

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

In Re:	)	CASE NO. 20-10247
	)	
Randolph Hospital, Inc. d/b/a Randolph Health,	)	CHAPTER 11
	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

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**DEBTORS' THIRD AMENDED JOINT PLAN OF LIQUIDATION**  
**DATED AUGUST 13, 2021**

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& SCARBOROUGH LLP

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<sup>1</sup> The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health, Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

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## INTRODUCTION

Randolph Hospital, Inc. d/b/a Randolph Health (“Randolph”) and its Debtor affiliates propose the following plan of liquidation for the resolution of outstanding creditor claims against the Debtors. The Debtors are the proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code.

Under Section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from a holder of a Claim or Equity Interest until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to holders of Claims and Interests. The Disclosure Statement relating to the Plan was approved by the Bankruptcy Court on July 20, 2021 [Docket No. 917] and has been distributed with the Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtors’ history, businesses, properties and operations, as well as a summary and description of the Plan, risk factors associated with the Debtors and the Plan, and certain related matters. ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. THE PLAN PROVIDES FOR SUBSTANTIVE CONSOLIDATION OF THE ESTATES FOR ALL PURPOSES ASSOCIATED WITH CONFIRMATION AND CONSUMMATION.

## ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

For purposes of this Plan, the Disclosure Statement and the Plan Supplement, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined herein have the meanings ascribed to them in Article 1 of the Plan. Any term used in the Plan that is not defined herein but is defined in the Bankruptcy Code or the Bankruptcy Rules retains the meaning specified for such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Whenever the context requires, each of the terms defined herein includes the plural as well as the singular, the masculine gender includes the feminine gender, and the feminine gender includes the masculine gender. Any reference to an entity as a holder of a Claim includes that entity’s successors and assigns.

### A. Definitions

As used in this Plan, the following terms have the meanings specified below:

**1.1 “Accounts”** shall have the meaning ascribed to it in the Master Trust Indenture dated June 1, 2007, among Randolph, and RSPG, and U.S. Bank, N.A., as successor to First-Citizens Bank & Trust Company, as Master Trustee; provided, however, that the following are expressly excluded from the definition of “Accounts” for all purposes under this Plan, including Article 4.3: (i) all Medicaid Reimbursement Initiative/GAP Assessment Program payments or rights to payment, (ii) all payments or rights to payment relating to Medicare and/or Medicaid cost report adjustments, and (iii) all accounts receivable and any proceeds thereof that are both (a) a Remaining Asset and (b) not billings for patient services rendered by the Debtors on or prior to June 30, 2021 at 11:59 p.m. (Eastern Time).

**1.2 “Acquired Assets”** means the assets acquired by the Purchaser under the APA.

**1.3 “Administrative Claim”** means a Claim against any Debtor or its Estate (a) arising on or after the Petition Date and prior to the Effective Date for a cost or expense of administration of the Chapter 11 Cases that is entitled to priority or superpriority pursuant to Section 364(c)(1), 503(b), 503(c) or 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, excluding Claims for Professional Fees, or (b) entitled to priority under Section 503(b)(9) of the Bankruptcy Code.

**1.4 “Administrative Claim Bar Date”** means the thirtieth (30th) day after the Effective Date, which shall be the last day for all parties to file with the Court any requests for payment or any other means of preserving and obtaining payment of an Administrative Claim to the extent such Claim has not been paid, released, or otherwise settled, excluding all requests for payment of Claims for Professional Fees, provided, however, that all requests for payment of an Administrative Claim by UnitedHealthcare Insurance Company, UnitedHealthcare of North Carolina, Inc., and their parents, subsidiaries, and affiliates (collectively, “United”) shall be filed by the deadline set forth in the *Stipulation and Agreed Order Concerning Assumption and Assignment of Network Contracts* dated August 6, 2021 [Docket No. \_\_\_].

**1.5 “Advisory Committee”** means the advisory committee established as of the Effective Date as set forth in Article 6 of the Plan. The Debtors shall file a notice disclosing the name and contact information for each member of the Advisory Committee in the Plan Supplement.

**1.6 “Allowed”** means with reference to a Claim, any Claim, to the extent it has not been withdrawn, paid, deemed satisfied or otherwise extinguished, (a) that has been listed by the Debtors in their Schedules as liquidated in amount and not disputed or contingent, for which no contrary Proof of Claim has been filed and for which no objection to the allowance thereof has been interposed on or before the Claims Objection Deadline, (b) for which a Proof of Claim (or, with respect to an Administrative Claim, a request for payment) has been filed on or before the applicable Bar Date, and for which no objection to the allowance thereof has been interposed on or before the Claims Objection Deadline, (c) that is allowed pursuant to the terms or procedures set forth in the Plan, (d) that is compromised, settled or otherwise resolved pursuant to a Final Order or the authority granted to the Debtors, the Liquidation Trustee, or the Advisory Committee, as appropriate, pursuant to the terms of the Plan or (e) for which an objection to the allowance thereof has been interposed on or before the Claims Objection Deadline but for which a Final Order has been entered allowing such Claim; provided, however, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder. Except as otherwise provided in the Plan or a Final Order, the amount of an Allowed Claim (including a Disputed Claim that subsequently becomes an Allowed Claim) shall not include (y) any interest, penalty or late charge arising or accruing after the Petition Date or (z) any award or reimbursement of attorneys’ fees or related expenses or disbursements. For the avoidance of doubt, no Claim shall be entitled to receive any distribution under the terms of this Plan unless and until such Claim becomes an Allowed Claim.



**1.7** “**APA**” means the Asset Purchase Agreement between the Debtors and Purchaser dated October 8, 2020, together with all ancillary documents and schedules referenced therein, as the same may be altered, amended, or modified from time to time.

**1.8** “**Ballot**” means the form distributed to each holder of an impaired Claim entitled to vote on the Plan on which such holder is to indicate acceptance or rejection of the Plan.

**1.9** “**Bankruptcy Administrator**” means the Office of the United States Bankruptcy Administrator for the Middle District of North Carolina.

**1.10** “**Bankruptcy Code**” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

**1.11** “**Bankruptcy Court**” means the United States District Court for the Middle District of North Carolina having jurisdiction over the Chapter 11 Cases and, by virtue of the reference made pursuant to Section 157 of title 28 of the United States Code, the Bankruptcy Court unit of such District Court, or any court having competent jurisdiction to hear appeals or certiorari petitions therefrom, or any successor thereto that may be established by an act of Congress or otherwise and that has competent jurisdiction over the Chapter 11 Cases.

**1.12** “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of title 28 of the United States Code, as applicable to the Chapter 11 Cases, and the Local Bankruptcy Rules.

**1.13** “**Bar Date**” means (a) the date set by the Local Bankruptcy Rules or any other date set by an order of the Bankruptcy Court as the applicable deadline for the filing of Proofs of Claim or requests for payment of Administrative Claims or (b) with reference to the assumption of an executory contract or unexpired lease by the Debtors, the date set by an order of the Bankruptcy Court as the applicable deadline for objecting to such assumption or Cure Amount proposed by the Debtors.

**1.14** “**Bidding Procedures Order**” means the Order (I) Approving Auction and Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Permitting Debtors to Designate Stalking Horse Purchaser and Grant Bid Protections, (III) Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases, (IV) Scheduling Auction and Sale Hearing, (V) Approving the Form and Manner of Sale Notice, and (VI) Granting Related Relief entered by the Bankruptcy Court September 8, 2020 (Docket No. 445).

**1.15** “**Business Day**” means any day except Saturday, Sunday or a “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

**1.16** “**Cash**” means legal tender of the United States of America and equivalents thereof.

**1.17** “**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 Debtors and/or the Estates), 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 thereafter against any Person or 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, 506, 510, 542 through 545 and 547 through 553 or 558 thereof, 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) rights or claims under any Insurance Policies applicable to the Debtors; (v) all claims of any kind or nature arising under state or federal law against any of the Debtors' current and former consultants, managers, 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 these Chapter 11 Cases, other than claims or Causes of Action released or otherwise waived during the Chapter 11 Cases; (vii) all legal and equitable defenses against any Claim or Cause of Action asserted against the Debtors; (viii) 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; (ix) 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 Debtors; (x) all claims and/or Causes of Action of any kind or nature arising under state law-based preferential transfer and/or fraudulent conveyance theories; and (xi) any and all claims and/or Causes of Action of any kind or nature against Cone. 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 Debtors and their Estates are preserved under the Plan.**

**1.18 “Chapter 5 Actions”** means any and all claims arising under chapter 5 of the Bankruptcy Code and any and all fraudulent conveyance, voidable preference, or avoidable transfer claims that, in any instance, could be brought under state or federal law. The term “Chapter 5 Actions” shall include, but not be limited to, all causes of action under chapter 5 of the Bankruptcy Code and any similar state or federal law against Persons and entities identified as recipients of transfers from any of the Debtors prior to the Petition Date identified in the Debtors' Schedules.

**1.19 “Chapter 11 Cases”** means the cases under chapter 11 of the Bankruptcy Code voluntarily commenced by the Debtors being jointly administered under Case No. 20-10247.

**1.20 “Claim”** means a claim (as defined in Section 101(5) of the Bankruptcy Code) against a Debtor.

**1.21 “Claims and Solicitation Agent”** means Epiq Corporate Restructuring, LLC.

**1.22 “Claims Register”** means the official register of Claims maintained by the Claims and Solicitation Agent.

**1.23 “Claims Objection Deadline”** means the last day for filing objections to Claims, which (with respect to any particular Claim) shall be the latest of: (a) 180 days after the Effective Date (which period 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) such date as may be fixed by the Bankruptcy Court upon a motion of the Liquidation Trustee or a holder of a Claim; (b) 90 days after the filing of a Proof of Claim, amended Proof of Claim or request for payment of an Administrative Claim; or (c) such other date as may be approved by order of the Bankruptcy Court, as applicable.

**1.24 “Class”** means a category of holders of Claims as set forth in the classifications under the Plan.

**1.25 “Collateral”** means any property or interest in property of the Estates that is subject to a Lien to secure the payment or performance of a Claim, which Lien is valid, perfected and enforceable under non-bankruptcy law and is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law.

**1.26 “Cone”** means The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Cone Health and all of its affiliates, subsidiaries, parents, predecessors, successors, assigns, and current and former officers, directors, members, managers, employees, attorneys, advisors, and other professionals. Notwithstanding the foregoing, “Cone” shall not refer to Angela Orth in her capacity as an officer of the Debtors.

**1.27 “Confirmation”** means the entry of the Confirmation Order, after all conditions specified in Section 10.1 hereof have been satisfied or waived.

**1.28 “Confirmation Date”** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

**1.29 “Confirmation Hearing”** means the hearing before the Bankruptcy Court to consider Confirmation, as such hearing may be adjourned or continued from time to time.

**1.30 “Confirmation Order”** means the order of the Bankruptcy Court confirming the Plan under Section 1129 of the Bankruptcy Code.

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

**1.32 “Court”** means the Bankruptcy Court.

**1.33 “Creditors Committee”** means the official committee of unsecured creditors, appointed pursuant to Section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases [Docket No. 111].

**1.34 “Cure Amount”** means the dollar amount required to be paid under Section 365 of the Bankruptcy Code at the time an executory contract or unexpired lease is assumed by a Debtor to cure that Debtor’s defaults under such contract or lease, and if applicable, to compensate the non-debtor party or parties to such contract or lease for any actual pecuniary loss to such party resulting from such default.

**1.35 “D&O Claims”** means any and all rights, claims, and Causes of Action arising under state and/or federal law against the Debtors’ current and/or former directors, trustees, managers, and/or officers (including claims and Causes of Action for breach of fiduciary duty) and the proceeds of any such rights, claims, and Causes of Action (including from any Insurance Policies associated therewith). Notwithstanding the foregoing, D&O Claims shall not include any Causes of Action against Cone, which are expressly reserved for the benefit of the Liquidation Trust.

**1.36 “D&O Release Date”** means the date that is one hundred eighty (180) days after the Effective Date of the Plan, subject to renewal for one additional period of one hundred eighty (180) days upon application by the Advisory Committee to the Bankruptcy Court.

**1.37 “Debtors”** means, in their capacity as debtors and debtors in possession, Randolph, Randolph Specialty Group Practice (Case No 20-10248), and MRI of Asheboro, LLC d/b/a Randolph MRI Center (Case No. 20-10249).

**1.38 “Defined Benefit Plan”** refers to the Debtors’ defined benefit pension plan which was frozen on February 28, 2003.

**1.39 “Directors and Officers”** means the Debtors’ current and/or former directors, trustees, managers, and/or officers; provided, however, that “Directors and Officers” does not include Cone.

**1.40 “Disclosure Statement”** means the written disclosure statement with respect to the Plan, together with all exhibits and annexes thereto and any amendments, modifications or supplements thereof, as approved by the Bankruptcy Court as containing adequate information in accordance with Section 1125 of the Bankruptcy Code.

**1.41 “Disputed”** means, with respect to a Claim, any Claim to the extent it has not been withdrawn, paid in full, deemed satisfied in full or otherwise extinguished that, either in whole or in part, has not become an Allowed Claim.

**1.42 “Distribution Record Date”** means the Confirmation Date, unless a different date is designated by the Confirmation or other order of the Bankruptcy Court.

**1.43 “District Court”** means the United States District Court for the Middle District of North Carolina.

**1.44 “Effective Date”** means a day, as determined by the Debtors, that is a Business Day no earlier than the date on which all conditions set forth in Section 10.2 hereof have been either satisfied or waived.

**1.45 “Estate”** means, as to a particular Debtor, the estate created for such Debtor pursuant to Section 541 of the Bankruptcy Code.

**1.46 “Exculpated Parties”** means the (i) the Debtors, (ii) the Creditors’ Committee, (iii) the members of the Creditors’ Committee solely in their capacity as members of the Creditors’ Committee, (iv) the Purchaser, solely in its capacity as the Purchaser under the APA, (v) the Liquidation Trustee, (vi) the Surviving Officer, (vii) the Advisory Committee, (viii) the members of the Advisory Committee solely in their capacity as members of the Advisory Committee, and (ix) their respective current and former officers, directors, members, managers, employees, attorneys, advisors, and other professionals, each solely in their respective capacities as such from and after the Petition Date. Cone is not an Exculpated Party.

**1.47 “Final Order”** means an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified or amended, and: (a) as to which the time to seek an appeal, petition for certiorari or other proceedings for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending; or (b) as to which any right to appeal, petition for certiorari, reargument or rehearing shall have been waived in writing in form and substance satisfactory to the Debtors; or (c) in the event that an appeal, certiorari, reargument or rehearing has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed or from which reargument or rehearing was sought or certiorari has been denied, and the time to take any further appeal, petition for certiorari or other proceedings for reargument or rehearing shall have expired; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, Rule 9024 of the Bankruptcy Rules or any analogous procedural rules under applicable state law can be filed with respect to such order.

**1.48 “General Unsecured Claim”** means any Claim other than a Secured Claim (including all Secured Tax Claims, the Term Loan Claim (except to the extent set forth in Article 4.3 below), and all Other Secured Claims), Administrative Claim, Priority Tax Claim, Priority Non-Tax Claim, PTO Claim for Employees Hired by Purchaser, Medical Malpractice Claim, or Intercompany Claim.

**1.49 “IMA”** means the Interim Management Agreement between the Debtors and Purchasers dated March 10, 2021, as it may be altered, amended, or modified from time to time.

**1.50 “IMA Termination Date”** means the date on which the IMA terminates according to its terms, which is expected to be October 1, 2021.

**1.51 “Insurance Policy”** means any policy of insurance coverage of any kind (including any and all amendments, endorsements, renewals, and extensions thereof) that belongs to or at any time belonged to, or includes or at any time included, a Debtor as a named

insured, additional insured, beneficiary, or assignee (including but not limited to any “directors and officers” or other fiduciary liability insurance policies).

**1.52 “Interest”** means any equity or ownership interest in MRI of Asheboro, LLC d/b/a Randolph Health MRI Center within the meaning of Section 101(16) of the Bankruptcy Code. Randolph Hospital, Inc. d/b/a Randolph Health shall retain its Interest in MRI of Asheboro, LLC solely for the purposes of winding down the Debtors under the Plan. Upon the Debtors’ dissolution, such Interest shall be eliminated. Debtors Randolph Hospital, Inc. d/b/a Randolph Health and Randolph Specialty Group Practice are nonprofit corporations and have no equity or ownership interests.

**1.53 “Intercompany Claim”** means any Claim by any Debtor against another Debtor. All Intercompany Claims are eliminated under the Plan through the substantive consolidation of the Debtors’ Estates.

**1.54 “Lien”** means any lien (statutory or otherwise), Claim, Indebtedness, hypothecation, encumbrance, obligation, security interest, interest, mortgage, pledge, restriction, charge, instrument, preference, priority, security agreement, easement, covenant, encroachment, option, lease, license, right of recovery, right of setoff, right of preemption, right of first refusal or other third party right, Tax (including federal, state and local Tax), order of any Governmental Unit or other governmental authority, of any kind or nature (including (a) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (b) any assignment or deposit arrangement in the nature of a security device and (c) any Claim based on any theory that the Purchaser or any Debtor is a successor or continuation of Debtors or their business), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

**1.55 “Liquidation Trust”** means the trust established as of the Effective Date to which all of the Trust Assets are contributed, in accordance with the terms of the Plan, for distribution to holders of Allowed Claims entitled to distributions from the Liquidation Trust.

**1.56 “Liquidation Trustee”** means the trustee appointed pursuant to the terms of the Plan and the Liquidation Trust.

**1.57 “Liquidation Trust Agreement”** means the liquidating trust agreement governing the Liquidation Trust that shall be filed as part of the Plan Supplement prior to the Confirmation Hearing.

**1.58 “Local Bankruptcy Rules”** means the Local Rules for the United States Bankruptcy Court for the Middle District of North Carolina and any standing orders of the Bankruptcy Court.

**1.59 “Medical Malpractice Claim”** means a claim of a former patient against any Debtor or any professional employed and/or insured by any Debtor alleging professional negligence in the care of such patient.

**1.60 “MRI of Asheboro”** means MRI of Asheboro, LLC d/b/a Randolph Health MRI Center.

**1.61 “Net Trust Assets”** means the Trust Assets, any other assets transferred to or earned by the Liquidation Trust, and any proceeds of the foregoing available for distribution under this Plan to holders of General Unsecured Claims after accounting for all other payments and distributions required to be made from the Liquidation Trust pursuant to the terms of this Plan (including, but not limited to, post-Effective Date fees, costs, and expenses payable from the Liquidation Trust as described in the Plan).

**1.62 “Other Secured Claims”** means all Secured Claims other than the Term Loan Claim and any Secured Tax Claims.

**1.63 “PBGC”** means the Pension Benefit Guaranty Corporation.

**1.64 “PBGC Claims”** means all Claims of the PBGC against any of the Debtors, whether asserted or unasserted, and whether relating to a filed Proof of Claim, a Claim identified in the Debtors’ Schedules, or otherwise, including without limitation: (x) claim number 20152 against Randolph (which amended number 20090), claim number 20154 against MRI of Asheboro (which amended number 20093), and claim number 20156 against RSGP (which amended number 20096), each asserting a General Unsecured Claim in the amount of \$14,221,949 and an unliquidated Priority Tax Claim and/or Priority Non-Tax Claim under section 507(a)(8) of the Bankruptcy Code and/or section 507(a)(2) of the Bankruptcy Code for statutory liability under 29 U.S.C. §§ 1362 and 1368; (y) claim number 20106 against Randolph (which amended number 20101, which amended number 20088), claim number 20102 against MRI of Asheboro (which amended number 20091), and claim number 20103 against RSGP (which amended number 20094), each asserting a General Unsecured Claim in the amount of \$1,234,669 for unfunded minimum funding contributions pursuant to 29 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082, 1342, and 1362(c); and (z) claim number 20153 against Randolph (which amended number 20089), claim number 20155 against MRI of Asheboro (which amended 20092), and claim number 20157 against RSGP (which amended number 20095), each asserting a General Unsecured Claim in the amount of \$2,822,909 and a Priority Tax Claim and/or Priority Non-Tax Claim in the amount of \$107,909 for pension insurance and termination premiums under 29 U.S.C. § 1307.

**1.65 “Person”** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, or other “person” as defined in Bankruptcy Code Section 101, as well as any governmental agency, government unit, or associated political subdivision.

**1.66 “Petition Date”** means March 6, 2020, the date on which each of the Debtors commenced its Chapter 11 Case.

**1.67 “Plan”** means, collectively, this Plan of Liquidation and all exhibits, supplements, appendices and schedules thereto, as the same may be altered, amended or modified from time to time by the Debtors.

**1.68 “Plan Supplement”** means all of the agreements and other documents that aid in effectuating the Plan, including without limitation all exhibits and modifications to the Plan which are not filed contemporaneously with the Plan, all of which shall be filed with the Bankruptcy Court on or before August 6, 2021.

**1.69 “Priority Non-Tax Claim”** means a Claim against a Debtor or its Estate accorded priority in right of payment pursuant to Section 507(a) of the Bankruptcy Code that is not an Administrative Claim, a Claim for Professional Fees, or a Priority Tax Claim.

**1.70 “Priority Tax Claim”** means a Claim of a governmental unit against a Debtor or its Estate accorded priority in right of payment pursuant to Section 507(a)(8) of the Bankruptcy Code.

**1.71 “Professional”** means a professional employed under Section 327, 328, 330, or 1103 of the Bankruptcy Code.

**1.72 “Professional Fees”** means a Claim by a Professional for compensation for services rendered and reimbursement for expenses submitted in accordance with Sections 330, 331, or 503(b) of the Bankruptcy Code for fees and expenses incurred after the Petition Date and prior to and including the Effective Date.

**1.73 “Professional Fees Bar Date”** means the date fixed under the Confirmation Order, which is expected to be approximately sixty (60) days following the Effective Date, by which any Professional seeking an award of Professional Fees must have filed an application with the Bankruptcy Court under Section 330(a) of the Bankruptcy Code, or be forever barred from an award of Professional Fees against the Debtor and/or sharing in any distribution under the Plan.

**1.74 “Proof of Claim”** means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

**1.75 “Pro Rata Share”** means as of any date of determination, a proportionate share, so that the ratio of (a) (i) the consideration distributed on account of an Allowed Claim in a Class to (ii) the amount of such Allowed Claim, is the same as the ratio of (b) (i) the amount of the consideration distributed on account of all Allowed Claims in such Class to (ii) the aggregate amount of all Allowed Claims in such Class without taking into account any other Class or Claim in another Class; provided, however, that for the purpose of calculating a Pro Rata Share, a Disputed Claim in a Class shall be treated as an Allowed Claim in the Maximum Allowable Amount in such Class for the purposes of determining the figure described in the foregoing clause (b)(ii).

**1.76 “PTO Claims for Employees Hired by Purchaser”** means accrued, unpaid “paid time off” for employees of the Debtors, as set forth on the books and records of the Debtors as of the Effective Date, who are hired by Purchaser. Each holder of a PTO Claim for Employees Hired by Purchaser shall receive a benefits credit from the Purchaser equal to the accrued, unpaid paid time off earned by such employee(s) while employed by the applicable Debtor, denominated in hours, as of the Effective Date. Such Claims are deemed fully satisfied through the foregoing and eliminated under the Plan.



**1.77 “Purchaser”** means American Healthcare Systems, LLC and its assigns.

**1.78 “Real Property Collateral”** means the real estate, assignment of rents and other security interests described in the Deed of Trust, Assignment and Fixture Filing dated April 24, 2014, executed by Randolph in favor of the Term Lender and recorded on April 28, 2014, in Book 2387, Page 73, of the Randolph County, North Carolina, Public Registry.

**1.79 “Released Parties”** means (i) the Creditors’ Committee and its members, attorneys, financial advisors, and other Professionals and (ii) the Debtors’ attorneys, investment bankers, Ankura Consulting Group, LLP and Louis E. Robichaux IV, and other Professionals, each solely in their respective capacities as such. In addition, solely for the purposes of Article 11.3, “Released Parties” shall include Bank of America, N.A. and U.S. Bank N.A. in its capacity as “Master Trustee” under the Master Trust Indenture dated June 1, 2007. For the avoidance of doubt, notwithstanding anything to the contrary in this Plan, neither Cone nor the Debtors’ current or former Directors and Officers are Released Parties; provided, however, that any current or former Directors and Officers of any of the Debtors against whom the Advisory Committee does not bring any D&O Claim or other Tort Claim on or prior to the D&O Release Date shall be deemed a Released Party for all purposes under the Plan.

**1.80 “Remaining Assets”** refers to the Debtors’ and Estates’ assets other than the Acquired Assets, including without limitation all Retained Causes of Action.

**1.81 “Restricted Assets”** refers to Remaining Assets to which the Debtors hold only legal title or which are donations or grants whose use is restricted by the terms of the donation or grant. A schedule of the Debtors’ Restricted Assets shall be filed as part of the Plan Supplement prior to the Confirmation Hearing.

**1.82 “Retained Causes of Action”** shall mean all Causes of Action of the Debtors which are Remaining Assets.

**1.83 “RSGP”** means Randolph Specialty Group Practice.

**1.84 “Sale Order”** means the Order (I) Authorizing the Sale of the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances and Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Certain Related Relief entered by the Bankruptcy Court on November 3, 2020 (Docket No. 563).

**1.85 “Sale Transaction”** means the transaction between the Debtors and Purchaser pursuant to which the Debtors sold the Acquired Assets to the Purchaser free and clear of all Liens, Claims, Interests and Encumbrances pursuant to Section 363 of the Bankruptcy Code, as set forth in the APA, the Sale Order, and the Supplemental Sale Order.

**1.86 “Schedules”** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors on May 4, 2020, pursuant to Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such may be amended or supplemented from time to time.

**1.87 “Secured Claim”** means any Claim that is (a) secured by a Lien on Collateral, but only to the extent of the value of such Collateral as determined in accordance with Section 506(a) of the Bankruptcy Code or (b) subject to a permissible setoff under Section 553 of the Bankruptcy Code, but only to the extent of such permissible setoff.

**1.88 “Secured Tax Claims”** means any Secured Claim that, absent its secured status, would be entitled to priority under Bankruptcy Code Section 507(a)(8) (determined irrespective of any time limits therein), including any related Secured Claim for penalties.

**1.89 “Sixteenth Interim Cash Collateral Order”** means the Stipulation and Agreed Interim Order (I) Authorizing Use of Cash Collateral Pursuant to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001, (II) Granting Adequate Protection, (III) Scheduling Further Hearing, and (IV) Granting Related Relief.

**1.90 “Statutory Fees”** means all fees and charges assessed against the Estates under 28 U.S.C § 1930.

**1.91 “Supplemental Sale Order”** means the Order Granting Debtors’ Motion for Approval of Amended Sale Transaction and Supplementing Prior Sale Order entered by the Bankruptcy Court on June 4, 2021 (Docket No. 851).

**1.92 “Surviving Officer”** means the person designated as the Surviving Officer effective on the Effective Date and any successor appointed as provided herein.

**1.93 “Swap Documents”** means that certain 2002 Master Agreement dated July 16, 2008 (together with the schedule thereto dated July 16, 2008 and letter agreement dated July 21, 2008, as amended or otherwise modified, the “**Swap Agreement**”) and any related secured agreement, collateral trust agreement, intercreditor agreement, and any other collateral and ancillary documents, as amended, restated, modified, or supplemented from time to time in accordance with their terms, including without limitation the Supplemental Indenture for Obligation No. 3 dated July 21, 2008 and Obligation No. 3 dated July 21, 2008.

**1.94 “Swap Facility”** mans the obligations in favor of Term Lender provided under the Swap Documents.

**1.95 “Tax”** means a tax on (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment, or charge of any kind whatsoever (together, in each instance, with any interest, penalty, addition to tax or additional amount) imposed by any federal, state or local taxing authority directly onto the Debtors or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

**1.96 “Term Lender”** refers to Bank of America, N.A.

**1.97 “Term Loan Claim”** means any and all claims relating to, arising out of, arising under or arising in connection with the Term Loan Facility, the Term Loan Documents, the Swap Facility, and Swap Documents.

**1.98 “Term Loan Agreement”** means that certain Term Loan Agreement dated as of August 31, 2012, as amended, restated, modified, or supplemented from time to time in accordance with its terms, by and among Randolph, as borrower, RSGP as guarantor, and Bank of America, N.A., as lender.

**1.99 “Term Loan Documents”** means, collectively, the Term Loan Agreement and any related secured agreement, collateral trust agreement, intercreditor agreement, and any other collateral and ancillary documents, as amended, restated, modified, or supplemented from time to time in accordance with their terms, including without limitation Obligation No. 4 and the Supplemental Indenture for Obligation No. 4 dated August 31, 2012, supplementing that certain Master Trust Indenture dated June 1, 2007, among the Randolph, and RSPG, and U.S. Bank, N.A., as successor to First-Citizens Bank & Trust Company, as Master Trustee, pursuant to which Randolph granted U.S. Bank as trustee for the benefit of the Bank a security interest in certain “Pledged Assets” as defined therein, and the Deed of Trust, Assignment and Fixture Filing dated April 24, 2014, executed by Randolph and recorded on April 28, 2014, in Book 2387, Page 73, of the Randolph County, North Carolina, Public Registry, pursuant to which the Randolph granted Bank of America, N.A. a first-priority lien on certain Real Property Collateral.

**1.100 “Term Loan Facility”** means the term loan facility provided under the Term Loan Documents.

**1.101 “Tort Claims”** means any and all claims and Causes of Action of the Debtors based upon any commercial tort, including but not limited to any D&O Claims. “Tort Claims” does not include any Causes of Action against Cone.

**1.102 “Trust Assets”** shall mean all Remaining Assets other than (i) the Restricted Assets, (ii) the D&O Claims and other Tort Claims (all related rights and remedies, including with respect to any applicable Insurance Policies), and (iii) any other rights or assets that vest or re-vest in any of the Debtors under the terms of this Plan. Notwithstanding anything to the contrary herein, the “Trust Assets” shall include all Causes of Action against Cone.

**1.103 “Voting Deadline”** means the date that is established by the Bankruptcy Court by which all Ballots indicating acceptance or rejection of the Plan must be received by the Claims and Solicitation Agent in order to be counted.

## **B. Additional Rules of Interpretation**

For the purposes of this Plan:

a. 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 documents shall be substantially in such form or substantially on such terms and conditions;

- b. any reference in this 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;
- c. unless otherwise specified in a particular reference, all references in this Plan to sections, articles, and exhibits are references to sections, articles, and exhibits of or to this Plan;
- d. 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;
- e. captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be part of or to affect the interpretation of the Plan;
- f. all exhibits to the Plan and documents included in the Plan Supplement are incorporated herein, regardless of when those exhibits or documents are filed;
- g. the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply;
- h. in computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) of the Bankruptcy Rules shall apply; and
- i. 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.

## **ARTICLE 2 TREATMENT OF UNCLASSIFIED CLAIMS**

**2.1. Unclassified Claims.** As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims against the Debtors are not classified for purposes of voting on, or receiving distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead treated separately in accordance with this Article 2 and in accordance with the requirements set forth in Section 1129(a)(9) of the Bankruptcy Code.

### **2.2. Administrative Claims.**

(a) **Administrative Claim Bar Dates.** All requests for payment of Administrative Claims (except with respect to Professional Fees, which shall instead be subject to the Professional Fees Bar Date) must be filed by the Administrative Claim Bar Date or the holders thereof shall be forever barred from asserting such Administrative Claims against the Debtor or from sharing in any distribution under the Plan. Except as otherwise provided by separate order of the Court, the date that is thirty (30) days after the Effective Date shall be the “Administrative Claim Bar Date” for all parties to File with the Court any requests for payment or any other means of preserving and obtaining payment of an Administrative Claim, excluding all requests for payment of Professional Fee Claims. Any request for payment of an Administrative Claim (other than a Professional Fee Claim) that is not timely filed as set forth

herein shall be forever barred, and holders of such Administrative Claims shall not be able to assert such Claims in any manner against the Debtors, the Estates, or the Liquidation Trust.

(b) **Generally.** Each Allowed Administrative Claim (except for Professional Fees, which shall be treated as set forth in Section 2.5 of the Plan) shall, unless the holder of such Claim shall have agreed to different treatment of such Claim, be paid in full in Cash on the latest of: (a) the Effective Date; (b) such date as may be fixed by the Bankruptcy Court; (c) the tenth (10th) Business Day after such Claim is Allowed; (d) such date as the holder of such Claim and the Liquidation Trustee may agree; and (e) the date such Claim is otherwise due according to its terms.

(c) **Ordinary Course.** Notwithstanding anything in Section 2.2(a) to the contrary, holders of Administrative Claims based on liabilities incurred in the ordinary course of the Debtors' business following the Petition Date shall not be required to comply with the Administrative Claims Bar Date, provided, however, that such holders have otherwise submitted an invoice, billing statement or other evidence of indebtedness to the Debtors in the ordinary course of business, and provided, further, that the Debtors and the Liquidation Trustee, to the extent of any disagreement with any such invoice, billing statement or other evidence of indebtedness, may file with the Bankruptcy Court an objection to such invoice, billing statement or other evidence of indebtedness as though the claimant thereunder had filed an Administrative Claim with the Bankruptcy Court.

**2.3. Allowed Priority Tax Claims.** Any Allowed Priority Tax Claim shall, at the option of the Liquidation Trustee, unless the holder of such Claim shall have agreed to different treatment of such Claim: (a) be paid in full in Cash, without interest, on the latest of: (i) the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the tenth (10th) Business Day after such Claim is Allowed; and (iv) such date as the holder of such Claim and the Liquidation Trustee may agree, or (b) receive deferred Cash payments to the extent permitted by Section 1129(a)(9) of the Bankruptcy Code with interest on the unpaid portion of such Claim at the statutory rate under applicable non-bankruptcy law or at a rate to be agreed upon by the Liquidation Trustee and the appropriate governmental unit or, if they are unable to agree, to be determined by the Bankruptcy Court; provided, however, that the Liquidation Trustee may prepay any or all such Claims at any time, without premium or penalty. For the purpose of option (b), the payment of each Allowed Priority Tax Claim shall be made in equal quarterly installments with the first installment due on the latest of: (i) the first Business Day following the end of the first full calendar quarter following the Effective Date, (ii) the first Business Day following the end of the first full calendar quarter following the date an order allowing such Claim becomes a Final Order, and (iii) such other time or times as may be agreed with the holder of such Claim. Each installment shall include simple interest on the unpaid balance of the Allowed Priority Tax Claim, without penalty of any kind, at the non-default rate of interest prescribed, agreed to or determined under option (b).

**2.4. Statutory Fees.** All Statutory Fees will be paid by the Liquidation Trustee as they become due and owing.

**2.5. Claims for Professional Fees.**

(a) **Pre-Effective Date Fees.** Each Professional seeking an award by the Bankruptcy Court of Professional Fees: (a) must file its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date on or before the Professional Fees Bar Date; and (b) if the Bankruptcy Court grants such an award, each such Person shall be paid in full in Cash by the Liquidation Trustee, in such unpaid amounts as are allowed by the Bankruptcy Court as soon as practicable following the first day after such order has been entered by the Bankruptcy Court and is not stayed. All final applications for allowance and disbursement of Professional Fees must be in compliance with all of the terms and provisions of any applicable order of the Bankruptcy Court, including the Confirmation Order.

(b) **Post-Effective Date Fees and Expenses.** Subject to the provisions of this Plan and the approval of the Advisory Committee, on and after the Effective Date, the Liquidation Trustee, the Surviving Officer, and the Advisory Committee may retain and employ attorneys, consultants, and other professionals (including Professionals previously retained in these Chapter 11 Cases) reasonably necessary to perform their respective duties under the Plan on such terms as may be approved by the Advisory Committee without further notice to or action, order, or approval of the Bankruptcy Court. Such professionals shall provide invoices setting forth their fees and expenses to the Advisory Committee monthly or at such other intervals as may be requested by the Advisory Committee. Following receipt of such invoices, the Advisory Committee shall have fourteen (14) days to object, verbally or in writing, to the payment of fees and reimbursement of expenses requested in the invoices. Absent any objection from the Advisory Committee, the Liquidation Trustee shall pay the invoices in Cash from the Liquidation Trust upon the expiration of such fourteen (14) day period. If the Advisory Committee objects to the payment of any such fees or reimbursement of any such expenses, the Liquidation Trustee shall pay the undisputed fees and expenses from the Liquidation Trust upon the expiration of such fourteen (14) day period, and the Advisory Committee and requesting party shall negotiate in good faith to resolve the dispute. If such dispute cannot be resolved following good faith discussion between the parties, either party may file an application with the Bankruptcy Court seeking resolution of the dispute. For the avoidance of doubt, (i) payment of undisputed and/or consensually agreed amounts pursuant to this paragraph shall not require any further notice to or action, order, or approval of the Bankruptcy Court; and (ii) neither the retention nor the payment of professionals pursuant to this paragraph shall require compliance with Sections 327 through 331 or 1103 of the Bankruptcy Code.

**ARTICLE 3  
CLASSIFICATION OF CLAIMS**

**3.1. Summary of Classification.** In accordance with Section 1123(a)(1) of the Bankruptcy Code, all Claims of Creditors (except those Claims receiving treatment as set forth in Article 2) and holders of Claims are placed in the Classes described in Section 3.2 below for all purposes, including voting on, confirmation of, and distribution under, the Plan.

**3.2. Classes.**

Class 1	Secured Tax Claims	Unimpaired, deemed to accept
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Class 2	Priority Non-Tax Claims	Unimpaired, deemed to accept
Class 3	Term Loan Claim	Impaired, entitled to vote
Class 4	Other Secured Claims	Impaired, entitled to vote
Class 5	General Unsecured Claims	Impaired, entitled to vote
Class 6	Medical Malpractice Claims	Impaired, entitled to vote

#### ARTICLE 4 TREATMENT OF CLAIMS

##### 4.1. Class 1 – Secured Tax Claims.

(a) **Treatment.** Each holder of an Allowed Secured Tax Claim shall, unless the holder of such Claim shall have agreed to different treatment of such Claim, receive, in full and final satisfaction, settlement, and release of, and exchange for, such Allowed Secured Tax Claim, a Cash payment in an amount equal to the Allowed Secured Tax Claim on the latest of: (i) the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the tenth (10th) Business Day after such Claim is Allowed; and (iv) such date as the holder of such Claim and the Liquidation Trustee may agree. The Debtors do not believe there are any claims in this Class.

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

##### 4.2. Class 2 – Priority Non-Tax Claims

(a) **Treatment.** Each holder of an Allowed Priority Non-Tax Claim shall, unless the holder of such Claim shall have agreed to different treatment of such Claim, receive, in full and final satisfaction, settlement, and release of, and exchange for, such Allowed Priority Non-Tax Claim, a Cash payment in an amount equal to the Allowed Priority Non-Tax Claim on the latest of: (i) the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the tenth (10th) Business Day after such Claim is Allowed; and (iv) such date as the holder of such Claim and the Liquidation Trustee may agree.

(b) **Voting.** Class 2 is unimpaired under the Plan. Holders of Priority Non-Tax Claims are deemed to have accepted the Plan under Bankruptcy Code Section 1126(f) and are not entitled to vote on the Plan.

##### 4.3. Class 3 – Term Loan Claim

(a) **Treatment.** In full and final satisfaction, settlement, and release of, and in exchange for, the Term Loan Claim (which shall be treated as an Allowed Claim for all purposes under the Plan) and all related Liens, the holder of the Term Loan Claim shall receive the following: (i) on the Effective Date, or as soon thereafter as reasonably practicable, a Cash payment in the amount of eight million four hundred fifty thousand dollars (\$8,450,000); (ii) the

net Cash proceeds (subject to any and all collection-related fees and expenses, including all such fees and expenses set forth in the APA), if any, of any Accounts, which net Cash proceeds shall be paid to the holder of the Term Loan Claim on a rolling basis as such Cash proceeds are received by the Debtors and/or Liquidation Trust, as applicable<sup>2</sup>; and (iii) an Allowed General Unsecured Claim in the amount of two hundred thousand dollars (\$200,000), which shall be treated as an Allowed Class 5 General Unsecured Claim under this Plan. For the avoidance of doubt, notwithstanding anything to the contrary in this Plan, neither the Term Loan Claim Allowed by this Article 4.3 nor the General Unsecured Claim Allowed by this Article 4.3 shall be subject to challenge, surcharge, reduction, or other modification, except by agreement of the holder of the Term Loan Claim.

(b) **Voting.** Class 3 is impaired under the Plan. The holder of the Term Loan Claim is entitled to vote on the Plan.

#### 4.4. Class 4 – Other Secured Claims

(a) **Treatment.** To the extent any Other Secured Claims exists, each holder of an Allowed Other Secured Claim shall, in full and final satisfaction, settlement, and release of, and exchange for, such Other Secured Claim, receive on the Effective Date in full satisfaction of the Secured Claim: (i) the proceeds from the Sale Transaction in an amount equal to the value of the holder's interest in the collateral securing such Claim or (ii) the Debtors will surrender the Collateral securing the Allowed Other Secured Claim to the holder. Any remaining Allowed Claim after the payment of the value of the holder's Collateral or surrender of the Collateral as set forth above shall be treated in Class 5.

(b) **Voting.** Class 4 is impaired under the Plan.<sup>3</sup> Holders of Secured Claims are entitled to vote on the Plan.

#### 4.5. Class 5 – General Unsecured Claims

(a) **Treatment.** Unless otherwise agreed by the applicable holder of an Allowed Claim in this Class to accept different and less favorable treatment, each holder of an Allowed General Unsecured Claim shall be entitled to receive, in full and final satisfaction, settlement, and release of, and exchange for, such Claim, a Pro Rata share of the Net Trust Assets on the later of: (a) the date or dates determined by the Liquidation Trustee, to the extent there is Cash available for distribution in the judgment of the Liquidation Trustee, having due regard the anticipated and actual expenses, the likelihood and timing of the process of liquidating; and (b) thirty (30) days after the date on which such Claim has become Allowed by a Final Order.

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<sup>2</sup> The Debtors and/or the Liquidation Trustee, in each case subject to the approval of the Advisory Committee, may direct the applicable party or parties to pay any net Cash proceeds of the Accounts directly to the holder of the Term Loan Claim.

<sup>3</sup> Class 4 is deemed impaired for purposes of the solicitation of acceptances of the Debtors' Plan, but all parties reserve all rights as to the issue of impairment of Class 4 at the Confirmation Hearing.



(b) **Voting.** Class 5 is impaired under the Plan. The holders of General Unsecured Claims are entitled to vote on the Plan.

#### 4.6. Class 6 – Medical Malpractice Claims

(a) **Treatment.** Holders of Medical Malpractice Claims shall, in full and final satisfaction, settlement, and release of, and exchange for, such Claims be granted relief from the automatic stay provided by Bankruptcy Code Section 362 and any stay or injunction provided for under this Plan or the Confirmation Order to pursue payment of their Medical Malpractice Claims from applicable Insurance Policies. To the extent such claims are Allowed, recovery on account of such Claims shall be limited to any available proceeds of such Insurance Policies. Holders of Medical Malpractice Claims shall not receive any Cash distribution from the Liquidation Trust or otherwise under this Plan on account of such Claims.

(b) **Voting.** Class 6 is impaired under the Plan. The holders of Medical Malpractice Claims are entitled to vote on the Plan

#### 4.7. General Claim Treatment Provision

(a) **Objections.** Except as otherwise set forth in any prior Final Order of the Bankruptcy Court, the failure of any party to object to any claim in these Chapter 11 Cases, including any Secured Claim, shall be without prejudice to the rights of the Debtors, the Creditors' Committee, the Liquidation Trustee and/or the Advisory Committee, as applicable, to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by such Claim's holder. Procedures for objections to Claims are set forth in Article 8 of this Plan.

(b) **No Attachment of Liens.** No Lien with respect to any Secured Claim shall attach to any property sold free and clear of liens, claims, and/or interests in such property pursuant to the Sale Order.

(c) **Survival, Release, and Determination of Liens.** Notwithstanding section 1141(c) or any other provision of the Bankruptcy Code, all pre-petition Liens on property of the Debtors held with respect to any Allowed Secured 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 consistent with the terms of this Plan, 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 Debtors (in consultation with the Creditors' Committee) or Liquidation Trustee (in consultation with the Advisory Committee), as the case may be, may condition delivery of any final payment upon receipt of an executed release of the Lien; provided further, however, that, notwithstanding the foregoing or anything to the contrary in this Plan, all Liens on property of the Debtors held with respect to the Term Loan Claim other than Accounts shall be deemed released, null and void, and unenforceable for all purposes upon the Effective Date.

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 the Debtors, the Creditors' Committee, the Liquidation Trustee, or the

Advisory Committee from challenging the validity of any alleged Lien on any asset of any Debtor or the Estates or the value of the property that secures any alleged Lien, and all such rights are expressly preserved. No allocation of consideration or purchase price under the APA or any other sale agreement shall be binding or determinative with respect to any determination under this paragraph or Section 506 of the Bankruptcy Code.

(d) **Surcharge Under Section 506(c) of the Bankruptcy Code.** All rights of holders of Secured Claims (other than the Term Loan Claim) under this Plan are subject to the rights of the Debtors (in consultation with the Creditors' Committee) and/or the Liquidation Trustee (in consultation with and/or with the approval of the Advisory Committee, as applicable) to surcharge the applicable Collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

(e) **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.

(f) **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.

(g) **Claims Paid by Third Parties.** A Claim shall be reduced in full, and such Claim shall be disallowed and expunged without a Claim objection having to be filed and without any further notice to or action, order, or approval 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 a Debtor or the Liquidation Trust. 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 a Debtor or the Liquidation Trust on account of such Claim, such holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Debtor or the Liquidation Trustee to the extent the holder's total recover on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim.

(h) **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 a Debtor or the Liquidation Trust, including pursuant to any insurance policy under which any Debtor is a covered party or beneficiary (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 Debtors' 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 shall be deemed disallowed and expunged without a Claim objection have to be filed and without further notice to or action, order, or approval of the Bankruptcy Court.

(i) **Acceptance of Plan.** In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an

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

(j) **Nonconsensual Confirmation.** The Debtors request entry of a Confirmation Order under Bankruptcy Code Section 1129(a). With respect to any impaired Class, including any Class of Claims created pursuant to amendments or modifications to this Plan, that does not accept the Plan, the Debtors request that the Bankruptcy Court confirm this Plan by cram down with respect to any such non-accepting Class or Classes at the Confirmation Hearing, and the filing of this Plan shall constitute a motion for such relief.

## **ARTICLE 5 MEANS FOR IMPLEMENTATION OF THE PLAN**

**5.1. Plan Funding.** The Plan shall be funded from Cash on hand, the proceeds of the Sale Transaction, and the net proceeds from the sale, liquidation, or other disposition of the Remaining Assets (including the litigation of Retained Causes of Action).

**5.2. Liquidation Trust.** The Liquidation Trust shall be established and become effective on the Effective Date in accordance with the provisions of Article 6 below and the other provisions of this Plan and the Liquidation Trust Agreement. On the Effective Date, the Trust Assets shall vest in the Liquidation Trust and shall thereafter be administered, liquidated (by sale, collection, recovery, settlement or other disposition) by the Liquidation Trustee in accordance with the Liquidation Trust Agreement and the Plan. For the avoidance of doubt, none of the Acquired Assets under the APA shall vest in or otherwise be subject to the Liquidation Trust.

**5.3. Advisory Committee.** On the Effective Date, the Creditors' Committee shall be replaced by the Advisory Committee, which shall oversee the Liquidation Trustee's administration of the Liquidation Trust and be deemed a representative of the Debtors and the Estates with respect to the D&O Claims and other Tort Claims (which shall revert in the Debtors on the Effective Date along with all related rights and remedies, including with respect to any applicable Insurance Policies) in accordance with the provisions of Article 6 below and the other provisions of this Plan and the Liquidation Trust Agreement.

**5.4. Surviving Officer.** The Surviving Officer shall be appointed to administer the Restricted Assets, wind down the Debtors, and take such other action as authorized herein. The proposed Surviving Officer shall be selected by the Debtors, in consultation with the Creditors' Committee, and identified in the Plan Supplement, along with a disclosure of the proposed terms and conditions of the Surviving Officer's compensation, which shall be subject to approval by the Creditors' Committee. If approved by the Bankruptcy Court at the Confirmation Hearing, the person or entity so designated shall become the Surviving Officer on the Effective Date without further Bankruptcy Court order. The Surviving Officer shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan.

**5.5. Effectuating Documents; Further Transactions.** On and after the Effective Date, the Debtors, the Surviving Officer, Liquidation Trustee, and the Advisory Committee are authorized to and may issue, execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan, without the need for any approvals, authorizations or consents except for those expressly required pursuant to the Plan. Without limiting the foregoing, the Debtors, the Surviving Officer, the Liquidation Trustee, and the Advisory Committee shall be entitled to seek such orders, judgments, injunctions, and rulings from the Court, in addition to those specifically listed in this Plan, as may be necessary to carry out the intentions and purposes, and to give full effect to, the provisions of this Plan. The Court shall retain jurisdiction to enter such orders, judgments, injunctions, and rulings.

**5.6. Joint Plan; Substantive Consolidation.** The Plan is a joint plan of the Debtors, with all rights to recover from the Remaining Assets to be governed by the terms of the Plan. The Plan constitutes the Debtors' motion, as part of confirmation of the Plan, seeking that the Debtors' Estates be substantively consolidated into a single consolidated Estate for all purposes under the Plan. To the extent the Court confirms the Plan, entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Debtors for Plan purposes. Under the Plan, (a) all assets and liabilities of the Debtors shall be deemed merged so that all of the assets of all of the Debtors shall be available to pay all of the liabilities of all of the Debtors as if they were one company, (b) each and every Claim (other than a PTO Claim for Employees Hired by Purchaser or an Intercompany Claim, all of which are eliminated under the Plan) in the Chapter 11 Case of any of the Debtors shall be deemed one Claim against and obligation of the consolidated Debtors and all guaranties thereof by or enforceable against any of the Debtors and any joint and several liability of the Debtors shall be treated as though they were a single obligation in the amount of the obligation of the primary obligor, (c) any Claim or Claims filed or to be filed against any of the Debtors in connection with any such obligation and any such guaranties or any such joint and several liability shall be treated as though they were a single Claim in the amount of the Claim against the primary obligor, (d) all such guaranties of the Debtors shall be deemed eliminated and extinguished, (e) all Intercompany Claims shall be cancelled and extinguished, and (f) no distributions shall be made under the Plan on account of any Interests of any of the Debtors in any of the other Debtors. Notwithstanding the occurrence of the Effective Date and regardless of whether the Debtors are substantively consolidated as part of this Plan, the Chapter 11 Cases of any Debtor entities may be dismissed by order of the Bankruptcy Court and each such entity may be excluded from this Plan. Nothing in this Section 5.6 shall augment or increase (i) the property that constitutes collateral or any offset or similar right securing any Claim or otherwise increase the secured portion of any Claim under Bankruptcy Code section 506(a), or (ii) the allowable amount of any Allowed Claim (including any Administrative Claim). The Debtors reserve the right to seek confirmation of the Plan, with or without substantive consolidation, with any modifications that the Bankruptcy Court may order related to the foregoing. Substantive consolidation shall not affect the legal and organizational structure of the Debtors or their separate corporate existences or any prepetition or postpetition guaranties, Liens or security interests that are required to be maintained under the Bankruptcy Code or under the Plan. Any alleged defaults under any applicable agreement with the Debtors arising from substantive consolidation under the Plan shall be deemed cured as of

the Effective Date. Notwithstanding the deemed substantive consolidation of the Chapter 11 Cases for purposes indicated above, each Debtor shall pay all Statutory Fees, plus interest due and payable under 31 U.S.C. § 3717, on all disbursements, including Plan payments and disbursements in and outside of the ordinary course of business, until the entry of a final decree closing the Chapter 11 Cases as contemplated by Bankruptcy Rule 3022, dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

**5.7. Preservation of Causes of Action.** In accordance with Section 1123(b)(3) of the Bankruptcy Code and Articles 1.17 and 1.75 and the other provisions of this Plan, the Liquidation Trustee (and with respect to the D&O Claims and other Tort Claims, the Debtors, through the Advisory Committee) shall retain and may (but is not required to) enforce all Retained Causes of Action, whether arising before or after the Petition Date, and the Liquidation Trustee's (and with respect to the D&O Claims and other Tort Claims, the Advisory Committee's) rights to commence, prosecute or settle such Retained Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Subject to the terms of the Plan, the Liquidation Trustee shall have the sole right and authority to pursue, prosecute, litigate to judgment and settle the Retained Causes of Action (other than the D&O Claims and other Tort Claims, which shall be pursued, prosecuted, litigated to judgment, and/or settled consistent with Article 6.8 below). **No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any cause of action against them as any indication that the Liquidation Trustee or the Advisory Committee will not pursue any and all available Retained Cause of Action against them. The Debtors, the Liquidation Trustee, and the Advisory Committee expressly reserve all rights to prosecute any and all Causes of Action against any entity, except as otherwise expressly provided in the Plan. For the avoidance of doubt, unless expressly released under the terms of this Plan, the Debtors, the Liquidation Trustee, and the Advisory Committee reserve any and all causes of action against Cone and transferees of the Debtors' property within 90 days of the Petition Date for non-insiders and one year of the Petition Date for insiders.** Unless any Retained Causes of Action against an entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Liquidation Trustee, the Debtors, and the Advisory Committee expressly reserve all Retained Causes of Action, as applicable for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Retained Causes of Action after, or as a consequence of, Confirmation or Consummation. Notwithstanding anything to the contrary herein, the Surviving Officer, as representative of the Debtors, shall have all rights with respect to the Restricted Assets, including without limitation all right to any Causes of Action relating to the Restricted Assets.

In accordance with Section 1123(b)(3) of the Bankruptcy Code, any and all Retained Causes of Action shall vest in the Debtors or the Liquidation Trust, as applicable, notwithstanding the rejection of any executory contract or unexpired lease during the Chapter 11 Cases or pursuant to the Plan. Subject to the terms of the Plan, including Articles 6.7 and 6.8 below, the Liquidation Trustee, as representative of the Debtors with respect to Retained Causes of Action (other than the D&O Claims and other Tort Claims), shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, assert as a set-off or other defenses as to a Claims, abandon, settle, compromise, release, withdraw or litigate to

judgment any Retained Causes of Action (other than the D&O Claims and other Tort Claims) and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court as set forth in the Liquidation Trust Agreement.

**5.8. Exemption from Certain Transfer Taxes and Recording Fee.** Pursuant to Section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to any other entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the creation, modification, consolidation or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (b) the making, assignment or recording of any lease or sublease or amendment thereto; or (c) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by or in any way related to the Plan, shall not be subject to any document recording Tax, stamp Tax, conveyance fee, intangibles or similar Tax, mortgage Tax, real estate transfer Tax, mortgage recording Tax, Uniform Commercial Code filing or recording fee or other similar Tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such Tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such Tax or governmental assessment.

**5.9. Employee Benefit Plans.** All employee benefit plans, policies, and programs implemented by the Debtors and not previously terminated by the Debtors or otherwise addressed by a separate Final Order as of the Effective Date shall be terminated as of the Effective Date, except for the Randolph Hospital Retirement Plan, which shall be terminated by written agreement between PBGC and the pension plan administrator. Except as otherwise provided in the Plan, employee benefit plans, policies, and programs shall include all health care plans, disability plans, severance benefit plans, life, accidental death and dismemberment insurance plans (to the extent not executory contracts assumed under the Plan), and pension/retirement plans (including the Debtors' 403(b) program). If the termination of any such plan, policy, or program gives rise to a Claim by an employee, such Claim shall be forever barred and shall not be enforceable against the Debtors or their Estates, affiliates, successors, estates, or properties, or the Liquidation Trust, unless a Proof of Claim is filed and served on the Debtors, the Liquidation Trustee, and the Advisory Committee within thirty (30) days after the Effective Date. Notwithstanding anything to the contrary herein, the Debtors have assumed and assigned their Administrative Services Agreement with UMR, Inc.

**5.10. Post-Effective Date Debtors.** On and after the Effective Date, the Surviving Officer shall have all right and authority necessary to wind up each of the Debtors, and all remaining officers, directors, and trustees of the Debtors shall be deemed to have resigned. Except as otherwise specifically provided in the Plan, all Restricted Property of a Debtor shall remain with that Debtor pursuant to Section 1125(a)(5) of the Bankruptcy Code, and shall be free and clear of all Claims, Liens, classes, encumbrances, and interests. The Debtors shall continue in existence for the purpose of (i) administering their rights and obligations under the Plan; (ii) filing all final cost reports reflecting its operations prior to closing of the Sale Transaction; (iii) filing appropriate tax returns; (iv) dissolving any dormant non-debtor affiliates; and (v) as

otherwise necessary to windup their affairs. In addition, the Surviving Officer on behalf of Randolph may take all acts necessary to consent to changes to the Bylaws of the Randolph Hospital Community Health Foundation on account of the Sale Transaction and the eventual dissolution of Randolph. Further, the Surviving Officer, on behalf of the Debtors, shall distribute the Restricted Assets in accordance with applicable non-bankruptcy law. At such time as the Debtors have completed the actions set forth in this Article, and at each of their respective sole discretion the Debtors will be dissolved in accordance with applicable state law.

**5.11. Indemnification of Surviving Officer.** The Debtors and their Estates shall, to the fullest extent permitted by North Carolina law, indemnify and hold harmless the Surviving Officer and its agents, representatives, attorneys, professionals, and employees (each an “Indemnified Party”), from and against any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees and costs, arising out of or due to their actions or omissions with respect to the implementation or administration of the Plan, if the Indemnified Party acted in good faith and in a reasonable manner; provided, however, that the Debtors and their Estates shall not indemnify or hold harmless the Indemnified Parties for actions or omissions constituting gross negligence or willful misconduct. The Debtors shall not have liability or any obligation to indemnify or hold harmless any Indemnified Party under this Section 5.11 unless and until such Indemnified Party has exhausted all applicable insurance coverage, including from any Insurance Policies of the Debtors.

**5.12. Resignation, Replacement, or Termination of Surviving Officer.** From and after the Effective Date, the Surviving Officer or his successor shall continue to serve in his capacity as the sole officer, director, and responsible person of the Debtors through the earlier of (a) the date the Debtors are dissolved in accordance with the Plan; and (b) the date the Surviving Officer resigns or is replaced or terminated. In the event that the Surviving Officer resigns or is terminated or unable to serve as a director, then a successor Surviving Officer shall be selected by the Surviving Officer, subject to the approval of the Advisory Committee, and the terms and conditions of such successor Surviving Officer’s compensation shall be subject to the approval of the Advisory Committee. The successor Surviving Officer shall then be deemed to be the Surviving Officer for all purposes under this Plan.

**5.13. Dissolution of the Creditors’ Committee.** Upon the Effective Date, the Creditors’ Committee shall be dissolved automatically, the retention and employment of the Creditors’ Committee’s Professionals shall be deemed terminated, and the members of the Creditors’ 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 Cases, other than for purposes of filing and/or objecting to final fee applications filed in these Chapter 11 Cases. The Creditors’ Committee shall be replaced by the Advisory Committee as of the Effective Date as described herein.

**5.14. PBGC Claims Settlement.** As part of the global settlement among the PBGC and the Debtors contained in this Plan, in full and final satisfaction of all PBGC Claims, the PBGC shall have an Allowed Class 5 General Unsecured Claim in the amount of fifteen million dollars (\$15,000,000) and an Allowed Administrative Claim in the amount of seventy five thousand dollars (\$75,000) (together, the “Allowed PBGC Claims”). PBGC shall not (i) be entitled to any other Allowed Claims under this Plan or (ii) participate in any distribution under

this Plan other than on account of the Allowed PBGC Claims. All Proofs of Claim filed by the PBGC other than the Allowed PBGC Claims shall be deemed expunged from the Claims Register. In consideration of this settlement, the PBGC supports the Plan and shall vote in favor of Confirmation.

## **ARTICLE 6 LIQUIDATION TRUST AND THE ADVISORY COMMITTEE**

### **6.1. Establishment of Liquidation Trust.**

(a) **Purpose.** On the Effective Date, the Liquidation Trust shall be established pursuant to the Liquidation Trust Agreement for the purpose of administering the Trust Assets consistent with the terms of this Plan, including without limitation by (1) resolving and objecting to Disputed Claims and prosecuting, settling, compromising, withdrawing or resolving such objections, (2) making distributions from the Trust Assets, and (3) establishing and administering any necessary reserves for Disputed Claims that may be required, all in accordance with and subject to the provisions of the Plan and Liquidation Trust Agreement, and take other actions as may be necessary to effectuate the foregoing and administering of the Trust Assets.

(b) **Liquidation Trust Agreement.** Prior to the Effective Date, the Debtors shall execute the Liquidation Trust Agreement. The Liquidation Trust Agreement is hereby incorporated into this Plan in its entirety as if set forth in full. The Liquidation 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 Liquidation Trust as a grantor trust. The Liquidation Trust Agreement shall also be in a form acceptable to and approved by the Creditors' Committee. For the avoidance of doubt, the terms of this Plan shall control to the extent of any conflict between the terms of this Plan and the terms of the Liquidation Trust Agreement.

(c) **Establishment on the Effective Date.** Without any further action of the managers, directors, or members of the Debtors, on the Effective Date, the Liquidation Trust Agreement shall become effective. The Liquidation Trustee shall accept the Liquidation Trust Agreement and sign the Liquidation Trust Agreement on or prior to the Effective Date, and the Liquidation Trust shall then be deemed created and effective as of the Effective Date.

**6.2. Appointment of Liquidation Trustee.** The proposed Liquidation Trustee for the Liquidation Trust shall be selected by the Debtors, in consultation with the Creditors'



Committee, and identified in the Plan Supplement, along with the terms and conditions of the Liquidation Trustee's proposed compensation, which shall be subject to approval by the Creditors' Committee. If approved by the Bankruptcy Court at the Confirmation Hearing, the person or entity so designated shall become the Liquidation Trustee on the Effective Date without further Bankruptcy Court order. The Liquidation Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Liquidation Trust Agreement and the Plan. The Liquidation Trustee shall be the successor in interest to the Debtors with respect to the Trust Assets and any other assets subsequently transferred to the Liquidation Trust; accordingly, to the extent this Plan requires an action by the Debtor with respect to such assets, the action shall be taken by the Liquidation Trustee on behalf of the Debtor.

### **6.3. Transfer of Trust Assets to the Liquidation Trust.**

(a) **Transfer.** On the Effective Date, the Debtors' Estates shall transfer and shall be deemed to have irrevocably transferred to the Liquidation Trust, for and on behalf of the beneficiaries of the Liquidation Trust, with no reversionary interest in the Debtors, the Trust Assets, free and clear of all Liens, Claims, encumbrances or interests of any kind in such property, except as otherwise expressly provided in the Plan. The Confirmation Order shall constitute a determination that the transfer of Trust Assets to the Liquidation Trust are legal, valid, and consistent with the laws of the State of North Carolina. All parties shall execute any documents or other instruments necessary to cause title to the applicable Trust Assets to be transferred to the Liquidation Trust. The Trust Assets will be held in trust for the benefit of all holders of Allowed Claims pursuant to the terms of this Plan and the Liquidation Trust Agreement. As part of the transfer described in this paragraph, the Debtors shall transfer to the Liquidation Trust all rights and remedies of the Debtors that are included in the Retained Causes of Action (other than the D&O Claims, Tort Claims, and related rights and remedies, including with respect to any applicable Insurance Policies, which shall revert in the Debtors and may be pursued by the Advisory Committee consistent with the terms of this Plan). The Debtors shall share with the Liquidation Trustee all evidentiary privileges (including the attorney-client privilege, work product, and other applicable privileges) as they relate to Retained Causes of Action transferred to the Liquidation Trust, and such privileges shall vest in the Liquidation Trustee as of the Effective Date. The Debtors shall share with the Advisory Committee all evidentiary privileges (including the attorney-client privilege, work product privilege, and other applicable privileges) as they relate to the D&O Claims and other Tort Claims, and such privileges shall vest in the Advisory Committee as of the Effective Date. All attorney-client privileged information and attorney work product relating to the Retained Causes of Action that the Debtors share with the Liquidation Trustee, the Liquidation Trustee's professionals, the Advisory Committee, and/or the Advisory Committee's professionals will remain confidential and privileged pursuant to a common-interest privilege.

The funding of the Liquidation Trust for the payments to be made to the holders of Allowed Claims under the Plan and the payment of other post-Effective Date costs and expenses described in the Plan will be from (i) the Trust Assets transferred to the Liquidation Trust on the Effective Date; (ii) the proceeds of the liquidation of such assets; and (iii) any further assets transferred to the Liquidation Trust pursuant to the terms of the Plan (and/or their proceeds), including the proceeds of any D&O Claims or other Tort Claims.

(b) **Obligations Following Transfer.** Upon the transfer of the Trust Assets pursuant to the terms of this Plan, the Debtors and the Debtors' Estates shall have no other or further rights or obligations with respect thereto. Notwithstanding the foregoing, the Debtors shall provide to the Liquidation Trustee (and with respect to the D&O Claims and other Tort Claims, the Advisory Committee) reasonable access during normal business hours, upon reasonable notice, to books and records of the Debtors to enable the Liquidation Trustee (and with respect to the D&O Claims and other Tort Claims, the Advisory Committee) to perform the Liquidation Trustee's (and with respect to the D&O Claims and other Tort Claims, the Advisory Committee's) tasks under the Liquidation Trust Agreement and the Plan, and the Debtors shall permit the Liquidation Trustee and the Advisory Committee reasonable access to information and personnel reasonably necessary to the reconciliation of Claims and distribution in respect of such Claims that is reasonably requested by the Liquidation Trustee and the Advisory Committee; provided, however, that (x) the Debtors shall not be required to make out-of-pocket expenditures in response to such requests (with any such expenditures being the responsibility of the Liquidation Trust) and (y) such requests will not require the participation or involvement of any personnel that might reasonably interfere with the performance of such person's duties to the Purchaser or with the Purchaser's operations or businesses. The Debtors and the Purchaser shall not be entitled to compensation or reimbursement (including reimbursement for professional fees) with respect to fulfilling their obligations as set forth in this paragraph; provided, however, except as otherwise set forth in this paragraph, in the event the Liquidation Trustee (and/or the Advisory Committee, as applicable) seeks to retain or use the services or assistance of any Debtors' Professional or any employee or personnel of any of the Purchaser, the Liquidation Trustee shall pay any and all costs and fees as agreed upon between the Liquidation Trustee (and/or the Advisory Committee, as applicable) and such party. Any requests for assistance that interferes with the Debtor's or any of the Purchaser's business operations shall be considered unreasonable. For the avoidance of doubt, nothing in the paragraph shall relieve the Debtors or the Purchaser of any obligation to comply with requests for documents and information set forth in subpoenas, discovery requests, or other requests the Debtors or the Purchaser would otherwise be required to comply with under applicable law.

#### **6.4. Term of Liquidation Trust and Rights and Duties of Liquidation Trustee.**

(a) **Term.** The existence of the Liquidation Trust and the authority of the Liquidation 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 Trust Assets are liquidated in accordance with the Plan, the funds in the Liquidation 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 these Chapter 11 Cases is a Final Order or (b) five (5) years after the date of creation of the Liquidation Trust, unless extended by the Bankruptcy Court as provided in the Liquidation Trust Agreement.

At such time as the Liquidation Trust has been fully administered (*i.e.*, when all things requiring action by the Liquidation 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 Liquidation Trustee will file an application for approval of his final report and the entry of the final decree by the Bankruptcy Court.

(b) **Rights and Powers of Liquidation Trustee.** Subject to the provisions of this Plan, including Article 6.7, and the Liquidation Trust Agreement, the Liquidation Trustee shall have all the rights and powers set forth in the Liquidation Trust Agreement, including without limitation the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidation Trust Agreement; (2) liquidate Trust Assets; (3) investigate, prosecute, compromise, and/or abandon all Retained Causes of Action (other than the D&O Claims and other Tort Claims); (4) resolve Disputed Claims subject to the terms of this Plan; (5) file objections to Disputed Claims and to prosecute, settle, compromise, withdraw, or resolve such objections subject to the terms of this Plan; (6) pay expenses incurred in carrying out Liquidation Trustee's powers and duties under the Liquidation Trust Agreement, including professional fees, consistent with the terms of this Plan; (7) make distributions from the Trust Assets in accordance with the provisions of the Plan and the Liquidation Trust Agreement and open and maintain bank accounts, deposit funds, and draw checks to make such disbursements and pay expenses; (8) establish and administer any necessary reserves for Disputed Claims that may be required; (9) resolve any non-material matter or take any non-material action (as such terms are described in Article 6.7 below) without further application to or order of the Bankruptcy Court; and (10) resolve any material matter or take any material action (as such terms are described in Article 6.7 below) that has been approved by the Advisory Committee without further application to or order of the Bankruptcy Court. The Liquidation Trustee shall be vested with all rights, powers, and authority of a debtor in possession and trustee under the Bankruptcy Code with respect to the Retained Causes of Action (other than the D&O Claims and other Tort Claims) as of the Effective Date.

(c) **Costs and Expenses.** All costs and expenses associated with the administration of the Liquidation Trust, including costs and expenses associated with objecting to, settling, estimating or otherwise resolving Claims that are Disputed, adjudicating the Retained Causes of Action, and the Liquidation Trustee's acting as the disbursing agent after the Effective Date shall be the responsibility of and solely paid by the Liquidation Trust.

(d) **Professionals.** Subject to Article 2.5(b) above, the Liquidation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals as it may deem necessary to aid in the performance of its responsibilities pursuant to the Plan, including the liquidation and distribution of Trust Assets.

(e) **Compensation of Liquidation Trustee.** Consistent with Article 6.2 above, the Liquidation Trustee is entitled to reasonable compensation on terms and conditions approved by the Creditors' Committee. When seeking payment, the Liquidation Trustee shall provide a statement of the compensation sought to the Advisory Committee, and such statement shall be subject to the review, approval, dispute, and resolution procedures for professionals set forth in Article 2.5(b) above.

(f) **Certain Tax Matters.** The Liquidation Trust is intended to be treated for federal U.S. income tax purposes as a liquidating trust within the meaning of Treasury Regulations § 301.7701-4(d), provided that the Liquidation Trustee will to the extent permitted by applicable law elect to treat any Trust Assets allocable to, or retained on account of, Disputed Claims (the "Disputed Claims Reserve") as a "disputed ownership fund" governed by Treasury

Regulation § 1.468B-9. Accordingly, except as to any assets attributable to the Disputed Claims Reserve, for federal U.S. income tax purposes, the transfer of the Trust Assets to the Liquidation Trust will be treated as a transfer of the Trust Assets from the Debtors to the holders of Allowed Claims which are entitled to distributions from the Liquidation Trust, subject to any liabilities of the Debtors or the Liquidation Trust payable from the proceeds of such assets, followed by such holders' transfer of such assets (subject to such liabilities) to the Liquidation Trust. The holders of such Allowed Claims will thereafter be treated for federal income tax purposes as the grantors and deemed owners of their respective shares of the Trust Assets (subject to such liabilities). Notwithstanding the foregoing, income and gain recognized with respect to the Trust Assets in the Disputed Claims Reserve will be subject to an entity-level Tax and distributions from the Disputed Claims Reserve will be made net of such entity-level Tax. For the avoidance of doubt, the holders of Allowed Claims which are entitled to distributions from the Liquidation Trust are not intended to be treated for federal income tax purposes as receiving the Trust Assets that are allocated to the Disputed Claims Reserve until such time as the Disputed Claims Reserve makes distributions, in which case (and at such time) the holders of Allowed Claims which are entitled to distributions from the Liquidation Trust are intended to be treated as receiving the distributions actually received from the Disputed Claims Reserve, if any. The Liquidation Trust Agreement will: (i) require that the Liquidation Trustee file income tax returns for the Liquidation Trust as a grantor trust (and file separate returns for the Disputed Claims Reserves pursuant to Treasury Regulation § 1.468B-9.); (ii) require that the Liquidation Trustee pay all Taxes owed on any net income or gain of the Liquidation Trust, including net income or gain of the Disputed Claims Reserves, on a current basis from Trust Assets; (iii) provide for consistent valuations for all Trust Assets by the Liquidation Trustee and holders of Allowed Claims and require that such valuations be used for all Tax reporting purposes; (iv) provide for the Liquidation Trust's termination no later than five years after the Effective Date unless the Bankruptcy Court approves a fixed extension based upon a finding that an extension is necessary for the Liquidation Trust to resolve all Claims, reduce all Trust Assets to Cash and liquidate the Trust Assets; (v) limit the investment powers of the Liquidation Trustee; and (vi) require that the Liquidation Trust distribute at least annually all net income and the net proceeds from the sale or other disposition of all Trust Assets in excess of amounts reasonably necessary to maintain the value of the remaining Trust Assets and pay Claims and contingent liabilities, including Disputed Claims.

(g) **Tax Returns.** The Liquidation Trustee shall be responsible for filing all necessary Tax returns and reports for the Liquidation Trust and paying Taxes or other obligations owed by the Liquidation Trust.

(h) **Statutory Fees.** Beginning with the quarter immediately following the quarter within which the Effective Date occurs, the Liquidation Trustee shall be responsible for paying all Statutory Fees from the Liquidation Trust.

(i) **Reports.** The Liquidation Trustee shall file periodic reports with the Bankruptcy Court in accordance with the Liquidation Trust Agreement and, upon concluding all activities by the Trust, a final report listing all distributions, payments or disposition of Trust Assets.

**6.5. Appointment of Advisory Committee.** On the Effective Date, the Advisory Committee, which will have consultation, information, and approval rights with respect to the Liquidation Trust and the Liquidation Trustee's actions as set forth in this Plan and the Liquidation Trust Agreement, shall be deemed formed and appointed. The Advisory Committee shall consist of at least two (2) members, which members shall be selected by the Creditors' Committee. The Advisory Committee may also include such other Persons or entities (including *ex officio* members) as may be requested by the Advisory Committee. Any such additional or *ex officio* members, and any successor members of the Advisory Committee, shall be appointed in accordance with by-laws to be adopted by the Advisory Committee upon its formation and appointment. The initial members of the Advisory Committee shall be identified in the Plan Supplement. The Advisory Committee shall monitor the status of the Liquidation Trust and the actions of the Liquidation Trustee and undertake such other duties as specified in the Plan and the Liquidation Trust Agreement. Each member of the Advisory Committee (or its designee, as applicable) shall be entitled to compensation in the amount of up to one thousand two hundred fifty dollars (\$1,250) for each meeting of the Advisory Committee such member (or its designee, as applicable) attends and may be reimbursed for reasonable expenses incurred in the performance of its duties as a member of the Advisory Committee, which compensation and reimbursement shall be paid from the Liquidation Trust; provided, however, that compensation for any member of the Advisory Committee shall not exceed \$5,000 in a single month unless otherwise ordered by the Bankruptcy Court. In serving as a member of the Advisory Committee, such members shall not assume or be deemed to have assumed any liabilities to creditors, the Debtors, or any other parties in interest in the Chapter 11 Cases, and shall not be liable for any acts or omissions while acting in that capacity, except for bad faith and acts or omissions constituting gross negligence. Upon the entry of a final decree in these Chapter 11 Cases (or the conversion or dismissal of these Chapter 11 Cases), the Advisory Committee and its members shall be deemed discharged of and from all further authority, duties, responsibilities, and obligations relating to or arising from the Plan and these Chapter 11 Cases. The Advisory Committee shall be the successor in interest to the Creditors' Committee (including with respect to any Lien determination rights); accordingly, (i) to the extent this Plan requires any action by the Creditors' Committee, the action shall be taken by the Advisory Committee on behalf of the Creditors' Committee, and to the extent the Plan authorizes (but does not require) any action by the Creditors' Committee, the action may be taken by the Advisory Committee, and (ii) the Creditors' Committee shall share with the Advisory Committee all evidentiary privileges (including the attorney-client privilege, work product privilege, and other applicable privileges), and such privileges shall vest in the Advisory Committee as of the Effective Date.

**6.6. Retention of Professionals by the Advisory Committee.** The Advisory Committee may retain and employ attorneys and other professionals reasonably necessary to perform its duties under the Plan consistent with the terms of Article 2.5(b) above. Such attorneys and other professionals shall be compensated consistent with the terms of Article 2.5(b) above.

**6.7. Advisory Committee Information and Approval Rights.** In addition to the specific consultation and approval requirements set forth expressly in this Plan and the Liquidation Trust Agreement, the Liquidation Trustee shall keep the Advisory Committee apprised of all material matters relating to the Liquidation Trust and obtain the Advisory Committee's approval with respect to all material actions relating to the Liquidation Trust. For

the purposes of this paragraph, “material matters” and “material actions” shall be defined as (i) the objection to, Allowance, compromise, or other resolution of any Claim asserted against the Debtors or the Estates with a face amount of one hundred thousand dollars (\$100,000) or more; (ii) the prosecution, defense, settlement, or other resolution of any Retained Causes of Action where the amount in controversy is twenty five thousand dollars (\$25,000) or more; and (iii) any matter, act, or action involving payment to or from the Liquidation Trust of twenty five thousand dollars (\$25,000) or more. If the Liquidating Trustee provides written notice of a proposed action to the Advisory Committee by e-mail, the Advisory Committee shall be deemed to have approved the action if no written objection to the proposal is received by the Liquidation Trustee within five (5) business days. In the event of a dispute between the Liquidation Trustee and the Advisory Committee regarding the approval of a proposed action by the Liquidation Trustee under this Plan, the Advisory Committee and the Liquidation Trustee each reserves the right to seek approval of the proposed action or other appropriate relief from Bankruptcy Court (and to object to or otherwise oppose such proposed action or other relief). To the extent that the Liquidation Trustee or the Advisory Committee seeks approval of a proposed action by the Liquidation Trustee or other appropriate relief from the Bankruptcy Court (and/or objects to or otherwise opposes such proposed action or other relief) pursuant to the foregoing sentence, there shall be no presumption in favor or deference to either party’s business judgment, and the Bankruptcy Court shall review the request de novo based upon the best interest of the creditors. To the extent that the Liquidation Trustee declines to take any action consistent with the terms of this Plan and the Liquidation Trust Agreement that is requested by the Advisory Committee and either constitutes a material action or concerns a material matter, the Advisory Committee is authorized and granted the right, standing, and authority to take such action on the Liquidation Trustee’s behalf or file an application with the Bankruptcy Court seeking the entry of an order directing the Liquidation Trustee to take such action, as appropriate. The Liquidation Trustee shall also comply with all reasonable information requests from the Advisory Committee.

All information and materials exchanged between the Liquidation Trustee and his professionals, on the one hand, and the Advisory Committee and its professionals, on the other hand, pursuant to this Article 6.7 or Articles 2.5(b) or 8 shall be subject to the common interest privilege except to the extent such privilege is waived by (i) mutual agreement of the parties or (ii) the use of such materials in a contested or otherwise adversarial matter or proceeding between the parties by the party that originally provided such materials or information to the other. For the avoidance of doubt, a party receiving information or materials pursuant to this Article 6.7 shall not have the power or authority to unilaterally waive the common interest privilege with respect to such information or materials.

**6.8. Advisory Committee as Debtor Representative with Respect to the D&O Claims and Other Tort Claims.** The Advisory Committee shall be deemed a representative of the Debtors and the Estates with respect to the D&O Claims and other Tort Claims under Section 1123(b)(3) of the Bankruptcy Code (which shall revert in the Debtors on the Effective Date along with all related rights and remedies, including with respect to any applicable Insurance Policies), and shall be vested with all rights, powers, and authority of a debtor in possession and trustee under the Bankruptcy Code with respect to the D&O Claims and other Tort Claims as of the Effective Date. Upon the occurrence of the Effective Date, the Advisory Committee shall have the right, standing, and authority to investigate, institute, prosecute to final judgment, settle, or otherwise resolve the D&O Claims and other Tort Claims in the Advisory Committee’s sole

authority. Consistent with the foregoing and Article 6.3(a) above, the Debtors shall share with the Advisory Committee all evidentiary privileges (including the attorney-client privilege, work product privilege, and other applicable privileges) as they relate to the D&O Claims and other Tort Claims, and such privileges shall vest in the Advisory Committee as of the Effective Date. Further, upon the entry of a final judgment with respect to, or settlement of, any D&O Claim or other Tort Claim by the Advisory Committee, the proceeds of such D&O Claim or other Tort Claim shall be transferred to the Liquidation Trust for use and distribution consistent with the terms of this Plan and the Liquidation Trust agreement. **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 Advisory Committee on the D&O Claims, any other Tort Claims, and the rights in and proceeds of any related Insurance Policies. The proceeds of all such D&O Claims, other Tort Claims, and Insurance Policies are material to the implementation of this Plan and the recoveries of creditors hereunder.**

## ARTICLE 7 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**7.1. Rejection of Executory Contracts and Unexpired Leases.** On the Confirmation Date (except as provided herein for certain payor agreements and provider agreements), but subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors entered into prior to the Petition Date that have not been previously assumed or rejected, have not been assumed and assigned to the Purchaser, or are not the subject of a pending motion to assume or reject, shall be deemed rejected by the Debtors pursuant to the provisions of Section 365 of the Bankruptcy Code. For certain payor agreements and provider agreements which shall be disclosed on the Plan Supplement, the effective date of rejection shall be the IMA Termination Date. Pursuant to the Bidding Procedures Order, the Debtors have filed with the Bankruptcy Court notices of assigned executory contracts and leases in connection with the Sale Transaction, which notices may be amended, withdrawn, and supplemented as provided in the Bidding Procedures Order. The Confirmation Order shall constitute an order approving the foregoing rejection.

**7.2. Rejection Damages.** Any Claim for damages arising from the rejection of any executory contract or unexpired lease under this Plan must be filed with the Court and served upon the Debtors, the Liquidation Trustee, and the Advisory Committee within forty five (45) days after the Effective Date or such other deadline established by the Court. Any Claim arising from the rejection of an executory contract or unexpired lease not filed within such time will be forever barred from receiving any distribution under this Plan or asserting any Claims against the Debtors, the Estates, or the Liquidation Trust.

**7.3. Insurance Policies.** On the Effective Date, the Debtors' rights with respect to all Insurance Policies (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 any Debtor after the Petition Date, and all Insurance Policies under which any Debtor holds rights to make, amend, prosecute, or benefit from any claim) shall revert in the applicable Debtor(s) as necessary for the Advisory Committee to pursue and prosecute the D&O Claims and other Tort Claims. To the extent that any such Insurance Policies are not necessary for the pursuit and prosecution of any D&O Claims or other Tort Claims, such Insurance Policies shall

be transferred to the Liquidation Trust from the Effective Date until the Liquidation Trust's dissolution, unless any such Insurance Policy is otherwise canceled by the Liquidation Trustee with the approval of the Advisory Committee. The Debtors do not believe that any Insurance Policies issued to the Debtors prior to the Petition Date constitute executory contracts, and notwithstanding any provision of this Plan 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 Liquidation Trustee or Advisory Committee, as applicable, to assume or reject the Insurance Policy pursuant to and subject to the provisions of Section 365 of the Bankruptcy Code following the Effective Date to the extent the Liquidation Trustee or Advisory Committee seeks to assume or reject such Insurance Policy.

The Confirmation Order shall constitute a determination that no default by any Debtor exists with respect to any of the Insurance Policies requiring payment of a Cure Amount, and that nothing in any prior order of the Bankruptcy Court, 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 the Estates and all creditors in all Causes of Action and to limit any Claims against the Estates. Notwithstanding anything to the contrary herein, any insurance policy acquired for the benefit of a Debtor (or any officers, directors, or trustees of the Debtors) before or after the Petition Date shall remain in full force and effect after the Effective Date according to its terms.

**7.4. Effect of Confirmation Order.** The Confirmation Order shall constitute an order of the Bankruptcy Court approving, as of the Confirmation Date but subject to the Effective Date, the assumption; assumption, assignment, and sale; or rejection (as applicable) by the Debtors, pursuant to Sections 365 and 1123(b)(2) of the Bankruptcy Code, of all executory contracts and unexpired leases identified under this Article 7 of the Plan for assumption; assumption, assignment, and sale; or rejection. Such executory contracts and unexpired leases shall be assumed; assumed, assigned, and sold; or rejected, respectively, only to the extent that such contracts or leases constitute pre-petition executory contracts or unexpired leases of the Debtors, and the identification of such agreements under this Plan does not constitute an admission with respect to the characterization of such agreements or the existence of any unperformed obligations, defaults, or damages thereunder. This Plan does not affect any executory contracts or unexpired leases that: (a) have been assumed, rejected or terminated prior to the Confirmation Date, or (b) are the subject of a pending motion to assume, reject or terminate as of the Confirmation Date.

## **ARTICLE 8 PROVISIONS FOR RESOLUTION OF DISPUTED CLAIMS**

### **8.1. Objections to Claims.**



(a) **Preservation of Objections.** After the Effective Date, the Debtors, the Liquidation Trustee, and the Advisory Committee shall have and retain any and all objections (whether or not filed), rights and defenses any Debtor or its Estate had with respect to any Claim immediately prior to the Effective Date, subject to the provisions of the Plan.

(b) **Liquidation Trustee Right to Object and Update Claims Register.** On and after the Effective Date, subject to Article 6.7 above, the Liquidation Trustee shall have the right and authority (1) to file, withdraw or litigate to judgment objections to Claims and (2) to settle, resolve or compromise any Disputed Claim. The Liquidation Trustee shall administer and adjust the Claims Register to reflect any such Claims withdrawals, determinations, settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court, and the Claims and Noticing Agent is directed to adjust and update the Claims Register as directed by the Liquidation Trustee in accordance with the foregoing.

**8.2. Estimation of Claims.** Before the Effective Date, the Debtors (in consultation with the Creditors' Committee) may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to Section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. From and after the Effective Date, the Liquidation Trustee may, at any time, request that the Bankruptcy Court (or District Court, as applicable) estimate any Claim not expressly Allowed by the terms of the Plan and otherwise subject to estimation under Section 502(c) of the Bankruptcy Code for which the Debtors or the Liquidation Trust may be liable under the Plan, including any Claim for taxes, to the extent permitted by Section 502(c) of the Bankruptcy Code, regardless of whether any party-in-interest previously objected to such Claim. In the event that the Bankruptcy Court (or District Court, as applicable) estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court (or District Court, as applicable). If the estimated amount constitutes a maximum limitation on such Claim, the Liquidation Trustee may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. 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 objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated by the Bankruptcy Court (or District Court, as applicable) and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court (or District Court, as applicable).

**8.3. Adjustment to Claims Without Objection.** Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Liquidation Trustee without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

**8.4. Time to file Objections to Claims.** Any objections to Claims shall be filed on or before the Claims Objection Deadline.

**8.5. Amendments to Claims.** Except as otherwise provided herein, on or after the Effective Date, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or the Liquidation Trustee and any such new or amended Claim filed shall be deemed disallowed in full and expunged without any further action.

**8.6. Nonpayment of Claims of Parties Holding Recoverable Property; Setoff.**

(a) **Parties Holding Recoverable Property.** Notwithstanding any other provision of the Plan, no payments or other distributions shall be made on account of any Claims of holders from which property is recoverable or alleged to be recoverable pursuant to Sections 542, 543, 550 or 553 of the Bankruptcy Code or that are or are alleged to be transferees of transfers avoidable under Sections 544, 545, 547, 548 or 549 of the Bankruptcy Code until (1) such holder has paid the amount, or turned over any such property, for which such entity or transferee is liable under Sections 542, 543, 550 or 553 of the Bankruptcy Code or (2) the Bankruptcy Court determines by Final Order that such holder need not pay such amount or turn over such property

(b) **Setoff and Recoupment.** In the event the Debtors, by and through the Liquidation Trustee or the Advisory Committee, have a claim or Cause of Action of any nature whatsoever against the holder of a Claim (and whether or not such claim or Cause of Action has been transferred to the Liquidation Trust), (1) the Liquidation Trustee may, but is not required to, setoff or recoup against the Claim such claim or Cause of Action of the Debtors against the holder and (2) the Liquidation Trustee may, but is not required to, setoff or recoup against any payments or other distributions to be made in respect of such Claim hereunder such claim or Cause of Action the Debtors have against the holder. Neither the failure to setoff or recoup against nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Liquidation Trustee, or the Advisory Committee of any claim or Cause of Action that such parties have against the holder of a Claim.

**8.7. Settlement of Disputed Claims.** Subject to Article 6.7 above, the Liquidation Trustee shall have the exclusive right and authority to resolve all Disputed Claims. Any such settlement shall be subject governed by Article 6.7 above.

**8.8. Advisory Committee Rights.** The Liquidation Trustee shall advise the Advisory Committee of all proposed actions under this Article 8. In addition, this Article 8 is qualified and limited in its entirety by Article 6.7 above. All actions by the Liquidation Trustee under this Article 8 and all decisions by the Liquidation Trustee not to act under this Article 8 in response to request for action by the Advisory Committee shall be governed by Article 6.7 above.

**ARTICLE 9  
PROVISIONS GOVERNING DISTRIBUTIONS**

**9.1. Disbursing Agents; Distributions.** The Liquidation Trustee shall be the disbursing agent for all distributions under the Plan. Distributions to be made by the Liquidation Trustee may be made by any Person designated or retained by him to serve as disbursing agent without the need for any further order of the Bankruptcy Court. Distributions to holders of

Allowed Claims shall be made as of the Distribution Record Date. The Debtors and the Liquidation Trustee shall not have any obligation to recognize any transfer of any Claim occurring after the Distribution Record Date but may elect to do so in consultation with the Creditors' Committee or Advisory Committee, as applicable.

**9.2. Addresses for Delivery of Distributions.** Except as otherwise agreed with the holder of an Allowed Claim in respect thereof or as provided in this Plan, any property to be distributed on account of an Allowed Claim shall be distributed by mail, upon compliance by the holder with the provisions of this Plan, to (a) the latest mailing address filed for the holder of an Allowed Claim entitled to a distribution under the Plan, (b) the latest mailing address filed for a holder of a filed power of attorney designated by the holder of such Claim to receive distributions, (c) the latest mailing address filed for the holder's transferee as identified in a filed notice served on the Debtors pursuant to Bankruptcy Rule 3001(e), or (d) if no such mailing address has been filed, the mailing address reflected on the Schedules or in the Debtors' books and records.

**9.3. Distributions on Account of Claims Allowed as of the Effective Date.** Except as otherwise provided herein, a Final Order, or as agreed by the relevant parties, distributions on account of Allowed Claims that become Allowed prior to the Effective Date shall be made by the Liquidation Trustee within seven (7) days of the Effective Date.

**9.4. Distributions on Account of Claims Allowed After the Effective Date.**

(a) **Distributions on Account of Disputed Claims and Estimated Claims.** Except as otherwise provided herein, a Final Order, or as agreed by the relevant parties, distributions on account of Disputed Claims and Estimated Claims that become Allowed after the Effective Date shall be made by the Liquidation Trustee at such periodic intervals as he determines to be reasonably prudent in consultation with the Advisory Committee.

(b) **No Distributions Pending Allowance.** Notwithstanding anything herein to the contrary: (a) no distribution shall be made with respect to any Disputed Claim or estimated Claim until such Claim becomes an Allowed Claim, and (b) unless determined otherwise by the Liquidation Trustee in consultation with the Advisory Committee, no distribution shall be made to any Person that holds both an Allowed Claim and either a Disputed Claim or an estimated Claim until such Person's Disputed Claims and estimated Claims have been resolved by settlement or Final Order.

**9.5. Disputed and Estimated Claims Reserve.** On and after the Effective Date, the Liquidation Trust shall maintain in reserve such Cash as the Liquidation Trustee, in consultation with the Advisory Committee, estimates to be reasonably necessary to satisfy the distributions required to be made under the Plan if each Disputed Claim and estimated Claim becomes an Allowed Claim.

**9.6. Distributions in Cash.** The Liquidation Trustee shall make any required Cash payments to the holders of Allowed Claims: (i) in U.S. dollars by check, draft or warrant, drawn on a domestic bank selected by the Liquidation Trustee in his sole discretion, or by wire transfer

from a domestic bank, at its option, and (ii) by first-class mail (or by other equivalent or superior means as determined by the Liquidation Trustee).

**9.7. Unclaimed Distributions.** Any entity which fails to claim any Cash within one hundred twenty (120) days from the date upon which a distribution is first made to such entity shall forfeit all rights to any distribution under the Plan and the Liquidation Trustee will be authorized to cancel any distribution that is not timely claimed. Pursuant to Section 347(b) of the Bankruptcy Code, upon forfeiture, such Cash (including interest thereon, if any) will revert to the Liquidation Trust, free of any restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules. Notwithstanding any federal or state escheat laws to the contrary, upon forfeiture, the Claim of any creditor with respect to such funds will be discharged and forever barred, and neither such creditors or any other entity will have any Claim whatsoever with respect to such forfeited distribution against the Debtors and the Liquidation Trustee or any holder of an Allowed Claim to whom distributions are made by the Liquidation Trustee. For the avoidance of doubt, (i) any check, draft or warrant that remains undeposited for one hundred twenty (120) days after its issuance shall be deemed an unclaimed distribution for the purposes of this Article 9.7; (ii) any distribution that is returned as undeliverable and remains unclaimed for one hundred twenty (120) days after it is mailed or otherwise transmitted consistent with Article 9.6 above shall be deemed an unclaimed distribution for the purposes of this Article 9.7; and (iii) any claimant who fails to comply with a request for information necessary for the Liquidation Trustee to fulfill any applicable tax withholding or reporting requirement within one hundred twenty (120) days of such request shall be deemed an unclaimed distribution for the purposes of this Article 9.7.

**9.8. Taxes.** Pursuant to Section 346(f) of the Bankruptcy Code, the Liquidation Trustee shall be entitled to deduct any federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. The Liquidation Trustee shall be authorized to take all actions necessary to comply with applicable withholding and recording requirements. **Notwithstanding any other provision of this Plan, each holder of an Allowed Claim that has received a distribution of Cash shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such distribution.** For tax purposes, distributions received in respect of Allowed Claims shall be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

**9.9. De Minimis Distributions.** If any interim distribution under the Plan to the holder of an Allowed Claim would be less than \$100.00, the Liquidation Trustee may withhold such distribution until a final distribution is made to such holder. If any final distribution under the Plan to the holder of an Allowed Claim would be less than \$10.00, the Liquidation Trustee may cancel such distribution. Any cancelled distributions pursuant to this Section shall be treated as unclaimed distributions under Section 9.7 of the Plan.

**9.10. Fractional Distributions.** Any other provision of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any distribution of a fraction of a cent would otherwise be called for, the actual distribution shall reflect a rounding down of such fraction to the nearest whole cent.

**9.11. 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 Liquidation 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, Allowed Priority Non-Tax Claims, or other Allowed Claims of the recipient against the Debtors 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.

## **ARTICLE 10 CONFIRMATION OF THE PLAN**

**10.1. Conditions Precedent to Confirmation.** The following are conditions precedent to confirmation of this Plan:

- (a) The Bankruptcy Court shall have entered a Final Order approving a Disclosure Statement with respect to the Plan in form and substance satisfactory to the Debtors;
- (b) The Sale Transaction under the APA has closed;
- (c) The proposed Confirmation Order shall be in a form and substance reasonably acceptable to the Debtors and the Creditors' Committee; and
- (d) The Plan Supplement and all exhibits, schedules and other attachments to the Plan shall be in form and substance reasonably acceptable to the Debtors and the Creditors' Committee.

**10.2. Conditions Precedent to Effectiveness.** The following are conditions precedent to the occurrence of the Effective Date:

- (a) The Confirmation Date shall have occurred;
- (b) The Confirmation Order shall be a Final Order;
- (c) The Liquidation Trust shall have been established and the Liquidation Trustee shall have accepted the terms of his service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order;
- (d) The Surviving Officer shall have been appointed and the Surviving Officer shall have accepted the terms of his service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order;
- (e) The occurrence of the IMA Termination Date;
- (f) All other actions, documents, and agreements determined by the Debtors to be necessary to effectuate the Plan shall have been effected or executed, and all such documents shall be in form and substance reasonably acceptable to the Debtors and the Creditors' Committee; and

(g) The Debtors shall have received any authorization, consent, regulatory approval, ruling, letter, opinion, or other documents that may be necessary to implement this Plan or that is required by law, regulation, or order.

**10.3. Waiver of Conditions.** The Debtors may waive one or more of the conditions to Confirmation and the Effective Date.

**10.4. Failure of Conditions.** If each of the conditions to the Effective Date is not satisfied or duly waived by December 31, 2021, then unless the Debtors agree otherwise and file notice with the Bankruptcy Court to such effect, the Confirmation Order shall automatically be vacated without further order of the Bankruptcy Court. If the Confirmation Order is vacated pursuant to this Section 10.4, then the Plan shall be null and void in all respects, and nothing in the Plan, the Disclosure Statement, any Plan Document or the Confirmation Order shall constitute or be deemed a waiver or release of any Claims by or against any Debtor or any other entity, or to prejudice in any manner the rights of a Debtor or any other entity in any proceedings involving a Debtor.

## **ARTICLE 11 EFFECT OF CONFIRMATION**

**11.1. Remaining Assets Revest Free and Clear.** Upon the Effective Date, title to all the Trust Assets shall vest in the Liquidation Trust as provided in the Plan and shall no longer constitute property of the Debtors' Estates. Upon the Effective Date, all Restricted Assets shall vest in the Debtors as provided in the Plan and shall no longer constitute property of the Debtors' Estates. Upon the Effective Date, the D&O Causes of Action and other Tort Claims (along with all related rights and remedies, including with respect to any applicable Insurance Policies) shall revest in the Debtors. Except as otherwise provided in the Plan, upon the Effective Date, all such assets and any other assets that vest or revest in the Debtors or vest in the Liquidation Trust under the terms of this Plan shall be free and clear of all Claims, Liens, charges, encumbrances or other interests of creditors of the Debtors.

**11.2. Satisfaction of Claims; Interest.** Holders of Claims shall receive the distributions provided for in this Plan, if any, in full settlement and satisfaction of the Debtors' obligations thereunder, and any interest thereon. Except as specifically provided in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date.

**11.3. Releases by the Debtors.** Pursuant to Section 1123(b) of the Bankruptcy Code and except as otherwise specifically provided in this Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by this Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Liquidation Trust, the Liquidation Trustee, and the Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Estates or their affiliates would have been legally entitled to assert in their own right

(whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person or other entity that constitutes property of the Debtors' Estates, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in this Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Debtors' Chapter 11 Cases, or the negotiation, formulation or preparation of the Sale Transaction, this Plan, the Disclosure Statement, any Plan Supplement or related agreements, instruments or other documents, other than Claims, Causes of Action, or liabilities arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence.

**11.4. Releases by Holders of Claims. As of the Effective Date and except as set forth in this Plan, each holder of a Claim or Interest who has voted to accept this Plan and failed to mark its ballots as opting out of the release set forth in this Section 11.4 shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims assertable on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Debtors' Chapter 11 Cases, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in this Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, or the negotiation, formulation or preparation of the Sale Transaction, this Plan, the Disclosure Statement, any Plan Supplement or related agreements, instruments or other documents, other than Claims, Causes of Action, or liabilities arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence. No provision of this Plan, including without limitation, any release or exculpation provision, shall modify, release, or otherwise limit the liability of any Person other than the applicable Released Parties, Exculpated Parties, or Persons whose liability is expressly limited, including without limitation, any Person that is a co-obligor, guarantor or joint tortfeasor of a Released Party or Exculpated Party or that otherwise is liable under theories of vicarious or other derivative liability.**

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any Causes of Action held by the Pension Benefit Guaranty Corporation against any Person, including any Released Party or Exculpated Party, arising from a breach of fiduciary duty under Title I of The Employee Retirement Income Security Act of 1974 ("ERISA").

**11.5. Exculpation.** The Exculpated Parties shall not have nor shall they incur any liability to any Person for any act taken or omission made in connection with or in any way related to negotiating, formulating, implementing, confirming, consummating or administering the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created in connection with or related to the Plan or the Chapter 11 Cases, including, without limitation, relating to the powers and duties conferred upon the Exculpated Parties by the Plan, or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or

any other act taken or omission made in connection with the Chapter 11 Cases; provided that the foregoing provisions of this Section 11.5 shall have no effect on the liability of any Exculpated Parties that results from any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any Causes of Action held by the Pension Benefit Guaranty Corporation against any Person, including any Released Party or Exculpated Party, arising from a breach of fiduciary duty under Title I of The Employee Retirement Income Security Act of 1974 (“ERISA”).

**11.6. Limitation on Liability.** Neither the Liquidation Trustee, the Surviving Officer, nor the Advisory Committee or its members will be liable for any act they may do or omit to do in such capacities under the Plan and the Liquidation Trust Agreement, as applicable, while acting in good faith and in the exercise of their reasonable business judgment; nor will such parties be liable in such capacities any event except for gross negligence or willful misconduct. The foregoing limitation on liability also will apply to any professional employed by the Liquidation Trustee, the Surviving Officer, or the Advisory Committee and acting on their behalf under the Plan or the Liquidation Trust Agreement. The Liquidation Trustee and the Advisory Committee (and its members), and any professional employed by the Liquidation Trustee or the Advisory Committee and acting on their behalf under the Plan or the Liquidation Trust Agreement, shall be entitled to indemnification out of the assets of the Liquidation 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 or having been employed by the Liquidation Trustee or Advisory Committee, or for performing any functions incidental to such service, except for any act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct.

**11.7. Injunction in Aid of Release.** Except as otherwise provided in the Plan or Confirmation Order, as of the Effective Date, to the extent of the releases, exculpations, and limitations of liability set forth in this Article 11, all Persons are permanently enjoined from taking any of the following actions against the Released Parties or any of their respective successors or assigns, or any of their respective assets or properties, on account of any claim or Cause of Action: (1) commencing or continuing in any manner any action or other proceeding with respect to any claim or Cause of Action; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order with respect to any claim or Cause of Action; (3) creating, perfecting or enforcing any lien or encumbrance with respect to any claim or Cause of Action; or (4) commencing or continuing any action that does not comply with or is inconsistent with the Plan; provided, however, nothing in this injunction shall preclude the holder of a Claim from pursuing any available insurance or from seeking discovery in actions against third parties.

**11.8. Order in Aid of Plan Provisions.** On and after the Effective Date, no Person who has held, holds or may hold Claims against the Debtors or the Estates, or Interests in the Debtors, may, with respect to any such Claims or Interests, pursue rights and/or take actions against the Liquidation Trust, the Liquidation Trustee, Surviving Officer, the Debtors, the Estates, or their property on account of such Claims or Interests other than as expressly provided in the Plan. Specifically, Persons holding Claims against the Debtors or



their Estates are permanently enjoined from and after the Effective Date from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Estates, the Surviving Officer, the Liquidation Trust, the Liquidation Trustee, or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, including, without limitation, the Purchaser, or any property of any such transferee or successor; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means whether directly or indirectly, of any judgment, award, decree or order against the Debtors, their Estates, the Liquidation Trust, the Liquidation Trustee, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing with respect to such person's Claim or Interest; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing; (d) asserting any right of setoff or recoupment, of any kind, directly or indirectly, against any obligation due the Debtors or the Estates, any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons, including without limitation the Liquidation Trust and the Liquidation Trustee; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan. Notwithstanding the foregoing, nothing in this Section 11.8 shall prohibit any Person from enforcing the terms of this Plan or the Confirmation Order in the Bankruptcy Court.

Notwithstanding anything in this Plan or in the Confirmation Order to the contrary, any rights of setoff or recoupment of United under any governing agreements between the Debtors and United as a third party payor or applicable law with regard to amounts allegedly owed to United by the Debtors, the Estates, any direct or indirect transferee of any property of the Estates, or any successors in interest to the Debtors under the Plan (including, without limitation, the Liquidation Trust, but excluding the Purchaser) and/or amounts United may owe to such parties are expressly reserved and preserved. United may exercise those rights of set-off or recoupment in accordance with the *Stipulation and Agreed Order Concerning Assumption and Assignment of Network Contracts* dated August 6, 2021 [Docket No. \_\_\_].

**11.9. Effect of Releases and Exculpations.** The releases and exculpations set forth in Articles 11.3, 11.4, and 11.5 above shall not modify, release, or otherwise limit the liability of any Person other than the Released Parties and the Exculpated Parties, including without limitation, any Person that is a co-obligor, guarantor or joint tortfeasor of a Released Party or Exculpated Party, or that otherwise is liable under theories of vicarious or other derivative liability.

**11.10. Nondischarge of the Debtors.** 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 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.

**11.11. Surrender of Instruments and Release of Liens.** Except as otherwise provided in this Plan or the Confirmation Order, each holder of an instrument evidencing a Claim against the Debtors or any of the property of the Debtors shall surrender such instrument to the Liquidation Trustee, and the Liquidation Trustee shall distribute to the holder thereof the distributions provided for in this Plan. No distribution under this Plan shall be made to or on behalf of any holder of such Claim unless and until such instrument is received or the non-availability of such instrument is established to the satisfaction of the Liquidation Trustee. Each Person who is to receive distributions under this Plan in complete satisfaction of a Secured Claim shall not receive such distributions until such creditor executes the release of its liens (in recordable form if requested by the Liquidation Trustee) and delivers the release to the Liquidation Trustee. Any such Person who fails to surrender such instrument or satisfactorily explain its non-availability or execute and deliver such release of liens within ten (10) days of the date request for such surrender, explanation, execution, or delivery shall be deemed to have no further Claim against the Debtors, their Estates, or the Liquidation Trust, or property of the Debtors, their Estates, or the Liquidation Trust, shall not participate in any distribution under this Plan, and in such event upon motion of the Debtors and/or the Liquidation Trustee accompanied by appropriate evidence of such failure by affidavit or otherwise, the Court may enter an order requiring the act to be done at the cost of such Person by the Debtors or the Liquidation Trustee and providing that such act when so done shall have like effect as if done by such Person or any other appropriate order.

**11.12. Subordinated Claims.** The allowance, classification and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, Section 510 of the Bankruptcy Code or otherwise. Pursuant to Section 510 of the Bankruptcy Code, the Liquidation Trustee reserves the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal or equitable subordination relating thereto.

**11.13. Compromise and Settlement of Claims and Controversies.** Pursuant to Section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, interest, or any distribution to be made on account of such an Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and holders of Claims and Interests and is fair, equitable and reasonable.

**11.14. Terms of Injunctions and Stays.** Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays in effect in the Chapter 11 Cases pursuant to Sections 105 or 362 of the Bankruptcy Code or any Final Order and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or Confirmation Order shall remain in full force and effect in accordance with their terms.

**11.15. Retention of Jurisdiction.** Notwithstanding entry of the Confirmation Order or the Effective Date having occurred, the Court will retain jurisdiction to the fullest extent permitted by law, including jurisdiction to enter any orders or to take any action specified in this Plan, and including, without limitation, the following:

(a) To determine any motion, adversary proceeding, avoidance action, application, contested matter, or other litigated matter involving the Debtors pending before the Bankruptcy Court as of the Effective Date or that may be instituted by or against the Liquidation Trustee or the Advisory Committee after the Effective Date;

(b) To hear and determine (i) applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom; (ii) any matters related to any potential contractual obligation under any executory contract or unexpired lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

(c) To ensure that distributions to holders of Allowed Claims are accomplished as provided in this Plan;

(d) To hear and determine objections to the allowance of Claims, whether filed, asserted or made before or after the Effective Date, including, without limitation, to hear and determine objections to the classification of Claims and the allowance or disallowance of Disputed Claims, in whole or in part;

(e) To consider Claims or the allowance, classification, priority, compromise, estimation, secured or unsecured status, or payment of any Claim;

(f) To adjudicate, decide, or resolve any and all matters relating to Causes of Action (including the D&O Claims and other Tort Claims) by or on behalf of the Debtors, the Liquidation Trust, the Liquidation Trustee, or the Advisory Committee; provided, however, that nothing in the Plan or the Confirmation shall vest the Bankruptcy Court with exclusive jurisdiction over Causes of Action (including the D&O Claims or Tort Claims or any dispute relating to coverage of such claims under any Insurance Policies);

(g) To enter and enforce any order for the sale of property pursuant to Bankruptcy Code Sections 363, 1123, or 1146(a);

(h) To adjudicate, decide, or resolve any disputes in connection with the interpretation, implementation, or enforcement of the Liquidation Trust, Liquidation Trust Agreement, or actions involving the Liquidation Trustee;

(i) To enter, implement, or enforce such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(j) To issue injunctions, enter and implement other Orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, the Confirmation Order or any other order of this Court;

(k) To hear and determine any application to modify this Plan in accordance with Bankruptcy Code Section 1127, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, or any Order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(l) To hear and determine all Claims for Professional Fees;

(m) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, or any transactions or payments contemplated hereby or thereby, or any agreement, instrument, or other document governing or relating to any of the foregoing; provided, however, that 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;

(n) To take any action and issue such Orders as may be necessary to construe, enforce, implement, execute, and consummate this Plan, including any release or injunction provisions set forth herein or in this Plan, or to maintain the integrity of this Plan following consummation;

(o) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(p) To hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code Sections 346, 505, and 1146;

(q) To enforce all orders previously entered by the Bankruptcy Court;

(r) To enter a final decree closing the Debtors' Chapter 11 Cases;

(s) To recover all assets of the Debtors and property of the Estates, wherever located; and

(t) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code, title 28 of the United States Code and other applicable law.

**ARTICLE 12  
MISCELLANEOUS**

**12.1. Modification of Plan.** The Debtors, after consultation with the Creditors' Committee, may modify the Plan at any time prior to the entry of the Confirmation Order provided that the Plan, as modified, and the Disclosure Statement pertaining thereto meet applicable Bankruptcy Code requirements of Section 1125 of the Bankruptcy Code, among others. Entry of the Confirmation Order shall mean all modifications or amendments to the Plan since solicitation thereof are approved pursuant to Section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019. After the entry of the Confirmation Order, the Debtors may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided that: (i) the Debtors obtain approval of the Bankruptcy Court for such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, treatment, or Distributions of any Class under the Plan.

**12.2. Revocation of this Plan.** The Debtors reserve the right to revoke or withdraw this Plan, prior to the Confirmation Date, for any reason deemed appropriate by the Debtors. If the Debtors revoke or withdraw this Plan, or if confirmation does not occur, then this Plan shall be null and void in all respects and nothing contained in this Plan shall constitute a waiver or release of any Claims by or against, the Debtors, or prejudice in any manner the rights of the Debtors.

**12.3. Preservation and Application of Insurance.** Consistent with Article 7.3 above, the provisions of the Plan shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtors, any directors, trustees or officers of the Debtors, or any other Person, other than as expressly as set forth herein. For the avoidance of doubt, and as set forth in the Plan, all of the Debtors' insurance policies, or third party policies naming the Debtors as an additional insured party, and the proceeds thereof shall be available to satisfy Claims to the extent such insurance policies cover such Claims. In addition, such insurance policies and proceeds thereof shall be available to satisfy Claims estimated pursuant to Section 502(c) of the Bankruptcy Code or in accordance with the Plan.

**12.4. Successors and Assigns; Binding Effect.** From and after the Effective Date, the rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person. The provisions of this Plan shall bind all holders of Claims against the Debtors, whether or not they have accepted the Plan.

**12.5. Computation of Time.** In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

**12.6. Notices.** All notices or requests in connection with this Plan shall be in writing and given by mail or overnight mail (with a contemporaneous e-mail copy, which shall not constitute notice) addressed to:

**To the Debtors:**

Randolph Health  
Attn: Angela Orth, Chief Executive Officer  
364 White Oak Street  
Post Office Box 1048  
Asheboro, NC 27204

**To Counsel for the Debtors:**

Nelson Mullins Riley & Scarborough, LLP  
Attn: Jody A. Bedenbaugh  
1320 Main Street, 17<sup>th</sup> Floor  
Post Office Box 11070 (29211)  
Columbia, South Carolina 29201  
[jody.bedenbaugh@nelsonmullins.com](mailto:jody.bedenbaugh@nelsonmullins.com)

and

Hendren, Redwine & Malone, PLLC  
Attn: Rebecca Finch Redwine  
4600 Marriott Drive, Suite 150  
Raleigh, NC 27612  
[redwine@hendrenmalone.com](mailto:redwine@hendrenmalone.com)

**To Counsel for the Creditors' Committee:**

Sills Cummis & Gross P.C.  
Attn: Andrew Sherman and Boris Mankovetskiy  
One Riverfront Plaza  
Newark, NJ 07102  
[ASherman@sillscummis.com](mailto:ASherman@sillscummis.com)  
[BMankovetskiy@sillscummis.com](mailto:BMankovetskiy@sillscummis.com)

and

Spilman Thomas & Battle, PLLC  
Rayford K. (Trip) Adams III  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
[tadams@spilmanlaw.com](mailto:tadams@spilmanlaw.com)

**To the Liquidation Trustee:**

c/o Nelson Mullins Riley & Scarborough, LLP  
Attn: Jody A. Bedenbaugh  
1320 Main Street, 17<sup>th</sup> Floor  
Post Office Box 11070 (29211)  
Columbia, South Carolina 29201  
[jody.bedenbaugh@nelsonmullins.com](mailto:jody.bedenbaugh@nelsonmullins.com)

and

Hendren, Redwine & Malone, PLLC  
Attn: Rebecca Finch Redwine  
4600 Marriott Drive, Suite 150  
Raleigh, NC 27612  
[redwine@hendrenmalone.com](mailto:redwine@hendrenmalone.com)

**To the Surviving Officer:**

c/o Nelson Mullins Riley & Scarborough, LLP  
Attn: Jody A. Bedenbaugh  
1320 Main Street, 17<sup>th</sup> Floor  
Post Office Box 11070 (29211)  
Columbia, South Carolina 29201  
[jody.bedenbaugh@nelsonmullins.com](mailto:jody.bedenbaugh@nelsonmullins.com)

and

Hendren, Redwine & Malone, PLLC  
Attn: Rebecca Finch Redwine  
4600 Marriott Drive, Suite 150  
Raleigh, NC 27612  
[redwine@hendrenmalone.com](mailto:redwine@hendrenmalone.com)

**To the Advisory Committee:**

c/o Sills Cummis & Gross P.C.  
Attn: Andrew Sherman and Boris Mankovetskiy  
One Riverfront Plaza  
Newark, NJ 07102  
[ASherman@sillscummis.com](mailto:ASherman@sillscummis.com)  
[BMankovetskiy@sillscummis.com](mailto:BMankovetskiy@sillscummis.com)

and

Spilman Thomas & Battle, PLLC  
Rayford K. (Trip) Adams III  
110 Oakwood Drive, Suite 500  
Winston-Salem, NC 27103  
[tadams@spilmanlaw.com](mailto:tadams@spilmanlaw.com)

**12.7. Headings.** The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the construction of the provisions of this Plan.

**12.8. Validity and Enforceability; Severability.** The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms. Should any provision in this Plan be determined by the Bankruptcy Court or any appellate court to be unenforceable following the Effective Date, such determination shall in no way limit the enforceability and operative effect of any and all other provisions of this Plan.

**12.9. Controlling Documents.** In the event of a conflict between the Plan (including the Plan Supplement) and the Disclosure Statement, the Plan shall control. In the event of a conflict between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan (including the Plan Supplement) and the Confirmation Order, the Confirmation Order shall control.

**12.10. Exhibits and Plan Supplement.** All exhibits to the Plan and the Plan Supplement are incorporated into the Plan by this reference as if set forth in full herein. Except as otherwise provided in the Plan, the Debtors will file all exhibits and the Plan Supplement on or before the date that is ten (10) days prior to the Voting Deadline.

**12.11. Reservation of Rights.** Except as expressly set forth in the Plan, the Plan shall have no force and effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtors with respect to the Plan, the Disclosure Statement, or any Plan Supplement shall be or shall be deemed to be an admission or waiver of rights of any Debtor with respect to holders of Claims or Interests prior to the Effective Date.

**12.12. Governing Law.** Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under the Plan and any agreements, documents and instruments executed in connection with the Plan or the Chapter 11 Cases, including the Plan Documents, shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina (without giving effect to the principles of conflicts of law of such jurisdiction), except as may be otherwise specifically provided in such agreements, documents and instruments.

**12.13. Closing of Chapter 11 Cases.** Consistent with the terms of this Plan, including Article 6.4, the Liquidation Trustee shall promptly, upon the full administration of the Chapter 11 Cases, 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 Cases.

Dated: August 13, 2021

RANDOLPH HOSPITAL, INC. d/b/a RANDOLPH HEALTH

By: /s/ Louis E. Robichaux IV



Name: Louis E. Robichaux IV  
Title: Chief Restructuring Officer

RANDOLPH SPECIALTY GROUP PRACTICE

By: /s/ Louis E. Robichaux IV  
Name: Louis E. Robichaux IV  
Title: Chief Restructuring Officer

MRI OF ASHEBORO, LLC d/b/a RANDOLPH MRI  
CENTER

By: /s/ Louis E. Robichaux IV  
Name: Louis E. Robichaux IV  
Title: Chief Restructuring Officer