with all Claims against the Debtor of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously Allowed by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code. **However, only Holders of Allowed Claims will receive any distribution under this Plan, and no Holder of a Claim shall receive any distribution unless and until such Claim is Allowed.** For purposes of determining Pro Rata distributions under this Plan, Disputed Claims shall be included in the Class in which such Claims would be included if Allowed, until such Claims are finally Disallowed. This Plan will not provide any distributions on account of a Claim to the extent that such Claim has been Disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date. Classified, Allowed Claims shall receive the treatment described in Article IV(B) below.

#### A. Classes of Claims

**Class 1** consists of all Priority Non-Tax Claims.

**Class 2** consists of all HUD Claims.

**Class 3** consists of all Secured Claims of Other Lienholders.

**Class 4** consists of all General Unsecured Claims.

**Class 5** consists of Convenience Claims.

**Class 6** consists of all Insured Claims.

**B. Impaired Classes**

Classes 2, 4, 5, and 6 are Impaired under the Plan. The treatment of Allowed Claims in the Impaired Classes under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed Claim in each such Impaired Class. Subject to the provisions of any Order approving the Disclosure Statement, Holders of Claims in the Impaired Classes are entitled to vote on the Plan. In the event the Holders of Claims in Class 2 fail to vote to accept or reject the Plan, they shall be deemed to have voted in favor of accepting the Plan.

All Classes other than Classes 2, 4, 5, and 6 are unimpaired, deemed to accept the Plan, and not entitled to vote on the Plan.

**C. Terms of Confirmed Plan Control Unless Otherwise Specified**

If the Plan is confirmed by the Bankruptcy Court, except as specifically set forth in this Plan and the Confirmation Order, the treatment of Claims set forth in the Plan and the Confirmation Order supersedes and replaces any agreements or rights the Holders of the Claims have in or against the Debtor or its estate. **EXCEPT AS SPECIFICALLY SET FORTH IN THIS PLAN OR IN THE CONFIRMATION ORDER, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM, WHETHER AN ALLOWED CLAIM OR NOT.**

**D. Holders of Claims as of Record Date**

All distributions under the Plan will be tendered to the Persons or Entities that are the Holders of the relevant Claims as of the Record Date unless the distributing party, in its sole discretion, elects to tender such distribution to a transferee of such Claim or successor to such Holder.

**IV.**

**TREATMENT OF CLAIMS**

**A. Unclassified Claims**

Certain types of Claims are not placed into Classes; instead, such Claims are Unclassified Claims. Such Unclassified Claims are not considered Impaired, and their Holders are not entitled to vote on the Plan because they automatically receive specific treatment provided for them in the Bankruptcy Code. As such, the Plan Proponents did not place the following Claims in a Class. The respective treatment for these Claims is provided below.

**1. Administrative Expense Claims**

**a. General**

Subject to the allowance procedures and the deadlines provided in this Plan and any applicable Bar Date previously established by the Bankruptcy Court, except to the extent any

entity entitled to payment of an Allowed Administrative Expense Claim has received payment on account of such Claim prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive, in full and final satisfaction of its Allowed Administrative Expense Claim, Cash in an amount equal to the amount of such Allowed Administrative Expense Claim, on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date or (ii) the date such Administrative Expense Claim becomes Allowed, or as soon thereafter as is practicable.

Except with respect to (i) Professional Compensation and Reimbursement Claims (which are treated as set forth in Article IV(A)(1)(b) below); (ii) Section 503(b)(9) Claims (which are subject to the Bar Date established by the General Bar Date Order); (iii) Administrative Expense Claims that arose from October 19, 2020 through and including May 31, 2021; and (iv) any other Administrative Expense Claim with respect to which a Bar Date was previously established by the Bankruptcy Court, failure to File a request for payment of Administrative Expense Claim on or before the Final Administrative Bar Date (the date that is thirty (30) days after the Effective Date) shall result in such Administrative Expense Claim being forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Any Administrative Expense Claim for which a Bar Date was previously established that was not timely filed or otherwise asserted as directed on or before the applicable Bar Date shall be forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

#### **b. Professional Compensation and Reimbursement Claims**

All Professionals seeking payment of Professional Compensation and Reimbursement Claims shall file their respective final Fee Applications no later than sixty (60) days after the Effective Date. All Professional Compensation and Reimbursement Claims shall be treated as Administrative Expense Claims as set forth in Article IV(A)(1)(a) above, or shall be paid on such other terms as may be mutually agreed upon between the Holder of an Allowed Professional Compensation and Reimbursement Claim and the Debtor, or the Liquidating Trustee, as applicable. Failure to timely file a final Fee Application shall result in the Professional Fee Compensation and Reimbursement Claim being forever Disallowed, barred, and expunged in its entirety.

#### **2. Priority Tax Claims**

In full and final satisfaction of each Allowed Priority Tax Claim, if any, except to the extent any entity entitled to payment of any Allowed Priority Tax Claim has received payment on account of such Claim prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive Cash in an amount equal to the amount of such Allowed Priority Tax Claim on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Priority Tax Claim becomes Allowed, or as soon thereafter as is practicable.

#### **3. DIP Claim**

The DIP Claim has been satisfied in full. The DIP Lender shall not receive any further payments or distributions on account of the DIP Claim.

#### **4. Statutory Fees**

On or before the date that is thirty (30) days after the Effective Date, or as soon thereafter as is practicable, the Liquidating Trustee shall make all payments required to be paid to the U.S. Trustee pursuant to section 1930 of title 28 of the United States Code as of the Effective Date from the Liquidating Trust. All fees payable pursuant to section 1930 of title 28 of the United States Code after the Effective Date shall be paid by the Liquidating Trustee from the Liquidating Trust on a quarterly basis until the Chapter 11 Case is closed, converted, or dismissed.

#### **B. Classified Claims**

The Allowed Claims classified under this Plan shall be deemed fully and finally satisfied in the manner set forth herein unless a Holder agrees to less favorable treatment of its claim.

##### **1. Class 1 – Priority Non-Tax Claims**

Each Holder of an Allowed Priority Non-Tax Claim will receive, in full and final satisfaction of such Claim, Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Priority Non-Tax Claim becomes Allowed, or as soon thereafter as is practicable.

##### **2. Class 2 –HUD Claims**

All HUD Claims, including any Secured Claim of HUD and any unsecured deficiency claim of HUD, shall be deemed fully and finally satisfied through the following:

**a.** Following the payment of all (i) Allowed Administrative Expense and Allowed Priority Claims; (ii) fees payable to the U.S. Trustee under 28 U.S.C. § 1930; (iii) any amounts payable to any Secured Creditors other than HUD under the Plan; and (iv) the costs of administering the Plan and the Liquidating Trust, the Liquidating Trustee shall determine the Net Distributable Assets and pay the HUD Share to HUD, retaining the GUC Share for distribution consistent with the terms of this Plan.

**b.** In addition to the foregoing, upon the realization of any Net Cause of Action Proceeds, the Liquidating Trustee shall pay the HUD Cause of Action Share to HUD, retaining the GUC Cause of Action Share for distribution consistent with the terms of this Plan.

**c.** In addition to the foregoing, HUD has already applied, or may apply, the MRF (as defined in the definition of “Exclusions” in Article II(A) above) as described in the Stay Relief Motion (consistent with the Order of the Bankruptcy Court granting the Stay Relief Motion entered at docket number 806). For purposes of clarity, the treatment of the MRF is not



contingent upon confirmation of the Plan and HUD may proceed in accordance with the Bankruptcy Court's Order regardless of the ultimate disposition of the Plan.

**3. Class 3 – Secured Claims of Other Lienholders**

To the extent a Secured Claim of an Other Lienholder is Allowed, it will be treated, in the sole discretion of the Liquidating Trustee, in one of the following ways:

**a.** as of the Effective Date, the legal, equitable, and contractual rights of the Holder of the Allowed Secured Claim shall be reinstated in accordance with the provisions of section 1124(2) of the Bankruptcy Code notwithstanding any contractual provision or applicable non-bankruptcy law that entitles such Holder to demand or receive payment of such Claim before the stated maturity of such Claim from and after the occurrence of a default; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, covenants regarding corporate existence, or covenants prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be enforceable as to any breach that occurred on or prior to the Effective Date or any breach determined by reference back to a date preceding the Effective Date;

**b.** the Holder of the Allowed Secured Claim shall (i) retain a Lien securing such Claim from and after the Effective Date and (ii) receive deferred Cash payments from the Liquidating Trust totaling at least the value of such Claim as of the Effective Date in full and final satisfaction of such Claim;

**c.** on the Effective Date, or as soon thereafter as reasonably practicable, the Collateral securing the Allowed Secured Claim shall be surrendered to the Holder of such Claim in full satisfaction of such Claim; or

**d.** the Holder of the Allowed Secured Claim shall be paid, in Cash, an amount equal to such Claim, on or before the date that is thirty (30) Business Days after the later of (i) the Effective Date and (ii) the date such Secured Claim becomes Allowed, or as soon thereafter as is practicable, in full and final satisfaction of such Claim. To the extent the Collateral securing any Allowed Secured Claim of an Other Lienholder has been or is to be sold pursuant to an Order of the Bankruptcy Court, any amount to be paid to the Holder of such Claim pursuant to the preceding sentence shall be net of the costs of sale of such Collateral and otherwise subject to the rights of the Debtor (in consultation with the Committee) and/or the Liquidating Trustee pursuant to section 506(c) of the Bankruptcy Code.

**4. Class 4 – General Unsecured Claims**

Each Holder of an Allowed General Unsecured Claim will receive, in full and final satisfaction of such Claim, on one or more GUC Distribution Dates, a Pro Rata share of the net Liquidating Trust Assets.

**5. Class 5 -- Convenience Claims.**

Each Holder of an Allowed Convenience Claim will receive, in full and final satisfaction of such Claim, Cash equal to ten percent (10%) of their Allowed Claim on the later of (i) the Effective Date or (ii) ten (10) days after an Order allowing such Claim becomes a Final Order, or as soon thereafter as reasonably practicable.

**6. Class 6 – Insured Claims**

Subject to the terms and conditions set forth in Article IV(C)(8)(c) below, each Holder of an Allowed Insured Claim will recover only from the available insurance coverage of the Debtor (including any Insurance Policy), and the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate will have no liability of any kind or nature with respect to any amount that a Claim is alleged or determined to exceed the amount of available insurance coverage. Such treatment shall be in full and final satisfaction of such Claim.

**C. General Claim Treatment Provisions**

**1. Objections**

The failure of any party to object to any Claim in the Chapter 11 Case prior to the occurrence of the Effective Date shall be without prejudice to the right of the Liquidating Trustee, as applicable, to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by the Holder of such Claim. Procedures for objections to Claims are set forth in Article VII(N) of this Plan.

**2. Attachment of Liens**

No Lien with respect to any Secured Claim shall attach to any property sold free and clear of interests of such property in the Sale or any other sale in this Chapter 11 Case.

**3. Survival and Release of Liens**

Notwithstanding section 1141(c) or any other provision of the Bankruptcy Code, all pre-petition Liens on property of the Debtor held with respect to any Allowed Secured Claim (other than any Secured Claim that is a HUD Claim) shall survive the Effective Date and continue in accordance with the contractual terms or statutory provisions governing such Claim until such Allowed Secured Claim is satisfied, at which time such Lien shall be released, shall be deemed null and void, and shall be unenforceable for all purposes; provided, however, that the Liquidating Trustee may condition delivery of any final payment upon receipt of an executed release of the Lien.

Any and all Liens securing any Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Nothing in this Plan shall preclude Debtor or the Liquidating Trustee from challenging the validity of any alleged Lien on any asset of the Debtor or the value of the property that secures any alleged Lien, and all such rights are expressly preserved.

**4. Surcharge Under Section 506(c) of the Bankruptcy Code.**

All rights of Holders of Secured Claims (other than HUD) under this Plan are subject to the rights of the Debtor (in consultation with the Committee) and/or the Liquidating Trustee to surcharge the applicable Collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

**5. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to that Class.

**6. Estimation of Claims**

Before or after the Effective Date, the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether a Proof of Claim has been filed or any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars and treated as having a value of zero dollars for all purposes under the Plan, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim that is disputed, contingent, or unliquidated, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as specified by the Bankruptcy Court, for all purposes under the Plan, including for purposes of distributions. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

**7. Untimely Claims**

Consistent with VII(O) below, any Claim for which a Bar Date has been established that is not timely filed or otherwise asserted as directed on or before the applicable Bar Date shall be forever Disallowed, barred, and expunged in its entirety without further notice to any party, or action, approval, or Order of the Bankruptcy Court, irrespective of whether such claim was filed prior to, on, or following the Confirmation Date.

**8. Claims Paid or Payable by Third Parties**

Subject to the terms of Article IV(B)(6) above, Claims paid and/or payable by third parties, irrespective of classification, shall be treated as follows:

**a. Claims Paid by Third Parties**

A Claim shall be reduced in full, and such Claim shall be Disallowed without a Claim objection having to be filed and without further notice to any party, or action, approval, or Order of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee. To the extent a Holder of a Claim receives a distribution under the Plan on account of such Claim and receives payment from a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of such Claim, such Holder shall, within two weeks of such Holder's receipt thereof, repay the distribution to the Debtor or the Liquidating Trust, as applicable, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim determined as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the holder owing the Debtor or the Liquidating Trust, as applicable, annualized interest at the federal judgment rate which was in effect as of the Petition Date on such amount owed for each day after the two-week grace period specified above until the amount is repaid.

**b. Claims Payable by Third Parties**

No distribution under the Plan shall be made on account of an Allowed Claim that is payable by a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee, including pursuant to any insurance policy (including any Insurance Policy), until the Holder of such Allowed Claim has exhausted all remedies with respect to such third party or insurance policy. To the extent that one or more of the Debtor's insurers or another third party agrees to satisfy in full or in part an Allowed Claim, then immediately upon such agreement, the applicable portion of such Claim may be Disallowed and expunged without a Claim objection having to be filed and without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Unless and until the Holder of a Claim that is payable by a party that is not the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee exhausts all remedies with respect to such third party or insurance policy, such Claim shall be deemed estimated at zero dollars (\$0) for all purposes of the Plan and Liquidating Trust Agreement without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**c. Special Issues Regarding Insured Claims**

Under the terms of the Debtor's various insurance policies, the Debtor may owe a deductible amount or self-insured retention obligation on account of Insured Claims. After the Effective Date of the Plan (unless an applicable Order modifying the automatic stay has been entered at an earlier date), Holders of Insured Claims shall be enjoined by the injunctions established by the Confirmation Order and this Plan from commencing or continuing any action

to assert or collect any alleged Claims relating to any deductible or self-insured retention obligation against the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate.

Consistent with the foregoing, distributions under the Plan to each Holder of an Allowed Insured Claim shall be recoverable only from available insurance, and the Debtor, its Estate, the Liquidating Trust, and the Liquidating Trust Estate will have no liability of any kind or nature with respect to any amount that a Claim is alleged or determined to exceed the amount of available insurance coverage. Further, the Plan shall not expand the scope of, or alter in any other way, the rights and obligations of the Debtor's insurers under their policies, and the Debtor's insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest and/or litigate with any party, including the Debtor, the existence, primacy, and/or scope of available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims that the Debtor's insurers have asserted or may assert in any proof of Claim, or the rights and defenses of the Debtor, the Estate, the Liquidating Trust, and the Liquidating Trust Estate to such Claims.

**9. Distributions to be Applied First to Administrative and Priority Claims**

To the extent any Holder of an Allowed Claim receives any distribution(s) under this Plan by the Liquidating Trustee on account of such Claims, said distribution(s) shall be applied by the recipient first to satisfy any Allowed Administrative Claims, Allowed Priority Tax Claims, or other Allowed Claims of the recipient against the Debtor which are entitled to priority under Bankruptcy Code sections 503 or 507 and, only after all such priority Claims are fully satisfied, to any Allowed Claims not entitled to such priority

**10. Distribution Record Date**

Except as otherwise provided in a Final Order of the Bankruptcy Court or as otherwise stipulated by the Debtor or Liquidating Trustee, as applicable, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Debtor and Liquidating Trustee shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any distribution with respect to any Claim, the Debtor and the Liquidating Trustee shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the Proof of Claim Filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to the Debtor or the Liquidating Trustee, as applicable, as of the Record Date.

**11. Third-Party Agreements**

Except as set forth herein, all subordination agreements entered into by any parties in interest shall be enforceable to the extent permitted by applicable law.

**12. Distribution Cap**

In no event shall any Holder of an Allowed Claim receive a distribution of a value exceeding one hundred percent (100%) of the amount of such Holder's Allowed Claim.

**V.**

**ACCEPTANCE OR REJECTION OF THIS PLAN**

**A. Voting Classes**

Subject to the provisions of any Order approving the Disclosure Statement, Holders of Claims in each Impaired Class, or their designees, shall be entitled to vote such Claims separately to accept or reject the Plan. Classes 2, 4, 5, and 6 are Impaired under the Plan.

**B. Non-Voting Classes**

Holders of Claims in Classes that are not Impaired are not entitled to vote such Claims to accept or reject this Plan. Each such Holder is conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 1 and 3 are not Impaired under this Plan.

**C. Controversy Concerning Impairment**

In the event of a controversy as to whether any Holder of an Allowed Claim or a Class is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

**D. Acceptance by Impaired Classes**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Claims actually voting in such Class have voted to accept the Plan. A Class of Claims in for which no Holder votes to accept or reject the Plan shall be deemed to have accepted the Plan.

**E. Non-Consensual Confirmation**

At the request of the Plan Proponents, this Plan may be confirmed under the so-called "cram down" provisions set forth in section 1129(b) of the Bankruptcy Code if, in addition to satisfying the other requirements for confirmation (other than section 1129(a)(8) of the Bankruptcy Code), this Plan "does not discriminate unfairly" and is determined to be "fair and equitable" with respect to each Class of Claims that has not accepted this Plan (*i.e.*, dissenting Classes). The Plan Proponents will request confirmation under this provision for any Impaired Class that rejects the Plan. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan or any amendment or supplement thereto, including to amend or



modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary, in accordance with section 1127 of the Bankruptcy Code and this Plan.

## **VI.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **A. Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date and subject to Article VI(C) below, all Executory Contracts and Unexpired Leases of the Debtor will be deemed rejected as of May 1, 2021, other than Executory Contracts and Unexpired Leases that were previously assumed, assumed and assigned, or rejected by Final Order of the Bankruptcy Court (which contracts will be treated in accordance with such Final Order). The Confirmation Order will constitute an Order approving the foregoing rejection.

#### **B. Bar Date for Claims for Rejection Damages**

If the rejection of an Executory Contract or Unexpired Lease pursuant to this Plan and the Confirmation Order or a previous or subsequent Order of the Bankruptcy Court gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever Disallowed, barred, and expunged in its entirety, and shall not be enforceable against the Debtor, the Liquidating Trust, or the Estate, without further notice to any party, or action, approval, or Order of the Bankruptcy Court, unless a proof of claim is filed and served on the Debtor, the Liquidating Trust, and their respective counsel within thirty (30) days after the Effective Date. Notwithstanding the foregoing, to the extent that any such Claim is or was subject to a previously established Bar Date in the Chapter 11 Case, such previously established Bar Date shall be deemed operative and will not be deemed extended by virtue of this Article VI(B). All Claims arising from the rejection of an Executory Contract or Unexpired Lease for which proofs of claim are required to be filed, if Allowed, will be classified and treated as General Unsecured Claims, subject to the provisions of this Plan.

#### **C. Insurance Policies**

For the avoidance of doubt, on the Effective Date, the Debtor's rights with respect to all Insurance Policies under which the Debtor may be a beneficiary or assignee (including all Insurance Policies that may have expired prior to the Petition Date, all Insurance Policies in existence on the Petition Date, all Insurance Policies entered into by the Debtor after the Petition Date, and all Insurance Policies under which the Debtor holds rights to make, amend, prosecute, and benefit from claims) shall revert in the Debtor as necessary for the Debtor Representative to pursue and prosecute any Causes of Action, and to the extent that any Insurance Policies are not necessary for the pursuit and prosecution of any Causes of Action by the Debtor Representative, all such Insurance Policies shall be transferred to the Liquidating Trust from the Effective Date until its dissolution, unless any such Insurance Policy is otherwise canceled by the Liquidating Trustee in the Liquidating Trustee's discretion. Notwithstanding any provision providing for the rejection of Executory Contracts, any Insurance Policy that is deemed to be an Executory Contract shall neither be rejected nor assumed by operation of this Plan and shall be the subject

of a specific motion by the Liquidating Trustee or Debtor Representative, as applicable, who shall retain the right to assume or reject any such Executory Contracts pursuant to and subject to the provisions of section 365 of the Bankruptcy Code following the Effective Date.

The Confirmation Order shall constitute a determination that no default by the Debtor exists with respect to any of the Insurance Policies requiring Cure, and that nothing in any prior Order, any prior agreements, or this Plan shall be construed or applied to modify, impair, or otherwise affect the enforceability of the Insurance Policies or any coverage thereunder with regard to any Claims or Causes of Action, including the D&O Claims. The Plan shall be liberally construed to protect the interests of all Creditors in all Causes of Action and to limit any Claims against the Estate.

**D. Retiree Benefits.**

For the avoidance of doubt, to the extent not previously terminated by the Debtors, as of the Effective Date, the Retiree Benefits shall be terminated and no further payments shall be made under such Retiree Benefits.

**VII.**

**MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

**A. Overview**

This Plan provides for the disposition of substantially all the Assets and the distribution of the net proceeds thereof to Holders of Allowed Claims, consistent with the priority provisions of the Bankruptcy Code. This Plan further provides for the winding down of the Debtor and its affairs by the Liquidating Trustee and the Wind-Down Committee. This Plan also creates a mechanism for the Liquidating Trustee and Debtor Representative to pursue Claims and Causes of Action, including D&O Claims and Tort Claims, to enable recoveries to Creditors.

**B. Establishment of Liquidating Trust; Appointment of Liquidating Trustee and Debtor Representative; Revesting of D&O Claims and Tort Claims**

Prior to the Effective Date, the Debtor shall execute the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, but not limited to, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust.

On the Effective Date, and in accordance with the Confirmation Order, the Estate's title to all the Assets (other than the D&O Claims and Tort Claims, which shall revest in the Debtor and may be pursued by the Debtor Representative) shall automatically pass to the Liquidating Trust, free and clear of all Claims and equity interests in accordance with section 1141 of the Bankruptcy Code. Notwithstanding the foregoing, the Plan Proponents reserve the right to modify the Plan to exclude certain Assets from transfer to the Liquidating Trust as necessary to preserve rights and claims of the Estate and maximize value for the Creditors. The Confirmation

Order shall constitute a determination that the transfers of the Assets to the Liquidating Trust are legal and valid and consistent with the laws of the State of New Hampshire.

All parties shall execute any documents or other instruments as necessary to cause title to the applicable Assets to be transferred to the Liquidating Trust. The Assets will be held in trust for the benefit of all Holders of Allowed Claims pursuant to the terms of the Plan and the Liquidating Trust Agreement.

The Liquidating Trustee will be appointed as of the date of execution of the Liquidating Trust Agreement. The Liquidating Trustee will pay or otherwise make distributions on account of all Allowed Claims against the Debtor in accordance with the terms of the Plan.

On the Effective Date, the Debtor Representative shall be deemed appointed pursuant to section 1123(b)(3) of the Bankruptcy Code and vested with all power and authority granted to the Debtor Representative under this Plan.

On the Effective Date, the Estate's interest in any D&O Claims, Tort Claims, and rights in and proceeds of any Insurance Policies necessary for the prosecution of all such Causes of Action will revert in the Debtor. The Debtor Representative shall be authorized to institute and to prosecute through final judgment or settle the D&O Claims and Tort Claims in the Debtor Representative's discretion. Upon the entry of a final judgment or settlement, the relevant proceeds of the D&O Claims and Tort Claims shall be transferred to the Liquidating Trust for the benefit of the Holders of Allowed Claims in accordance with the provisions of this Plan. For the avoidance of doubt, subject to the assignment of any D&O Claims and/or Tort Claims to the Liquidating Trust pursuant to this Article VII(B), upon the occurrence of the Effective Date, the Debtor Representative shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring any D&O Claims and Tort Claims in any court of competent jurisdiction, (ii) prosecute the D&O Claims and Tort Claims, (iii) negotiate and settle the D&O Claims and Tort Claims, and/or (iv) otherwise resolve the D&O Claims and Tort Claims. For the further avoidance of doubt, subject to any assignment of any D&O Claims and/or Tort Claims to the Liquidating Trust pursuant to this Article VII(B), upon the occurrence of the Effective Date, the Debtor Representative shall automatically be (a) deemed a representative of the Debtor with respect to the D&O Claims, Tort Claims, and any related Insurance Policies and (b) granted and have to right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to the D&O Claims and Tort Claims. Nothing in this Plan shall require the Debtor Representative to prosecute or pursue any D&O Claims or Tort Claims.

In addition to the foregoing, to the extent any D&O Claims and Tort Claims are assignable under applicable law, the Debtor Representative is expressly authorized, in their discretion, to assign such D&O Claims and Tort Claims to the Liquidating Trust for prosecution and/or settlement by the Liquidating Trustee upon the occurrence of the Effective Date or at any time thereafter. To the extent necessary for the Liquidating Trustee to pursue and prosecute any such D&O Claims and Tort Claims, all rights in and proceeds of any applicable Insurance Policies shall be deemed transferred to the Liquidating Trust upon the assignment of such D&O Claims and Tort Claims. Upon the assignment of any D&O Claims or Tort Claims to the Liquidating Trust, the Liquidating Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring the assigned D&O Claims and Tort Claims in

any court of competent jurisdiction, (ii) prosecute the assigned D&O Claims and Tort Claims, (iii) negotiate and settle the assigned D&O Claims and Tort Claims, and/or (iv) otherwise resolve the assigned D&O Claims and Tort Claims. In addition, upon the assignment of any D&O Claims or Tort Claims to the Liquidating Trust, the Liquidating Trustee shall automatically be (a) deemed a representative of the Debtor with respect to the assigned D&O Claims and Tort Claims and any related Insurance Policies and (b) granted and have to right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to the assigned D&O Claims and Tort Claims. Nothing in this Plan shall require the Debtor Representative to prosecute or pursue any D&O Claims or Tort Claims.

**This Plan shall be interpreted so as to afford, for the benefit of all Holders of Allowed Claims, the greatest opportunity for maximum recovery by the Liquidating Trustee and the Debtor Representative on the Assets, D&O Claims, Tort Claims, and rights in and proceeds of any Insurance Policies. The Proceeds of all Causes of Action are material to the implementation of this Plan and the recoveries to Creditors.**

#### C. Income Tax Status

For federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries of the Liquidating Trust Estate) shall treat the Liquidating Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124. For federal income tax purposes, the transfer of Assets to the Liquidating Trust under the Plan shall be treated as a deemed transfer to the Beneficiaries of the Liquidating Trust Estate in satisfaction of their Claims followed by a deemed transfer of the Assets by the Beneficiaries to the Liquidating Trust. For federal income tax purposes, the Beneficiaries will be deemed to be the grantors and owners of the Liquidating Trust and its assets. For federal income tax purposes, the Liquidating Trust will be taxed as a grantor trust within the meaning of IRC sections 671-677 (a non-taxable pass-through tax entity) owned by the Beneficiaries. The Liquidating Trust will file federal income tax returns as a grantor trust under IRC section 671 and Treasury Income Tax Regulation section 1.671-4 and report, but not pay tax on, the Liquidating Trust's tax items of income, gain, loss deductions, and credits ("**Tax Items**"). The Beneficiaries will report such Tax Items on their federal income tax returns and pay any resulting federal income tax liability. All parties will use consistent valuations of the assets transferred to the Liquidating Trust for all federal income tax purposes. The assets shall be valued based on the Liquidating Trustee's good faith determination of their fair market value. The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. The beneficial interests in the Liquidating Trust shall not be certificated, except as otherwise provided in the Liquidating Trust Documents.

#### D. Powers and Authority of the Liquidating Trustee

The powers of the Liquidating Trustee are set forth in full in the Liquidating Trust Agreement and shall include, among other things: (a) the power to sell, lease, license, abandon, or otherwise dispose of all remaining Assets of the Liquidating Trust Estate subject to the terms of this Plan; (b) subject to the provisions of Article VII(I) below, the power to wind down the

Debtor and its affairs, including by filing final cost reports and taking such other actions as are necessary after the Effective Date to bring about and orderly wind down of the Debtor's operations; (c) the power to effect distributions under this Plan to the Holders of Allowed Claims; (d) the authority to pay all costs and expenses of administering the Liquidating Trust Estate after the Effective Date (including the Post-Effective Date Expenses), including the power to employ and compensate Persons and Entities to assist the Liquidating Trustee in carrying out the Liquidating Trustee's duties hereunder, and to obtain and pay premiums for insurance and any other powers necessary or incidental thereto; (e) the power to implement this Plan including any other powers necessary or incidental thereto; (f) the authority to waive, pursue, and/or settle Claims, applicable Causes of Action or disputes as to amounts owing to or from the Estate; (g) the authority to participate in any post-Effective Date motions to amend or modify this Plan or the Liquidating Trust Agreement, or appeals from the Confirmation Order; (h) the authority to participate in actions to enforce or interpret this Plan; and (i) the power to bind the Liquidating Trust. Each of the foregoing powers may be exercised by the Liquidating Trustee without further notice to any party, or action, approval, or Order of the Bankruptcy Court. Notwithstanding any of the foregoing, the Liquidating Trustee may not unilaterally materially amend or alter the terms and provisions of this Plan.

For the avoidance of doubt, upon the occurrence of the Effective Date or the assignment of any D&O Claims or Tort Claims to the Liquidating Trust pursuant to Article VII(B) of this Plan, as applicable, the Liquidating Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring any Causes of Action in any court of competent jurisdiction, (ii) prosecute any Causes of Action, (iii) negotiate and settle any Causes of Action, and/or (iv) otherwise resolve any Causes of Action. For the further avoidance of doubt, upon the occurrence of the Effective Date or the assignment of any D&O Claims or Tort Claims to the Liquidating Trust pursuant to Article VII(B) of this Plan, as applicable, the Liquidating Trustee shall automatically be (a) deemed a representative of the Debtor with respect to all applicable Causes of Action and any related Insurance Policies and (b) granted and have the right to control any and all privileges and protections on behalf of the Debtor and the Estate with respect to all applicable Causes of Action. Nothing in this Plan shall require the Liquidating Trustee to prosecute or pursue any Causes of Action.

#### **E. Funding of the Liquidating Trust**

The funding of the Liquidating Trust for the payments to be made to Holders of Allowed Claims under the Plan and the payment of Post-Effective Date Expenses will be from (i) the Liquidating Trust Expense Reserve, (ii) the Debtor's Cash on hand as of the Effective Date, which will be transferred to the Liquidating Trust as of the Effective Date and proceeds from the investment of such Cash, and (iii) the proceeds of the liquidation of the Assets, including, without limitation, any Claims or Causes of Action.

The Liquidating Trustee, in the Liquidating Trustee's sole discretion, shall have the authority to allocate and reallocate Assets of the Estate and Liquidating Trust Estate (including Cash, and including with respect to any reserves provided for under this Plan) as necessary to effectuate the Plan without further notice to any party, or action, approval, or Order of the Bankruptcy Court, to the extent such allocation or reallocation would not be inconsistent with the terms of this Plan; provided, however, that the Liquidating Trustee may, but is not required to,



apply to the Bankruptcy Court on notice to parties included on the Post-Effective Date Notice List prior to making any such allocation or reallocation. In the event that the Liquidating Trustee determines that effectuation of the Plan or an equitable distribution to Holders of Allowed Claims requires allocation or reallocation of Assets of the Estate or the Liquidating Trust Estate in a manner that would otherwise be inconsistent with any term of this Plan (including for the purposes of distribution under the Plan), the Liquidating Trustee shall have the authority to make such allocation or reallocation with approval of the Bankruptcy Court upon application to the Bankruptcy Court on notice to parties included in the Post-Effective Date Notice List.

#### **F. Liquidating Trust's Post-Effective Date Expenses**

All expenses related to implementation of the Plan incurred from and after the Effective Date through the date on which the Liquidating Trust is dissolved will be expenses of the Liquidating Trust, and the Liquidating Trustee will disburse funds from the Liquidating Trust Expense Reserve or other Liquidating Trust Assets as appropriate for purposes of paying the Post-Effective Date Expenses of the Liquidating Trust without further notice to any party, or action, approval, or Order of the Bankruptcy Court. The Post-Effective Date Expenses shall include, but are not limited to, the fees and expenses of the Liquidating Trustee, the fees and expenses of the Debtor Representative, the fees and expenses of the professionals employed by the Liquidating Trustee and/or the Debtor Representative (including the Liquidating Trustee Professionals), and other costs, expenses, and obligations of the Liquidating Trust until the date the Liquidating Trust is terminated in accordance with Article VII(M) and the Liquidating Trust Agreement. The Liquidating Trustee, in the Liquidating Trustee's sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Liquidating Trust Expense Reserve, as reasonably necessary and appropriate, to account for and pay the Post-Effective Date Expenses.

Prior to making a distribution to any Holders of Allowed Claims under the Plan, the Liquidating Trustee may place in reserve and/or in a separate account any funds that may be needed to pay Claims that are Disputed and Claims that have otherwise not been Allowed in the event that all or a portion of such Claims become Allowed (the "Distribution Reserve"). When a Claim is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Claim shall be released from the Distribution Reserve and shall be available for distribution in accordance with the terms of this Plan to either (i) the Holder of the Claim that has become an Allowed Claim, or (ii) if Disallowed, the Holders of Allowed Claims. The Liquidating Trustee, in the Liquidating Trustee's sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Distribution Reserve, as reasonably necessary and appropriate, and upon satisfaction of all Allowed Claims required to be paid from the Distribution Reserve, to transfer amounts held therein for distribution pursuant to the Plan.

#### **G. Use of Existing Accounts**

The Liquidating Trustee may use the Debtor's existing bank accounts (as of the Effective Date) for the purposes set forth herein, to the extent possible and desired. The Liquidating Trustee also may close the Debtor's existing bank accounts, in the Liquidating Trustee's sole discretion, and transfer all amounts therein to one or more accounts, in accordance with the terms



of this Plan. Alternatively, notwithstanding any provisions to the contrary in this Plan, the Liquidating Trustee may invest some or all the funds that would otherwise be deposited into the accounts established pursuant to the Plan in allowed investments under applicable non-bankruptcy law.

#### **H. Employment and Compensation**

The Liquidating Trustee shall serve without bond and shall receive compensation for serving as Liquidating Trustee as set forth in the Liquidating Trust Agreement. At any time after the Effective Date and without further notice to any party, or action, approval, or Order of the Bankruptcy Court, the Liquidating Trustee may employ and compensate Persons or Entities, including professionals (which may, but need not, include Professionals previously or currently employed in the Chapter 11 Case) reasonably necessary to assist the Liquidating Trustee in the performance of the Liquidating Trustee's duties under the Liquidating Trust Agreement and this Plan. Such Persons or Entities shall be compensated and reimbursed by the Liquidating Trustee for their reasonable and necessary fees and out of pocket expenses on a monthly basis in arrears.

#### **I. The Wind-Down Committee**

The Wind-Down Committee will be responsible for certain matters of corporate governance for the Debtor set forth in this Plan until the earlier of (i) the date that the Debtor is dissolved in accordance with applicable state law pursuant to the terms of this Plan and (ii) the date that the Chapter 11 Case is closed. Specifically, (a) the Liquidating Trustee, with the assistance of the Wind-Down Committee, if necessary, shall prepare all tax returns, cost reports, and similar filings required for the Debtor (but not, for the avoidance of doubt, the Liquidating Trust) and, subject to the approval of the Liquidating Trustee and/or Debtor Representative, as applicable, file such documents with the applicable Governmental Unit or Entity; and (b) the Wind-Down Committee may, subject to the approval of the Liquidating Trustee, take such actions as are necessary to dissolve the Debtor in accordance with applicable state law. The members of the Wind-Down Committee shall serve without compensation; provided, however, that the Wind-Down Committee may be reimbursed for reasonable expenses incurred in the performance of its duties under the Plan. Further, with the Liquidating Trustee's approval, the Wind-Down Committee may utilize professionals retained by the Liquidating Trustee under the terms of this Plan to assist the Wind-Down Committee in the preparation and filing of any documents identified in (a) or (b) above, and the associated fees and costs of such professionals shall constitute Post-Effective Date Expenses.

#### **J. Vesting of Authority in Debtor Representative**

The Debtor Representative shall be deemed appointed as of the Effective Date, and, except as otherwise set forth in this Plan, shall be responsible for effectuating transfers of Assets in accordance with this Plan and otherwise satisfying the Debtor's obligations under the terms of this Plan. On and after the Effective Date, unless otherwise expressly set forth in this Plan, the Debtor Representative shall have full and complete authority to act on behalf of and bind the Debtor without further action or approval of the Bankruptcy Court, the Debtor's board of trustees, or the Wind-Down Committee. After the D&O Claims and Tort Claims are liquidated and any proceeds of such Causes of Action are transferred to the Liquidating Trust Estate in

accordance with this Plan, the Debtor Representative shall be empowered, but not directed, to effectuate the dissolution of the Debtor in accordance with the laws of the State of New Hampshire, subject to the approval of the Wind-Down Committee. For the avoidance of doubt, on the Effective Date, the Debtor Representative shall be deemed granted standing and authority to prosecute all applicable Causes of Action, including the D&O Claims and Tort Claims, preserved under this Plan.

**K. Termination of the Committee; Creation of POC**

On the Effective Date, the Committee shall be deemed dissolved, the retention and employment of the Committee's Professionals shall be deemed terminated, and the members of the Committee shall be deemed released and discharged of and from all further authority, duties, responsibilities, and obligations related to and arising from and in connection with the Chapter 11 Case, other than for purposes of filing and/or objecting to final Fee Applications filed in the Chapter 11 Case.

On the Effective Date, to the extent Beneficiaries of the Liquidating Trust are willing to serve, the Committee shall be replaced by the POC consisting of not less than three (3) Persons or Entities that are Beneficiaries of the Liquidating Trust. The identities of the Persons and/or Entities that will serve on the POC as of the Effective Date will be filed by the Committee with the Bankruptcy Court as part of the Plan Supplement. The POC's sole function and responsibility shall be to advise the Liquidating Trustee in the performance of the Liquidating Trustee's duties and obligations under the Plan with respect to the liquidation of Assets for the benefit of Holders of Allowed Claims. In the Liquidating Trustee's discretion, members of the POC may be paid compensation in the amount of up to one thousand dollars (\$1,000) for each meeting of the POC such members attend; provided, however, that compensation for any single member of the POC shall not exceed three thousand dollars (\$3,000) in a single month unless otherwise ordered by the Bankruptcy Court. Members of the POC may also be reimbursed for reasonable expenses incurred in the performance of their duties as members of the POC. All such compensation and reimbursement shall be paid from the Liquidation Trust.

**L. Termination of the Liquidating Trust Estate**

The existence of the Liquidating Trust and the authority of the Liquidating Trustee will commence as of the Effective Date and will remain and continue in full force and effect until the earlier of (a) the date on which all of the Assets are liquidated in accordance with the Plan, the funds in the Liquidating Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities, and the Order closing the Chapter 11 Case is a Final Order or (b) five (5) years after the date of creation of the Liquidating Trust, unless extended by the Bankruptcy Court as provided in the Liquidating Trust Agreement.

At such time as the Liquidating Trust has been fully administered (*i.e.*, when all things requiring action by the Liquidating Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final Distribution Date, the

Liquidating Trustee will file an application for approval of his final report and the entry of the final decree by the Bankruptcy Court.

**M. Liquidating Trustee as Successor in Interest to the Debtor and Committee**

Subject to Article VII(I) above, except as to the D&O Claims and the Tort Claims and any other Assets that revest in the Debtor upon the Effective Date, the Liquidating Trustee is the successor in interest to the Debtor and the Committee, and thus, after the Effective Date, to the extent this Plan requires an action by the Debtor (and except as it relates to the D&O Claims and Tort Claims or other Assets revested in the Debtor upon the Effective Date, or is otherwise delegated to the Debtor Representative), the action shall be taken by the Liquidating Trustee on behalf of the Debtor and the Committee, as applicable.

For federal and applicable state income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Beneficiaries of the Liquidating Trust Estate) shall treat the transfer of Assets to the Liquidating Trust in accordance with the terms of this Plan, as a sale by the Debtor of such Assets to the Liquidating Trust Estate at a selling price equal to the fair market value of such Assets on the Effective Date. The Liquidating Trust shall be treated as the owner of all Assets that it holds.

**N. Objections to Claims**

From and after the Effective Date, the Liquidating Trustee shall have the exclusive authority, right, and standing (but shall not be obligated) to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further notice to any party, or action, approval, or Order of the Bankruptcy Court; and (iii) litigate to final resolution objections to Claims.

**No distribution shall be made pursuant to this Plan to a Holder of Claim, Disputed or otherwise, unless and until such Claim is or becomes an Allowed Claim.**

All objections to Claims shall be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the one hundred eightieth (180th) day after the Effective Date. The time period for filing objections to Claims shall automatically renew for successive periods of one hundred eighty (180) days each until the earlier of (i) the date upon which all Claims have been Allowed or Disallowed or (ii) the date fixed by the Bankruptcy Court upon motion of the Liquidating Trustee or a Holder of a Claim.

Until such time as an unliquidated Claim, contingent Claim, or unliquidated or contingent portion of a Claim becomes Allowed or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to distributions. The Holder of an unliquidated Claim, contingent Claim, or unliquidated or contingent portion of a Claim will be entitled to a distribution under the Plan only when and if such unliquidated or contingent Claim becomes an Allowed Claim.

**O. Disallowance of Untimely Claims**

Except as otherwise agreed by the Liquidating Trustee, any and all Holders of Claims (i) for which proofs of claim were not timely filed on or before the applicable Bar Date(s) or (ii) that

were not otherwise asserted as directed on or before the applicable Bar Date(s) shall not be treated as Creditors for purposes of voting and distribution pursuant to Bankruptcy Rule 3003(c)(2).

Claims for which proofs of claim or requests for allowance were required to be filed by a Bar Date occurring before the Effective Date, and with respect to which no proof of claim or request for allowance was filed before the applicable Bar Date, shall be forever Disallowed, barred, and expunged in their entirety as of the Effective Date, and shall not be enforceable against the Debtor, the Liquidating Trust, or the Estate, all without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

Claims for which proofs of claim or requests for allowance are required to be filed after the Effective Date pursuant to a Bar Date established by this Plan, and with respect to which no proof of claim or request for allowance is filed by the applicable Bar Date, shall be forever Disallowed, barred, and expunged in their entirety as of the applicable Bar Date, and shall not be enforceable against the Debtor's, the Liquidating Trust, or the Estate, all without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**P. Continued Corporate Existence**

Notwithstanding anything to the contrary in the Plan or Confirmation Order, the Debtor shall continue to exist solely for the purpose of implementing the Plan unless and until the Debtor is dissolved in accordance with applicable state law pursuant to the terms of the Plan.

Subject to Article VII(I) above, the winding down of the Debtor's affairs, filing of any necessary documentation to dissolve the Debtor, and adoption of any and all corporate documents or resolutions necessary or appropriate to implement the Plan are hereby deemed authorized and approved in all respects without further action under any applicable law, regulation, order or rule.

**VIII.**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Delivery of Distributions**

With respect to each Claim, distributions to the applicable Holder shall be made at the address of the Holder of such Claim as indicated on the records of the Debtor, or a filed proof of claim, as applicable.

**B. Undeliverable Distributions**

If any Allowed Claim Holder's distribution is returned as undeliverable, no further distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address. Subject to Article VIII(C) below, undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a distribution becomes deliverable. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind. Any check that is not cashed or otherwise deposited

within three months after the check's date shall be deemed an undeliverable distribution under this Plan.

#### C. Failure to Claim Undeliverable Distributions

In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, the Liquidating Trustee will maintain a list of unclaimed distribution Holders. This list will be maintained and updated as needed for as long as the Chapter 11 Case stays open. Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution within three (3) months after the first attempted delivery shall have its Claim for such undeliverable distribution expunged and shall be forever barred from asserting any such Claim against the Debtor, its Estate, the Liquidating Trust Estate, the Liquidating Trustee, or their respective property. In such cases, any Cash held for distribution on account of such Claims shall be property of the Liquidating Trust Estate, free of any restrictions thereon, and shall revert to the account from which such payment was originally issued to be distributed pursuant to the Plan. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. Similarly, checks or drafts issued pursuant to this Plan to Persons holding Allowed Claims and not presented for payment within three (3) months following mailing thereof to the last known address of such Person shall be deemed nonnegotiable thereafter. Any Claim in respect of such distribution shall be discharged and forever barred from assertion against the Debtor, the Liquidating Trust, their property, and the Liquidating Trustee. Any distribution which is deemed nonnegotiable shall re-vest in the Liquidating Trust and be available for distribution consistent with the Plan.

#### D. Compliance with Tax Requirements

In connection with the Plan, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued on such Claims.

**Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon any disbursing agent in connection with such distribution. Any property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution under this Plan.**

**E. Minimum Distributions**

If the amount of Cash to be distributed to the Holder of an Allowed Claim is less than fifty dollars (\$50) on a particular Distribution Date, the Liquidating Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than fifty dollars (\$50). Notwithstanding the preceding sentence, if the aggregate amount of Cash distribution owed to any Holder of an Allowed Claim never equals or exceeds fifty dollars (\$50), then the Liquidating Trustee shall not be required to distribute Cash to any such Holder.

**F. Rounding**

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

**G. Setoffs and Recoupments**

The Liquidating Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made on account of such Claim), the Claims, rights, and Causes of Action of any nature that the Debtor, Estate, or Liquidating Trust may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee of any such Claims, rights, or Causes of Action that the Debtor, Estate, or Liquidating Trust may possess against such Holder.

**H. Settlement of Claims and Controversies**

Pursuant to sections 363 and 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim (including, but not limited to, the HUD Claims), or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtor, its Estate, and Holders of Claims, and is fair, equitable, and reasonable.

**I. Distributions Free and Clear**

Except as otherwise provided herein, any distributions under the Plan shall be free and clear of any Liens, Claims, and encumbrances, and no other Entity, including the Debtor, shall have any interest (legal, beneficial or otherwise) in any Estate property distributed pursuant to the Plan.



**J. Not Securities; Section 1145 Exemption**

The respective rights of the Holders of Claims arising under the Plan are not intended to be “securities” under applicable laws, but the Debtor does not represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Debtor intends for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

**IX.**

**ALLOWANCE OF CLAIMS & PROCEDURES FOR TREATMENT OF DISPUTED CLAIMS AND CLAIMS THAT HAVE OTHERWISE NOT BEEN ALLOWED**

**A. Allowance**

1. Any Claim that is not a Disputed Claim shall be Allowed as of the expiration of the time to object to Claims set forth in Article VII(N) except as provided in this Article IX(A) or in Article IV(C), VII(O), VIII(G), or VIII(H).

2. Any Claim as to which liability and amount are determined by a Final Order of the Bankruptcy Court (or such other court or forum as the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Claim agree to or as the Bankruptcy Court may direct) shall be Allowed in such amount.

3. No Disputed Claim shall be Allowed except in the amount either agreed upon between the Holder of such Claim and the Debtor or the Liquidating Trustee, as applicable, or as determined by a Final Order of the Bankruptcy Court (or such other court or forum as the Debtor (in consultation with the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Claim agree to or as the Bankruptcy Court may direct).

4. Any Claim allowed pursuant to an Order of the Bankruptcy Court or an express agreement between the Holder of such Claim and the Debtor, in consultation with the Committee, solely for the purpose of voting to accept or reject the Plan will not be considered an “Allowed” Claim under the Plan; provided, however, that any Claim expunged or disallowed under the Plan, by Order of the Bankruptcy Court, or otherwise shall not be an Allowed Claim. If a Claim is Allowed only in part, references to “Allowed” Claims in this Plan include, and are limited to, the portion of such Claim that is Allowed.

5. Notwithstanding anything to the contrary herein, no Claim that is disallowed in accordance with section 502(d) of the Bankruptcy Code is Allowed, and each such Claim shall be expunged without further action by the Debtor, and without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**B. Payments and Distributions on Disputed Claims and Claims That Have Otherwise Not Been Allowed**

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Liquidating Trustee, in the Liquidating Trustee's sole discretion, no partial payments and no partial distributions will be made with respect to a Disputed Claim or Claim that has otherwise not been Allowed until such disputes are resolved by settlement or Final Order and the Claim, or some portion thereof, has been Allowed. Notwithstanding the foregoing, any Person or Entity who holds both an Allowed Claim and a separate and distinct Disputed Claim or Claim that has otherwise not been Allowed will receive the appropriate payment or distribution on account of the Allowed Claim, although, except as otherwise agreed by the Liquidating Trustee in the Liquidating Trustee's sole discretion, no payment or distribution will be made on the Disputed Claim or Claim that has otherwise not been Allowed until such dispute is resolved by settlement or Final Order and the Claim has been Allowed. In the event there is a Disputed Claim or Claim that has otherwise not been Allowed requiring adjudication and resolution, the Liquidating Trustee reserves the right to, or upon order of the Bankruptcy Court shall, establish appropriate reserves for potential payment of such Claim. To the extent a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan, without any interest to be paid on account of the time period during which such Claim was a Disputed Claim.

**C. Safekeeping of Distributable Property**

Pending entry of a Final Order determining an objection to any Disputed Claim or Allowing a Claim that has not otherwise been Allowed, the Liquidating Trustee shall take appropriate steps to safeguard the Cash, notes, or other instruments that would be distributed on account of such Claim if Allowed, but the Liquidating Trustee shall not be required to establish any formal escrow or reserve for such distributable property unless it determines, or the Bankruptcy Court orders, that an escrow or reserve is necessary to ensure that such property is available if and when such Claim is Allowed.

**D. Allowance of Claims**

Except as expressly provided herein or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim. Except as expressly provided in the Plan or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Liquidating Trust Estate (including the Liquidating Trustee on behalf of such estate), on and after the Effective Date, will have and retain any and all rights and defenses the Debtor had with respect to any Claim as of the Petition Date.

**X.**

**JURISDICTION**

**A. Retention of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, to the maximum extent permitted by applicable law, retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan, including jurisdiction to issue any other Order necessary to administer the Estate or the Liquidating Trust Estate and enforce the terms of this Plan, and/or the Liquidating Trust Agreement pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including, without limitation, jurisdiction to:

**a.** Allow, disallow, liquidate, classify, estimate, establish the priority, secured or unsecured status, and determine the type, allowance and payment of any Claims upon any objections thereto (or other appropriate proceedings) by the Liquidating Trustee or any other party-in-interest entitled to proceed in that manner, including the resolution of any request for payment of any Administrative Claim;

**b.** Except as may otherwise be limited herein, recover all Assets of the Debtor and property of the Debtor's Estate, wherever located;

**c.** Hear and determine any issue arising under or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement; provided, however, any action, controversy, dispute, claim, or question arising out of or relating to the right of any party to enforce, contest, and/or litigate the existence, primacy, and/or scope of available coverage and/or any defenses to coverage under the Insurance Policies shall be referred to and resolved solely in accordance with the terms and conditions of the Insurance Policies and applicable non-bankruptcy law, including, but not limited to, any choice of law, forum, or jurisdiction provision therein;

**d.** Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

**e.** Hear and determine any other matter not inconsistent with the Bankruptcy Code;

**f.** Enter a final decree concluding or closing the Chapter 11 Case;

**g.** Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising or related to distributions under the Plan;

**h.** Decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtor

that may be pending on the Effective Date or that may be instituted by the Liquidating Trustee or Debtor Representative after the Effective Date;

i. Issue injunctions, enter and implement other Orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the Consummation or enforcement of the Plan, except as otherwise provided herein;

j. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement and to enter an implement such orders as may be necessary or appropriate to execute, implement or consummate any of the foregoing;

k. Enforce, interpret, and determine any disputes arising in connection with any stipulations, Orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case have been closed), including, without limitation, resolving any dispute, case, controversy, suit with respect to whether or not the Debtor is bankrupt or out of business pursuant to any statute including without limitation pursuant to 42 CFR 433.312(b) and/or 42 CFR 433.318(e);

l. Adjudicate any adversary proceeding or other proceeding which may be commenced against any Person or Entity arising from, related to, or in connection with (i) the D&O Claims; (ii) the Tort Claims; (iii) any Chapter 5 Actions; and (iv) claims against third parties relating to the facts and circumstances surrounding the same that the Debtor Representative or Liquidating Trustee is legally entitled to assert; provided, however, that nothing in this Plan or the Confirmation Order shall vest the Bankruptcy Court with exclusive jurisdiction over any claims identified in subclauses (i), (ii), or (v) of this subparagraph (l) or over any dispute relating to coverage under the D&O Policies;

m. Resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof, including, without limitation, any case, controversy, suit, dispute or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim for amounts not timely repaid;

n. Resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder, or for any other purpose;

o. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

p. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom, including pursuant to section 365 of the Bankruptcy

Code ; (b) any potential contractual obligation arising under any executory contract or unexpired lease that is assumed; and (c) any dispute regarding whether or not a contract or lease is or was executory or expired;

**q.** Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code, including, without limitation, any and all orders entered in connection with or related to the Sale;

**r.** Resolve any case, controversies, suits, disputes, or Causes of Action that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any Entity or Persons obligations incurred in connection with the Plan;

**s.** Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason, modified, stayed, reversed, revoked, or vacated;

**t.** Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Order, including the Confirmation Order;

**u.** Adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code, including, without limitation, hearing and determining all disputes involving or relating to any liability arising out of the termination of employment or the termination of any employee or retirement benefit program, regardless of whether or not such termination occurred prior to or after the Effective Date.

**B. Consent to Jurisdiction**

All creditors who have filed or otherwise asserted Claims in the Chapter 11 Case shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for purposes of the Causes of Action.

**XI.**

**EXCULPATIONS, RELEASES, AND RELATED PROVISIONS**

**A. Term of Bankruptcy Injunction or Stay**

All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Except as otherwise expressly provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order, or a separate Order of the Bankruptcy Court, as of the Effective Date, all entities who have held, hold, or may hold Claims against the Debtor, are permanently enjoined, on and after the Confirmation Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee with respect to any such Claim or taking any act to recover such Claim outside of the claims allowance procedure discussed in this Plan and the Bankruptcy Code and Bankruptcy Rules; (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or

Order against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim; and (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtor, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee, or against the property or interests in property of the Debtor, the Debtor's Estate, the Liquidating Trust, the Liquidating Trust Estate, or the Liquidating Trustee on account of any such Claim. Such injunction shall extend for the benefit of the Debtor Representative, the Liquidating Trustee, and any successors of the Debtor, and to any property and interests in property subject to this Plan.

## **B. Exculpation**

Except as otherwise specifically provided in the Plan, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim (including Claims of the Estate) for any postpetition act or omission in connection with, related to, or arising out of the Chapter 11 Case, the Plan, the Disclosure Statement, the pursuit of Confirmation, the Consummation of the Plan, the administration of the Plan, the property to be liquidated and/or distributed under the Plan or any other postpetition act taken or omitted from being taken in connection with the Plan or the liquidation of the Debtor (other than for gross negligence, willful misconduct, or fraud as determined by a Final Order of a court of competent jurisdiction) and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

## **C. Release**

**PURSUANT TO BANKRUPTCY CODE SECTION 1123(B), AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN OR THE CONFIRMATION ORDER, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES SHALL BE DEEMED RELEASED BY THE DEBTOR AND THE ESTATE FROM ANY AND ALL CLAIMS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD AS DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION), INCLUDING DERIVATIVE CLAIMS ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ANY OF THE DEBTOR OR THE ESTATE, AS APPLICABLE, WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN ITS OWN RIGHT, OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE CHAPTER 11 CASE, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, ASSET, RIGHT, OR INTEREST OF THE DEBTOR, THE SUBJECT MATTER OF, OR THE**



**TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTOR OR THE ESTATE.**

**For the avoidance of doubt, except as set specifically forth herein, nothing in this Plan or any related document shall impair any rights with respect to any D&O Claims, and all D&O Claims are expressly reserved and preserved.**

**ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASE OF THE RELEASED PARTIES BY THE DEBTOR AND THE ESTATE IS: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR OR THE ESTATE; (C) IN THE BEST INTERESTS OF THE DEBTOR, THE ESTATE AND ALL HOLDERS OF CLAIMS; (D) FAIR, EQUITABLE, AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (F) A BAR TO THE DEBTOR OR THE ESTATE ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE BY THE DEBTOR OR THE ESTATE.**

**D. Limitation on Liability of Liquidating Trustee and Debtor Representative**

The Liquidating Trustee, the Debtor Representative, the POC, the Wind-Down Committee and its individual members, will not be liable for any act they may do or omit to do as in such capacity under the Plan and the Liquidating Trust Agreement, as applicable, while acting in good faith and in the exercise of their reasonable business judgment; nor will any of them be liable in any event except for gross negligence, willful misconduct, or fraud as determined by a Final Order of a court of competent jurisdiction. The foregoing limitation on liability also will apply to any Person or Entity (including any Liquidating Trustee Professional) employed by the any such party and acting on behalf of such party in the fulfillment of their respective duties hereunder or under the Liquidating Trust Agreement. Also, the Debtor Representative, the Liquidating Trustee, the POC, the Wind-Down Committee (and its individual members) and any Person or Entity (including any Liquidating Trustee Professional) employed by such parties and acting on behalf of such a party shall be entitled to indemnification out of the assets of the Liquidating Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that they may incur or

sustain by reason of being, having been, or being employed by such party, or for performing any functions incidental to such service.

**E. Injunction in Aid of Confirmation**

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE EXCULPATIONS, LIMITATIONS OF LIABILITY, AND RELEASES GRANTED IN THIS PLAN, ALL PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE EXCULPATED PARTIES, THE RELEASED PARTIES, OR PARTIES WHOSE LIABILITY IS LIMITED (COLLECTIVELY, THE “**PROTECTED PARTIES**”), AND THEIR RESPECTIVE ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION, OR OTHER PROCEEDING ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST, OR REMEDY WITH RESPECT TO WHICH SUCH PROTECTED PARTIES ARE EXCULPATED OR RELEASED OR WITH RESPECT TO WHICH SUCH PROTECTED PARTIES’ LIABILITY IS OTHERWISE LIMITED.

**F. Release and Injunction Limitation with Respect to the United States of America**

Except to the extent provided in the Bankruptcy code, nothing in the Plan shall (i) effect a release of any claim by the United States of America against parties other than the Debtor or the Debtor’s post-petition trustees or officers, or (ii) enjoin the United States of America from bringing any claim, suit, action, or other proceedings asserting any liability arising against parties other than the Debtor or the Debtor’s post-petition trustees or officers (together, the “Release and Injunction Limitation”); provided, however, that the Release and Injunction limitation shall not nullify, limit, or otherwise impair the exculpation set forth in Article XI(B), the limitation of liability set forth in Article XI(D), or the injunction set forth in Article XI(E) (to the extent such injunction pertains to the exculpation set forth in Article XI(B) and the limitation of liability set forth in Article XI(D)).

**G. Nondischarge of the Debtor**

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Confirmation Order will not discharge Claims. However, no Holder of a Claim may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Holder pursuant to the Plan. As of the Confirmation Date, all Persons and Entities are enjoined from asserting against any property that is to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

**H. Cancellation of Documents**

On the Effective Date, except to the extent otherwise provided in this Plan, any and all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtor shall be deemed inoperative and unenforceable solely as against the Debtor and its Estate.

**I. Effect of Plan on Released Claims and Liens**

Nothing contained in this Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to any prior Order of the Bankruptcy Court.

**XII.**

**MISCELLANEOUS PROVISIONS**

**A. Conditions Precedent to the Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

**a.** the Confirmation Order, authorizing and directing that the Debtor take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, and other agreements or documents created in connection with the Plan and the transactions contemplated thereby, including, without limitation, the transactions contemplated by the Liquidating Trust Agreement, shall have been entered and become a Final Order;

**b.** the Liquidating Trustee shall have accepted, in writing, the terms of the Liquidating Trustee's service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order;

**c.** the Liquidating Trust shall have been established; and

**d.** all other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtor and the Committee or, if waivable, waived by the Person or Persons (or Entity or Entities) entitled to the benefit thereof.

**B. Effect of Failure of Condition**

If each condition to the Effective Date has not been satisfied or duly waived within sixty (60) days after the Confirmation Date, then (unless the period for satisfaction or waiver of conditions has been extended at the joint option of the Plan Proponents for a period not exceeding ninety (90) days) upon motion by any party in interest, made before the time that each of the conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Plan Proponents or the Liquidating Trustee, as the case may be, before the Bankruptcy Court enters a Final Order granting such motion. If the Confirmation Order is vacated pursuant to this Plan, the Plan shall be deemed null and void in all respects, and nothing contained herein shall (i) constitute a waiver or release of any Claims by or against the Debtor or (ii) prejudice in any manner the rights of the Debtor or the Committee.

**C. Waiver of Conditions to the Effective Date**

The Debtor and the Committee, jointly and in their sole discretion, may waive any or all of the conditions to the Effective Date (except those set forth in Article XII(A)(a)-(c) above), in whole or in part, at any time, without notice, leave or an Order of the Bankruptcy Court. In that event, the Debtor and the Committee will be entitled to render any or all of their performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived, including, but not limited to, the right to perform under any circumstances which would moot any appeal, review, or other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review, or other challenge. The failure to satisfy or to waive any condition may be asserted by the Debtor or the Committee regardless of the circumstances giving rise to failure of such condition to be satisfied (including any action or inaction by the Debtor). The failure of the Debtor or the Committee to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

**D. Modification of the Plan**

The Plan (including the Plan Supplement and any exhibits to the Plan) may be modified jointly by the Plan Proponents, or the Liquidating Trustee, as applicable, from time to time in accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019. The Plan (including the Plan Supplement and any exhibits to the Plan) may be modified at any time before the entry of the Confirmation Order pursuant to section 1127(a) of the Bankruptcy Code; and after the entry of the Confirmation Order, the Plan Proponents, or the Liquidating Trustee, as applicable may, upon Order of the Bankruptcy Court, amend or modify the Plan (including the Plan Supplement and any exhibits to the Plan) in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan (as and to the extent permitted hereby) filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, at <https://dm.epiq11.com/case/lrghealthcare/info>. The documents annexed to the Disclosure Statement or contained in any modification or supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

**E. Adjustment of Claims Register**

Epiq is authorized and directed to adjust the Claims Register at the direction of the Liquidating Trustee to reflect the disallowance, reduction, reclassification, modification, or other resolution of any Claim pursuant to the terms of this Plan (whether or documented in a Final Order, written agreement, or otherwise) or any Final Order of the Bankruptcy Court without further notice to any party, or action, approval, or Order of the Bankruptcy Court.

**F. Extension of Time**

For cause shown, any deadlines herein that are applicable to the Debtor, the Committee, the Liquidating Trustee, the Debtor Representative, or the Liquidating Trust Estate and which are not otherwise extendable, may be extended by the Bankruptcy Court.

**G. Post-Effective Date Notice List**

Because certain Persons may not desire to continue to receive notices after the Effective Date, this Plan provides for the establishment of a Post-Effective Date Notice List. Persons on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under this Plan (as described herein). Any Person desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Liquidating Trustee and the Liquidating Trustee's counsel. Those parties set forth in Article XII(K) of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request.

**H. Revocation of Plan**

The Plan Proponents reserve the right to jointly seek revocation of the Confirmation Order pursuant to section 1144 of the Bankruptcy Code. If the Bankruptcy Court revokes the Confirmation Order pursuant to section 1144 of the Bankruptcy Code, or if confirmation or the Effective Date of the Plan does not occur, then (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of Executory Contracts or leases affected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and except as herein provided; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against the Debtor or any other person, (b) prejudice in any manner the Debtor's, the Committee's, or any Person or Entity's rights, or (c) constitute the Debtor's or the Committee's or any Person or Entity's admission of any sort.

**I. Successors and Assigns**

The rights, benefits, and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, and lawful successor or assign of such Person or Entity.

**J. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect until the Bankruptcy Court has entered the Confirmation Order. Neither the filing of the Plan, any statement or provision contained in the Plan, nor the Debtor's taking of any action with respect to the Plan or the Disclosure Statement shall be or shall be deemed to be an admission or waiver of any of the Debtor's rights with respect to the Holders of Claims prior to the Effective Date.

**K. Service of Documents**

Any pleading, notice, or other document required or permitted to be made in accordance with this Plan shall be made in writing and shall be delivered personally, by facsimile transmission, electronic mail or by first class U.S. mail, postage prepaid, as follows:

To the Debtor:

Nixon Peabody LLP  
Attn: Victor G. Milione  
Christopher M. Desiderio  
Christopher J. Fong  
55 West 46<sup>th</sup> Street  
New York, NY 10036

Nixon Peabody LLP  
Attn: Morgan Nighan  
900 Elm Street  
Manchester, NH 03101

To the Committee:

Sills Cummis & Gross P.C.  
Attn: Andrew H. Sherman  
Boris I. Mankovetskiy  
Lucas F. Hammonds  
One Riverfront Plaza  
Newark, NJ 07102

Drummond Woodsum  
Attn: Jeremy R. Fischer  
670 N. Commercial Street, Suite 207  
Manchester, NH 03101

**L. L. Filing of Additional Documents and Notice of Effective Date**

On or before the Effective Date, the Debtor and/or the Committee may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Liquidating Trustee shall file a notice of the Effective Date as soon as practicable after the Effective Date and shall serve such notice on all parties that are entitled to notice under Bankruptcy Rule 2002.

**M. Severability**

The provisions of the Plan shall not be severable unless the Plan Proponents agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.



**N. Entire Agreement**

The Plan, and any supplements or amendments hereto, supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects (other than the Liquidating Trust Agreement), all of which have become merged and integrated into the Plan.

**O. Governing Law**

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire, without giving effect to the principles of conflicts of law of such jurisdiction.

**P. Corporate Dissolution.**

Upon the distribution of all Assets pursuant to this Plan and the filing by the Liquidating Trustee of a statement to that effect with the Court (which may be included in the application for the entry of the final decree), the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of Debtor or payments to be made in connection therewith, provided, however, that the Debtor may take appropriate action to dissolve under applicable law. From and after the Effective Date, the Debtor shall not be required to file any document, or take any action, to withdraw their business operations from any states where the Debtor previously conducted business.

**Q. Closing of the Chapter 11 Case**

Consistent with the other terms of this Plan, the Liquidating Trustee shall promptly, upon the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable Order of the Bankruptcy Court to close the Chapter 11 Case.

| Dated: September ~~2021~~2024, 2021

**HGRL**

By: /s/ Victor Milione

Name: Victor Milione

Title: Counsel for the Debtor

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By: /s/ Andrew Sherman

Name: Andrew Sherman

Title: Counsel for the Committee

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Document 2 ID	netdocuments://4836-7527-4987/5
Description	LRG Joint Plan of Liquidation
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