

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**IN RE:**

**ZERGA PHIN-KER LP,**

**DEBTOR.**

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**CASE NO. 15-42087-BTR  
(Complex Chapter 11)**

**SECOND AMENDED DISCLOSURE STATEMENT IN SUPPORT OF  
DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF  
LIQUIDATION DATED AS OF JULY 18, 2016**

**July 18, 2016**

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*This Disclosure Statement and the documents accompanying it contain a number of defined terms, which are denoted with capital letters. Please refer to Section 2.1 of the Plan for a complete listing and definitions of the capitalized terms used herein.*

This *Second Amended Disclosure Statement in Support of the Debtor's Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016* (the "Disclosure Statement") describes the *Debtor's Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016* (the "Plan"), which has been filed with the Disclosure Statement in the Debtor's chapter 11 case currently pending in the United States Bankruptcy Court for the Eastern District of Texas. A copy of the Plan is attached hereto as Appendix "1" and is incorporated herein by reference.

**If you have a Claim against the Debtor, you should read the Disclosure Statement and the Plan carefully. The Debtor urges all holders of Claims in Impaired Classes receiving Ballots to accept the Plan.**

This Disclosure Statement (and the appendices hereto), the Plan, the accompanying forms of Ballot, if any, and the related materials delivered together herewith are being furnished by the Debtor to holders of Impaired Claims pursuant to 11 U.S.C. § 1125, in connection with the solicitation by the Debtor of votes to accept or reject the Plan (and the transactions contemplated thereby), as described herein.

This Disclosure Statement is designed to provide adequate information to enable holders of Claims against the Debtor to make an informed judgment on the Plan. All Creditors are encouraged to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. The statements made in this Disclosure Statement are qualified in their entirety by reference to the Plan, the Appendices annexed hereto and other documents referenced as filed with the Bankruptcy Court before or concurrently with the filing of this Disclosure Statement. Furthermore, the projected financial information contained herein has not been the subject of an audit. Subsequent to the date hereof, there can be no assurance (i) that the information and representations contained herein will continue to be materially accurate, or (ii) that this Disclosure Statement contains all material information.

All holders of Impaired Claims should read and consider carefully the matters described in the Plan and Disclosure Statement as a whole, including Article V, entitled "RISK FACTORS," prior to voting on the Plan. In making a decision to accept or reject the Plan, each Creditor must rely on its own examination of the Debtor as described in this Disclosure Statement and the terms of the Plan, including the merits and risks involved. In addition, Confirmation and consummation of the Plan are subject to conditions precedent that could lead to delays in consummation of the Plan. There can be no assurance that each of these conditions precedent will be satisfied or waived (as provided in the Plan) or that the Plan will be consummated. Even after the Effective Date, Distributions under the Plan may be subject to substantial delays for holders of Disputed Claims.

This Disclosure Statement has been approved by order of the Bankruptcy Court as containing adequate information of a kind and in sufficient detail to enable holders of Claims to make an informed judgment with respect to voting to accept or reject the Plan. However, the Bankruptcy Court's approval of this Disclosure Statement does not constitute a

recommendation or determination by the Bankruptcy Court with respect to the merits of the Plan.

With the exception of historical information, some matters discussed herein, including the projections and valuation analysis described herein are “forward looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward looking statements are subject to risks, uncertainties and other factors which could cause actual results to differ materially from future results expressed or implied by such forward looking statements.

No party is authorized by the Debtor to give any information or make any representations with respect to the Plan other than that which is contained in this Disclosure Statement. No representation or information concerning the Debtor, its future operations or the value of its properties has been authorized by the Debtor, other than as set forth herein. Any information or representation given to obtain your acceptance or rejection of the Plan that is different from or inconsistent with the information or representations contained herein and in the Plan should not be relied upon by any holders of Claims in voting on the Plan.

This Disclosure Statement has been prepared in accordance with § 1125 and not in accordance with federal or state securities laws or other applicable non-bankruptcy law. Entities holding or trading in or otherwise purchasing, selling or transferring Claims against, Interests in or securities of, the Debtor should evaluate this Disclosure Statement only in light of the purpose for which it was prepared.

This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the “Commission”) or by any state securities commission or similar public, governmental or regulatory authority, and neither such Commission nor any such authority has passed upon the accuracy or adequacy of the statements contained herein.

With respect to contested matters, adversary proceedings and other pending or threatened actions (whether or not pending), this Disclosure Statement and the information contained herein shall not be construed as an admission or stipulation by any Entity, but rather as statements made in settlement negotiations governed by Rule 408 of the Federal Rules of Evidence and any other rule or statute of similar import.

Each holder of a Claim or Interest should consult with its own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the summaries thereof contained in this Disclosure Statement.

### **INCORPORATION OF DOCUMENTS BY REFERENCE**

This Disclosure Statement incorporates by reference certain documents relating to the Debtor that are not presented herein or delivered herewith. The following documents are incorporated by reference herein in their entirety:

The Debtor's *Schedules of Assets and Liabilities*, collectively filed on December 15, 2015, including all amendments and restatements thereto filed through the date of the approval of this Disclosure Statement (Docket Nos. 29, 112, 252) (collectively, the "Schedules").

The Debtor's *Statements of Financial Affairs*, collectively filed December 15, 2015, including all amendments and restatements thereto filed through the date of the approval of this Disclosure Statement (Docket Nos. 28, 253) (collectively, the "SOFA's").

The Debtor's Monthly Operating Reports, including all amendments thereto filed through the date of the approval of this Disclosure Statement (collectively, the "MOR's").

The *Final Order (I) Authorizing Debtor to Obtain Senior Secured Super-Priority Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 363, 364 and 507, and (II) Granting Adequate Protection to Lender Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364* entered on February 26, 2016 (Docket No. 143).

The *Debtor's Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016* filed contemporaneously herewith.

The *Debtor's Motion for (I) Order (A) Approving Bidding Procedures for the Sale of All or Substantially All of Debtor's Assets, (B) Approval of Designation of Stalking Horse Bidder and Bid Protections, (C) Approval of Procedure to Assume and Assign Executory Contracts and Unexpired Leases; and (D) Scheduling Final Sale Hearing and Approving Form and Manner of Notice Thereof; and (II) Order Authorizing and Approving the Sale of Assets Free and Clear of Liens and Other Interests* filed on June 28, 2016 (Docket No. 246).

The *Order Granting Part (I) of the Motion of Zerga Phin-Ker LP, for Entry of an Order (I) Approving Sale Procedures (II) Authorizing the Sale of Certain Real Property and (III) Granting Related Relief* entered on July 18, 2016 (Docket No. 289).

Any statement contained in a document incorporated or deemed to be incorporated by reference herein, or contained in this Disclosure Statement, shall be deemed to be modified or superseded for purposes of this Disclosure Statement to the extent that a statement contained herein modifies or supersedes such statement.

### **AVAILABLE INFORMATION**

Documents Filed in the Case are available upon request to counsel for the Debtor at:

Sandra Meiners  
Lewis Brisbois Bisgaard & Smith, LLP  
2100 Ross Ave., Suite 2000 Dallas, TX 75201  
(214) 722-7100

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## **I. INTRODUCTION AND SUMMARY**

The following introduction and summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements and notes thereto appearing elsewhere in this Disclosure Statement. References herein to a “fiscal” year refer to the fiscal year of the Debtor ending the last day of December in the calendar year indicated. Unless otherwise stated herein, section (“§”) references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

### **A. The Solicitation.**

On July 18, 2016, the Debtor filed the Plan with the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division. The Debtor Filed this Disclosure Statement with the Bankruptcy Court pursuant to § 1125 and in connection with the solicitation with respect to the Plan.

On July 12, 2016, the Bankruptcy Court determined that this Disclosure Statement contains “adequate information” in accordance with § 1125. Pursuant to § 1125(a)(1), “adequate information” is defined as “information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor’ books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant Class to make an informed judgment about the Plan.”

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan on August 30, 2016 at 10:00 a.m./p.m. Central Time in Plano, Texas. The hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled date of such hearing. Any objections to Confirmation of the Plan must be in writing and must be Filed with the Clerk of the Bankruptcy Court and served on the counsel listed below to ensure actual receipt by them on or before August 24, 2016; notwithstanding the foregoing, the Indenture Trustee shall have until August 26, 2016 to file an objection to the Confirmation of the Plan. Bankruptcy Rule 3007 governs the form of any such objection. Counsel on whom objections must be served are:

Counsel for the Debtor:

Vickie L. Driver  
Lewis Brisbois Bisgaard & Smith, LLP  
2100 Ross Ave., Suite 2000 Dallas, TX 75201  
(214) 722-7100

Office of the U.S. Trustee:

John M. Vardeman  
110 N. College Avenue, Room 300  
Tyler, Texas 75702  
(210) 472-4620

**B. Recommendation.**

THE DEBTOR URGES ALL CREDITORS TO VOTE TO ACCEPT THE PLAN.

The Debtor believes that (i) the Plan provides the best possible result for the holders of Claims against the Debtor; (ii) with respect to each Impaired Class of Claims, the Distributions under the Plan are greater than the amounts that would be received if the Debtor were to liquidate under chapter 7 of the Bankruptcy Code; and (iii) acceptance of the Plan is in the best interest of holders of Claims.

In arriving at its conclusions, the Debtor considered (i) the limited alternatives available to the Debtor to restructure its debts, (ii) the Debtor's estimated liquidation value, and (iii) the rights, in both payment and security position, of the Debtor's creditors.

**C. Summary of the Plan.**

The Plan is a liquidating plan and the funding thereof depends on the successful liquidation of the Debtor's assets, primarily the Facilities. The Facilities are being offered for sale through an auction process pursuant to the Sale Motion filed on June 28, 2016. The occurrence of the Effective Date of the Plan is contingent upon, among other things, the closing of the Sale of the Facilities to the Prevailing Bidder. If the Sale of the Facilities to the Prevailing Bidder fails to close, the Effective Date of the Plan will not occur and Plan would not be consummated. If the Sale to the Prevailing Bidder closes, and other conditions precedent to the occurrence of the Effective Date are met, or waived, the Plan will go effective and be consummated.

The Sale Order will not be entered except contemporaneously with the Confirmation Order, because, among other reasons, the Confirmation Order will indicate that Bondholders were able to vote on the Plan, and therefore on the sale of the Property, and the Confirmation Order will address cancellation of the Bonds as required by the stalking horse purchaser's title company.

Should the Effective Date of the Plan occur and the Plan goes effective, funds in addition to the proceeds of the Sale of the Property including the Facilities may be generated from the liquidation of Excluded Assets, consisting primarily of Causes of Action, not included in the sale to the Prevailing Bidder. However, there is no assurance that any Causes of Action will be pursued or that if a Cause of Action is pursued, that such pursuit will be successful and resulting in recovery to the Debtor's Estate.

The following Tables set forth a summary reference guide to the classification and treatment of Allowed Claims against and Allowed Interests in the Debtor, and provides the Debtor's estimate of total Claims in each Class as of the Effective Date. The following Table is a summary only and is subject in all respects to the specific provisions of the Plan.

The Claims and Interests are as follows:



| Class | Type of Allowed Claim or Interest | Treatment  | Estimated Recovery | Number of Claim Holders   | Total Dollar Amount of Claims  |
|-------|-----------------------------------|--|--------------------|---|--|
| 1     | Secured Claim of the Bonds        | <p>The Indenture Trustee will receive the proceeds realized from the Sale of the Property net of amount to repay in full the DIP Loan and net of the Wind Down Budget Amount. The Wind Down Budget Amount shall be repaid in full prior to any disbursement to any other class. In the event such net proceeds of the Sale of the Property are not sufficient to satisfy the entire Claim of the Bonds, the remaining balance shall constitute the Unsecured Claim of the Bonds and be treated as a Class 3 General Unsecured Claim, receiving a <i>pro rata</i> share of any distribution available to Class 3.</p> <p><b>BONDHOLDERS MAY NOT RECOVER ALL AMOUNTS DUE WITH RESPECT TO THEIR BONDS UNDER THIS PLAN.</b></p> <p>See Section 5.1 of the Plan for a more complete description of the treatment of the Claim of the Bonds.</p> | 40%                | Although the Claim of the Bond is held by the Indenture Trustee, Bondholders, rather than the Indenture Trustee, vote to accept or reject the Plan with respect to the Claim of the Bonds as it pertains to both Class 1 (Secured) and Class 3 (Unsecured). | Anticipated net proceeds from Sale of Approximately \$14 million (balance of the Claim of the Bonds are included in Class 3) |
| 2     | Secured Tax Claims                | For Year 2016 Secured Tax Claims, paid in the ordinary course by the Successful Bidder.  | 100%               |   | Anticipated to be \$0  |
| 3     | General Unsecured Claims          | Paid pro rata share of remaining assets after Distributions to Classes 1 and 2 and repayment of the Wind-down Budget.  | Unknown            |   | \$22.8 million including Bondholder Deficiency Claim and other undisputed General Unsecured Claims                           |

|   |                         |                  |    |  |     |
|---|-------------------------|------------------|----|--|-----|
| 4 | Interests in the Debtor | No Distribution. | 0% |  | \$0 |
|---|-------------------------|------------------|----|--|-----|

**The Debtor believes that the Plan treats the respective Classes of Claims and Interests fairly and equitably in observance of the absolute priority rule of 11 U.S.C. § 1129(b)(2). The Debtor believes that the Plan provides each Creditor and Interest holder with at least as much as it would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.**

Set forth in detail elsewhere in this Disclosure Statement is a description of the technical aspects of the classification of Claims and Interests, the relative allocations of property to holders of such Claims and Interests, the methodology as to how such property is to be distributed, the risks inherent in the Plan, and the applicable bankruptcy and tax consequences of the liquidation of the Debtor. The Plan is the product of lengthy discussions between and among the Debtor and other parties in interest and is based upon the Debtor's analysis of all Claims asserted or known as of the date hereof, an evaluation of the relative merits of potential conflicting Claims and a compromise of such Claims consistent with the goals of the Bankruptcy Code. The Debtor believes that the following overview of what Creditors and Interest holders will receive under the Plan will be helpful in your consideration of whether you wish to accept or reject the Plan. This summary does not purport to be complete and should only be relied upon for voting purposes when read in conjunction with the Plan and the Disclosure Statement in their entirety. In the event of any inconsistency between the Plan and the Plan Documents, on the one hand, and this Disclosure Statement, on the other hand, the Plan and the Plan Documents shall control and take precedence with respect to such inconsistency.

#### **D. Voting Eligibility and Procedures.**

The following Table provides a summary of the voting eligibility of Claim and Interest holders in each Class under the Plan, based on whether or not those Claims and Interests are Impaired or Unimpaired.

| <b>Voting Eligibility Under the Plan</b> |  |                   |                          |
|--|--|-------------------|--------------------------|
| <b>Class</b>                             | <b>Description</b>                                   | <b>Impairment</b> | <b>Entitled to vote?</b> |
| 1  | Secured Claim of the Bonds<br>(voted by Bondholders) | Impaired          | YES                      |
| 2  | Secured Tax Claims                                   | Unimpaired        | NO (deemed to accept)    |
| 3  | General Unsecured Claims                             | Impaired          | YES                      |
| 4  | Interests in the Debtor                              | Impaired          | NO (deemed to reject)    |

Some Creditors may hold Impaired Claims in more than one Class and must vote separately for each Class. If you hold Claims in more than one Class, or multiple Claims in the same Class, you must cast a separate vote based on each individual Claim. Notwithstanding this paragraph, when Bondholders vote to accept or reject the Plan, their vote will count in both Class 1 (as to the Secured Claim of the Bonds) and in Class 3 (as to the Unsecured Claim of the Bonds) (as described in Sections IV.D and IV.E.2 & 4 below).

A Ballot for the acceptance or rejection of the Plan is enclosed with the Solicitation Package mailed to holders of Claims that the Debtor believes are entitled to accept or reject the Plan. However, although the Claim of the Bonds is held by the Indenture Trustee, Bondholders, rather than the Indenture Trustee, will receive Solicitation Packages including Bondholder Ballots to vote to accept or reject the Plan with respect to the Claim of the Bonds as it pertains to both Class 1 (Secured) and Class 3 (Unsecured).

Please do not return any other documentation with your Ballot. For further information on casting a Ballot to vote on the Plan, please see Section VI.B, D and E of this Disclosure Statement.

#### **E. Votes Required for Acceptance; Confirmation.**

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number of the claims of that class that actually cast ballots. The vote of a creditor may be disregarded if the Bankruptcy Court determines, after notice and hearing, that the acceptance or rejection was not solicited or procured in good faith.

In addition to this voting requirement, § 1129 requires that a plan be accepted by each class or that Bankruptcy Court finds the Plan provides the holder with at least as much value on account of its claim as it would receive in a liquidation under chapter 7 of the Bankruptcy Code.

Confirmation will make the Plan binding upon the Debtor, holders of Claims against and Interests in the Debtor, and all other parties in interest regardless of whether they have accepted the Plan, and such holders of Claims and Interests will be prohibited from receiving payment from, or seeking recourse against, any assets that are distributed to other holders of Claims or Interests under the confirmed Plan. In addition, Confirmation will serve to enjoin holders of Claims or Interests from taking a wide variety of actions on account of any debt, Claim, liability, Interest or right that arose prior to the Confirmation Date.

Confirmation of the Plan will enjoin holders of Claims and Interests from seeking to enforce Claims against and Interests in the Debtor, whether or not a proof of Claim based on such debt is Filed or deemed Filed, whether or not such Claim is Allowed, and whether or not the holder of such Claim has accepted the Plan.

## **F. Effective Date of the Plan.**

The Debtor will consummate the Plan upon the Effective Date. The Effective Date will not occur unless certain conditions precedent occur. The Confirmation Order may be vacated if the conditions to the occurrence of the Effective Date are not timely met or waived.

Because of the conditions to the occurrence of the Effective Date provided in the Plan, a delay will occur between Confirmation of the Plan and the Effective Date of the Plan. There is no assurance that the conditions to the Effective Date will be fulfilled. The Plan provides that it is a condition to the occurrence of the Effective Date of the Plan that each of the conditions precedent to the occurrence of the Effective Date has been satisfied. Those conditions precedent are described more fully in Section 6.1 of the Plan. If any condition to the Effective Date cannot be fulfilled or is not waived, the Effective Date will not occur.

The implementation of the Plan involves certain risks. For a discussion of these risks, see Article V, entitled “RISK FACTORS.”

## **G. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtor, its business, properties and management, and the Plan have been prepared from information furnished by the Debtor.

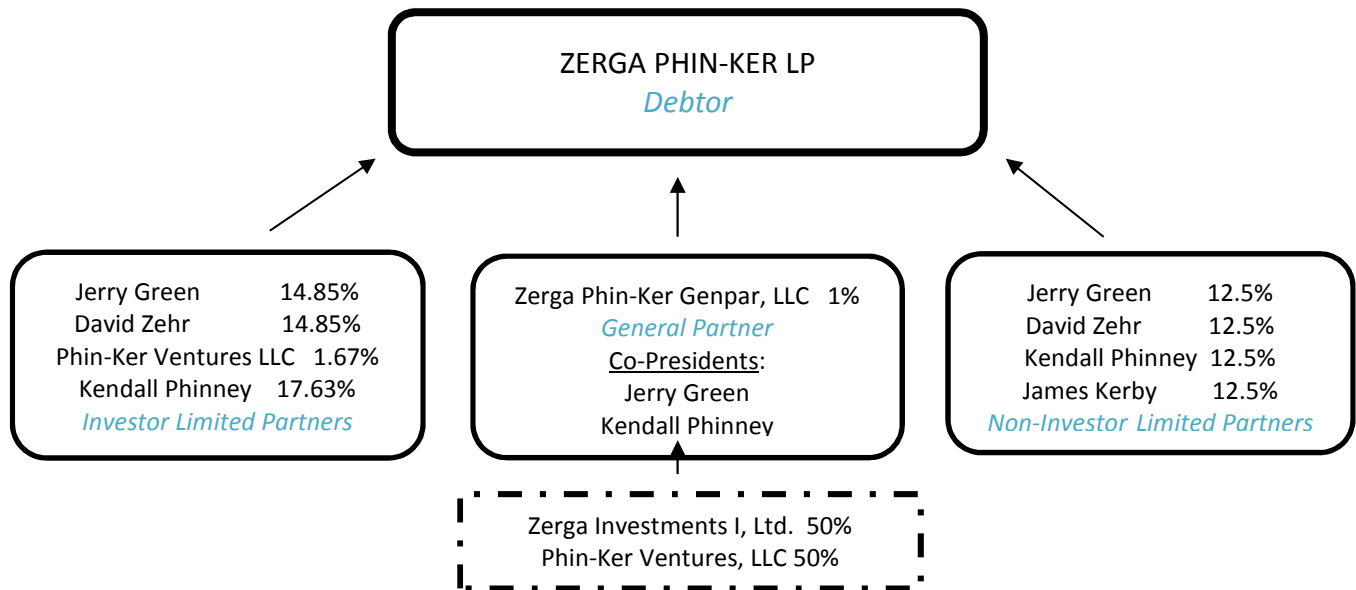
The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtor, the value of its property, or the value of any benefit offered to any Creditor or Interest holder in connection with the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement. Any such, additional representations or inducements should be reported immediately to the Debtor’s counsel, Lewis Brisbois Bisgaard & Smith LLP, 2100 Ross Avenue, Suite 2000, Dallas, Texas 75201, Attention: Vickie L. Driver.

## **II. BACKGROUND.**

### **A. The Debtor’s Structure.**

The Debtor is a Texas limited partnership whose principal place of business is in McKinney, Texas. The Debtor was engaged in the acquisition, construction, and development of a senior retirement facility in the City of Longview, Gregg County, Texas, to be known as “Parkview on Hollybrook,” and to consist of 126 independent living units, an assisted living and memory care facility, and common areas (the “Facilities”). The Debtor’s equity and governance structure is as follows:



The Debtor's general partner is Zerga Phin-Ker Genpar, LLC ("Genpar"). Genpar, a limited liability company, acts through its two officers, two Co-Presidents. The two Co-Presidents of Genpar are Mr. Jerry Green and Mr. Kendall Phinney. Mr. Green and Mr. Phinney share authority over the management of the Debtor's affairs. Zerga Investments I, Ltd., an entity in which Mr. Green is a principal, holds a 50% member interest in Genpar. Phin-Ker Ventures, LLC, an entity in which Mr. Phinney is a principal, holds the other 50% member interest in Genpar. Phin-Ker Ventures, LLC also holds a 1.67% limited partner interest in the Debtor. Additionally, Mr. Phinney and Mr. Green, each in his individual capacity is a limited partner of the Debtor.

The Debtor's daily operations were managed, prior to the Petition Date, by Zerga Management, LLC ("Management"). The managing member of Management is Mr. Green, who, as identified above, is an insider of the Debtor. Management was responsible for the promotion, marketing, operation, repair and maintenance of the Facilities. Management maintained its own staff to provide such services. The Debtor is currently utilizing Management post-petition.

## **B. Construction of the Facilities**

The Debtor engaged HMC Contracting Services, LLC ("HMC"), a Texas limited liability company, as the general contractor for the construction of the Facilities. One of the members of HMC is Mr. Kendall Phinney. As described above, Mr. Phinney is an officer of the Debtor's General Partner, and is, in his individual capacity, a limited partner of the Debtor. The Debtor and HMC entered into that AIA Standard Form Agreement dated as of May 1, 2013 for the construction of the independent living facility (the "IL Agreement"). The Debtor and HMC entered into a separate AIA Standard Form Agreement dated as of May 1, 2013 for the construction of the assisted living and memory care facility (the "MC/AL Agreement", and collectively with the IL Agreement, the "Construction Agreements").

Hartford Fire Insurance Company (the “Surety”) issued Performance and Payment Bonds in connection with the Construction Agreements.

HMC commenced construction of the Facilities in and around July 2013. The MC/AL Facility was originally anticipated to be completed and available for occupancy in and around June/July 2014, and the IL Facility was to be completed and available for occupancy in and around August/September 2014. However, by spring of 2014, HMC was significantly behind construction schedule. At the same time, the cost of construction was rising higher than anticipated.

While construction progressed at no more than a creeping pace, costs continued to run up at a much higher rate. The Debtor and HMC disputed various construction and cost issues. By June 2015, a year after its anticipated completion date, the majority of the construction of the assisted living and memory care facility was completed. On the other hand, the independent living facility lagged much further behind in construction schedule. As of June 2015, construction on the independent living facility was estimated by independent contractors as being of no more than 60% to 65% complete.

In July 2015, the Debtor and HMC participated in a mediation to resolve outstanding disputes. Pursuant to the mediation, the parties reached a limited agreement requiring: (a) the Debtor to pay an outstanding HMC invoice for work that had been performed prior to the mediation, and (b) HMC to finish the punch list for the assisted living and memory care facility. The limited agreement, however, was never fully performed.

Due to the disputes between HMC and the Debtor, construction came to a halt by June, 2015. On or about August 12, 2015, the Debtor sent HMC a written notice of default of the Construction Agreements asserting, among other things, that HMC failed to complete construction in a timely manner and on budget and failed to staff the construction project adequately.

### **C. Financing History**

The acquisition, construction and equipping of the Facilities were financed through public bond financing. At the request of the Debtor, Red River Health Facilities Development Corporation (the “Issuer”) issued its First Mortgage Revenue Bonds (Parkview on Hollybrook Project) Series 2013A (\$27,480,000) and Taxable Series 2013B (\$6,430,000) (collectively, the “Bonds”) in the original aggregate principal amount of \$33,910,000, pursuant to that Indenture of Trust dated as of June 1, 2013 (the “Bond Indenture”) with U.S. Bank National Association as bond trustee (the “Bond Trustee”).

The Bonds were sold (ultimately to the Bondholders), and the Issuer loaned the proceeds from the sale of the Bonds to the Debtor pursuant to the Loan Agreement dated as of June 1, 2013. The Issuer conveyed and assigned all of its right, title, and interest in and to such Loan Agreement to the Bond Trustee pursuant to, and as more fully set forth in, the Bond Indenture (such Loan Agreement, as so conveyed and assigned, the “Loan Agreement”). To evidence the loan of the Bonds’ proceeds and to secure the Bonds, the Debtor issued and delivered to the Issuer that certain Senior Series 2013A Note in the principal amount of

\$27,480,000 and that certain Senior Series 2013B Note in the principal amount of \$6,430,000. The Issuer assigned both such notes to the Bond Trustee pursuant to an “Assignment to Bond Trustee” executed with respect to each note and pursuant to the Bond Indenture (such notes, as so assigned, the “Notes”).

The Notes and the Debtor’s obligations under the Notes are secured by that certain Master Trust Indenture, Deed of Trust and Security Agreement dated as of June 1, 2013, as supplemented and amended by that Supplemental Indenture Number 1 dated as of the same date (together, the “Master Indenture” or “Master Indenture/Deed of Trust”) executed by the Debtor and by U.S. Bank National Association as master trustee (the “Master Trustee,” and in either or both its capacities as Bond Trustee and/or Master Trustee, the “Indenture Trustee”), and filed and recorded in the Official Public Records of Gregg County, Texas, on July 5, 2013.

As more fully set forth in the Master Indenture/Deed of Trust, the Debtor granted, among other things, a mortgage to the Indenture Trustee in and to all real and fixture property of the Facilities and all personal property of the Debtor.

The Bonds, Bond Indenture, Loan Agreement, Notes, and Master Indenture/Deed of Trust, and all other documents related to the issuance of the Bonds, are hereunder collectively referred to as the “Bond Documents”.

As of the Petition Date, the Debtor is indebted on account of the Bonds and under the Bond Documents, without defense, counterclaim or offset of any kind which obligation is secured by substantially all of the Debtor’s assets (the “Prepetition Secured Bond Obligation”).

On March 14, 2016, the Indenture Trustee filed a proof of claim asserting a secured claim in at least the amount of \$34,879,927.52 which was assigned the claim number 13.

#### **D. Events Leading to the Debtor’s Bankruptcy Filing**

According to the original construction schedule, the Debtor anticipated that the Facilities would be completed in the summer/fall of 2014 and generating revenue by the end of 2014. However, the Facilities remained incomplete as of summer of 2015 and thus the Debtor was without the means to generate the revenue needed to make the payments due to the Indenture Trustee pursuant to the Bond Documents. Due to the construction delays and cost overruns that led to the Debtor’s inability to make the payments due to the Indenture Trustee pursuant to the Bond Documents, on or about October 20, 2015, the Indenture Trustee sent a Notice of Events of Default and Demand for Cure (the “Default Notice”) to the Debtor. Among other things, the Indenture Trustee alleged that the Debtor (a) failed to complete construction of the Facilities with due diligence, (b) failed to cause the construction of the Facilities at a price within the amount of funds in the Construction Fund, (c) failed to make scheduled monthly payments to repay the loan of the proceeds of the Bonds, and (d) failed to make payment of the total amount due to Bondholders on the July 1, 2015 payment date.

On November 13, 2015, HMC filed a lawsuit against the Debtor, Jerry Green, David Zehr, and U.S. Bank National Association, in the County Court at Law No. 2 of Gregg County,

Texas styled *Plaintiff's Verified Original Petition and Application for Temporary Restraining Order Against Defendants* (the "HMC Action"). The HMC Action alleges, among others, breach of contract and fraud claims against the Debtor, Jerry Green, and David Zehr. HMC also sought and obtained a Temporary Restraining Order (the "TRO") against the four named defendants for ten days, until the temporary injunction hearing set for November 23, 2015.

On November 17, 2015, the Indenture Trustee filed a petition against the Debtor in the HMC Action styled *U.S. Bank's Verified Petition and Request for Emergency Appointment of Receiver* (the "Trustee Petition"). The Trustee Petition sought, among other things, the appointment of a receiver with powers including management and sale of the Facilities. The hearing on the Trustee Petition was also set for November 23, 2015.

### **III. THE CHAPTER 11 CASE.**

#### **A. Continuation of Business; Stay of Litigation.**

The Debtor filed the petition commencing this Case on November 20, 2015. The commencement of this case stayed the HMC Action and the hearings set therein for November 23, 2015.

Since the Petition Date, the Debtor has continued to operate as Debtor-in-possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. The Debtor is authorized to operate in the ordinary course of business; but transactions out of the ordinary course of business must receive prior Bankruptcy Court approval. In addition, the Bankruptcy Court has supervised and approved the Debtor's employment of certain Professionals, including attorneys and restructuring advisors.

#### **B. Significant Events During the Case.**

The following is a brief description of some of the major events during the Case.

##### **1. First Day Orders; Debtor's Professionals.**

On December 15, 2015, the Debtor filed certain so-called "first day motions" seeking entry of orders (i) approving post-petition secured financing; (ii) approving retention and employment of CohnReznick LLP as the Debtor's Restructuring Advisor and Chad J. Shandler of CohnReznick as the Debtor's Chief Restructuring Officer; (iii) establishing a procedure to offer deposits to utility companies to ensure continued utilities services post-petition; and (iv) authorizing the Debtor to continue to make monthly premium payments on the Debtor's insurance policies covering the Facilities and other assets.

A hearing to consider the first day motions was held on December 18, 2015. The insurance premium motion was granted on a final basis while the other motions were granted on an interim basis. Subsequently, on January 6, 2016, the Court entered an order granting the utilities motion on a final basis. The final order approving the employment of CohnReznick and Mr. Shandler was entered on February 17, 2016 (Docket No. 120). The post-petition secured financing is addressed in more detail below.



Just prior to filing the first day motions, the Debtor filed an application to retain the services of Lewis Brisbois Bisgaard & Smith, LLP as its bankruptcy counsel (Application at Docket No. 14, and the subsequent order approving the application at Docket No. 38). In addition to engaging bankruptcy counsel, the Debtor subsequently obtained an order authorizing it to employ Nixon Jach Hubbard, PLLC to serve as the Debtor's conflicts counsel. (Application at Docket No. 41; subsequent order at Docket No. 71).

## ***2. Postpetition Financing.***

On February 26, 2016, the Bankruptcy Court entered a final order, pursuant to § 364(c) and (d) (the "Final DIP Order") (Docket No. 143), granting the Debtor authority to obtain post-petition financing from the Indenture Trustee (in its capacity as lender of the DIP loan, the "DIP Lender"), secured by superpriority liens on substantially all of the Debtor's assets but excluding the claims and causes action that arise under Chapter 5 of the Bankruptcy Code (the "DIP Loan"). The DIP Loan provided for up to the maximum principal amount of \$1,308,365 (with a 5% deviation allowance).

## ***3. § 341 Meeting.***

The Office of the United States Trustee convened the official meeting of creditors in the Case pursuant to § 341 in Plano, Texas on December 18, 2015.

## ***4. § 363 Sale of Assets.***

The Final DIP Order provides certain milestone deadlines for the marketing and Sale of substantially all assets of the Debtor. The Debtor has filed the Sale Motion under § 363 of the Bankruptcy Code seeking (i) the approval of Bidding Procedures to facilitate a Sale by Auction of substantially all of the Debtor's assets, and (ii) the approval of the Sale of Purchased Assets to the Prevailing Bidder selected by the Debtor at the conclusion of the Auction.

## ***5. Claims Process and Bar Dates.***

The Debtor filed its Schedules and Statements of Financial Affairs with the Bankruptcy Court on December 15, 2015 (Docket Nos. 28 and 29). Subsequently the Debtor filed amendments thereto on February 11, 2016 (Docket No. 112), and on July 1, 2016 (Docket Nos. 253 and 255).

The Bankruptcy Court established (i) March 17, 2016 as the deadline for Creditors to File proofs of Claim; and (ii) May 18, 2016 as the deadline for Governmental Units to File Claims (collectively, the "Bar Date").

To the extent funds are available for distribution, the Debtor will review Claims Filed and will develop and analyze a database of all Claims asserted against the Debtor. The Debtor will analyze proofs of Claim to determine whether to object to the allowance of such Claims.

The Claims asserted against the Debtor may be materially in excess of the total amount of Allowed Claims estimated by the Debtor in connection with the development of the Plan because, among other things, certain Claims (i) are filed in duplicate; (ii) consist of

amendments to previously filed Claims; (iii) assert Claims in excess of the amount actually owed; (iv) do not allege an obligation of the Debtor; (v) assert contingent Claims against the Debtor; (vi) were Filed after the Bar Date; or (vii) include postpetition interest and other disallowable amounts. To the extent funds are available for distribution, the Debtor intends to File objections to, among others, those Claims falling into the foregoing categories.

#### **6. *Operations of the Debtor.***

The Debtor has continued to operate pursuant to the DIP Loan and budgets presented to the Court, and has generally met its post-petition obligations incurred during the course of the Case. As the Facilities are not operational, the Debtor's post-petition operations related primarily to the preservation of the value of the Facilities and the administration of the Case.

As set forth in the Liquidation Analysis attached hereto as Appendix "2," the Debtor estimates the amount available to unsecured creditors through an orderly chapter 11 liquidation is \$0. The Debtor anticipates that significantly less would be realized by the Indenture Trustee (on account of the Claim of the Bonds) and holders of Allowed Administrative Expense in a chapter 7 bankruptcy case.

### **IV. THE PLAN**

**The following is a summary of certain significant provisions of the Plan. This summary is qualified in its entirety by reference to the more detailed information set forth in the Plan. To the extent that the terms of this Disclosure Statement vary from the terms of the Plan or the Plan Documents, the terms of the Plan and the Plan Documents shall control.**

#### **A. General.**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize or liquidate its business for the benefit of itself and its creditors and interest holders.

Formulation of a plan is the principal objective of chapter 11. In general, a plan (i) divides claims and interests into separate classes, (ii) specifies the property that each class is to receive under the plan, and (iii) contains other provisions necessary to the reorganization of the debtor. Alternatively, the Bankruptcy Code allows a debtor to file a plan of liquidation which allows for the orderly liquidation of the assets of the debtor.

Chapter 11 does not require each holder of a claim or interest to vote in favor of the plan in order for the Bankruptcy Court to confirm the plan. However, the plan must be accepted by the holders of at least one class of claims that is impaired without considering the votes of "insiders" within the meaning of the Bankruptcy Code.

Distributions to be made under the plan will be made after confirmation of the plan, on the effective date or as soon thereafter as is practicable, or at such other time or times specified in the plan.

## **B. Funding for the Plan / Wind Down Budget.**

The Plan proposed by the Debtor is a liquidating plan. The Plan will be funded from proceeds generated from the proceeds of the Sale of Property (the Collateral of the Bonds) to the Prevailing Bidder.

The Wind Down Budget Amount shall be funded from the proceeds of the Sale of the Property, i.e., from the Collateral of the Bonds. The Wind Down Budget shall be divided into two sections: the “**Administrative Budget**,” meaning such amounts as are required to administratively wind down and close the Debtor’s estate (*e.g.*, file final tax returns) and must be in amounts acceptable to the Indenture Trustee, but such amounts shall not include any amounts to fund litigation costs or the liquidation of the Excluded Assets; and the “**Litigation Budget**,” meaning a capped amount only for expenses incurred related to the investigation or pursuit of claims or Causes of Action; legal fees related to the investigation or pursuit of claims or Causes of Action shall not be funded from the Wind Down Budget. The Plan Administrator shall seek other options of funding legal fees for the pursuit of Causes of Action. Such alternative funding source or option may include, but shall not be limited to, contingent fee arrangements. The Wind Down Budget shall not include amounts for Distributions to holders of Allowed Claims.

The Wind Down Budget shall constitute a first priority secured debt and obligation of the Debtor and/or the Liquidating Debtor to the Indenture Trustee, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor’s Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other payment being made from the Debtor’s Estate.

Bondholders are notified that the Wind Down Budget Amount may not be repaid, or may be repaid only in part, and that any repayment of the Wind Down Budget Amount may not be made for several years.

## **C. Classification and Treatment of Claims and Interests Generally.**

§ 1123(a)(1) requires that the Plan classify all Claims (other than Administrative Expenses and Priority Tax Claims) and Interests. § 1122 provides that, except for certain Claims classified for administrative convenience, the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtor believes it has classified all Claims and Interests in compliance with the provisions of § 1122. If a Claim or Interest holder challenges such classification of Claims or Interests and the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtor, to the extent permitted by the Bankruptcy Court, intends to make such reasonable modifications to the classification of Claims or Interests under the Plan to provide for whatever classification might be required by the Bankruptcy Court for Confirmation.

**Except to the extent that such modification of classification adversely affects the treatment of a holder of a Claim or Interest and requires resolicitation, acceptance of the Plan by any holder of a Claim or Interest pursuant to this solicitation will be deemed to be a consent to the Plan's treatment of such holder of a Claim or Interest regardless of the Class to which such holder of a Claim or Interest is ultimately deemed to belong.**

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest in a particular Class, unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtor believes that the Plan complies with this standard. If the Bankruptcy Court finds that the Plan does not comply with this standard, it could deny Confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

The Plan categorizes Claims against and Interests in the Debtor under the Plan into separate Classes. In accordance with the Bankruptcy Code, Administrative Expenses and Priority Tax Claims are not classified into Classes. The Plan also provides that expenses properly incurred by the Debtor during the Case will be paid in full and specifies the treatment proposed for the Claims and Interests in each Class.

#### **D. Claim of the Bonds.**

##### ***1. Claim of the Bonds***

The Claim of the Bonds consists of the Claim held by the Indenture Trustee on account of the Bonds and under the Indentures. As of the Petition Date, the Debtor is indebted under the Bond Documents for all outstanding principal, all accrued and unpaid interest, plus all other amounts due under the Bond Documents including without limitation the fees and expenses of the Indenture Trustee, including the fees and expenses of the Indenture Trustee's attorneys, consultants and advisors, and the aggregate amount of which shall be an Allowed Claim of the Bonds. The Indenture Trustee has filed a proof of claim asserting a secured claim in at least the amount of \$34,879,927.52 which the Indenture Trustee asserts represent outstanding principal (\$33,910,000) and accrued unpaid interest (\$969,927.52) but does not represent the full amount owed to the Indenture Trustee under the Bond Documents. All findings of fact and conclusions of law in the Final DIP Order pertaining to the Bonds, Bond Documents, and the trust estates established under the Indentures, including the property held in such trust estates, are incorporated herein. As of the date of this Disclosure Statement, no objection to the Indenture Trustee's proof of claim has been filed.

The Claim of the Bonds is secured by, among other collateral, the Property (the "Secured Claim of the Bonds"); and if the recovery on the collateral securing the Claim of the Bonds is not sufficient to satisfy the total amount of the Claim of the Bonds, then the balance of the Claim of the Bonds shall be treated in accordance with Class 3 as a General Unsecured Claim (the "Unsecured Claim of the Bonds").

## **2. Voting the Claim of the Bonds**

Although the Claim of the Bonds is held by the Indenture Trustee, it is voted by the beneficial holders of the Bonds as of the Voting Record Date. Such Bondholders have the right to vote, as a class, to accept or reject this Plan with respect to the Claim of the Bonds.

Bondholders are the only parties who vote with respect to Class 1, the Secured Claim of the Bonds. With respect to an Unsecured Claim of the Bonds, the Bondholders' vote will also be tallied in Class 3 (General Unsecured Claims) along with other unsecured creditors.

Pursuant to section 1126(c) of the Bankruptcy Code, Class 1 – Secured Claim of the Bonds is deemed to have accepted the Plan if (a) with regard to the collective amount of Bonds that are actually voted, the beneficial holders of at least two-thirds in aggregate principal amount of such Bonds have voted to accept the Plan, and (b) with regard to the Bondholders who actually vote, more than one-half in number of such Bondholders have voted to accept the Plan.

## **3. Recovery on the Claim of the Bonds**

The Claim of the Bonds is Impaired.

On the Secured Claim of the Bonds (Class 1), the Indenture Trustee shall receive the proceeds realized from the Sale of the Property, net of repayment in full of the DIP Loan (which repayment is made to the Indenture Trustee as DIP Lender) and net of the Wind Down Budget Amount.

There will be an Unsecured Claim of the Bonds if, as is expected, the proceeds of the Sale of the Property received by the Indenture Trustee are not sufficient to satisfy the entire Claim of the Bonds. In that event, the remaining balance of the Claim of the Bonds shall be treated as a General Unsecured Claim in Class 3 and shall receive a *pro rata* share of any distribution made to Class 3. Bondholders are alerted that the Unsecured Claim of the Bonds in Class 3 may receive no payment or only partial payment, and that any payment on the Unsecured Claim of the Bonds may not be made for several years.

The full amount of the DIP Loan shall be repaid to the Indenture Trustee (as DIP Lender) at closing of the Sale.

### **BONDHOLDERS MAY NOT RECOVER ALL AMOUNTS DUE WITH RESPECT TO THEIR BONDS UNDER THIS PLAN.**

The Indenture Trustee shall deposit all amounts received under this Plan into the appropriate fund(s) or account(s) within the trust estates established under the Indentures. All amounts held by the Indenture Trustee, whether currently in the possession of the Indenture Trustee or received pursuant to this Plan or Case, constitute and shall constitute property of the trust estates established under the Indentures. The Trustee shall retain and/or disburse all such

amounts subject to the terms and provisions of the Indentures and in accordance with the Final DIP Order and this Plan.

The recovery on the Claim of the Bonds under this Plan shall be the total recovery that the Indenture Trustee shall receive on account of the Bonds and shall be in full settlement and discharge of the Claim of the Bonds. Other than the recovery on the Claim of the Bonds under this Plan, the Indenture Trustee shall not receive any further amounts on account of the Bonds.

#### ***4. Wind Down Budget***

The Wind Down Budget Amount shall be funded from the proceeds of the Sale of the Property, i.e., from the Collateral of the Bonds.

The Wind Down Budget is attached to the Disclosure Statement as Appendix 4 and form part of the Solicitation Packages. The Wind Down Budget shall be divided into two sections: the “**Administrative Budget**,” meaning such amounts as are required to administratively wind down and close the Debtor’s estate (*e.g.*, file final tax returns) and must be in amounts acceptable to the Indenture Trustee, but such amounts shall not include any amounts to fund litigation costs or the liquidation of the Excluded Assets; and the “**Litigation Budget**,” meaning a capped amount only for expenses incurred related to the investigation or pursuit of claims or Causes of Action; legal fees related to the investigation or pursuit of claims or Causes of Action shall not be funded from the Wind Down Budget. The Plan Administrator shall seek other options of funding legal fees for the pursuit of Causes of Action. Such alternative funding source or option may include, but shall not be limited to, contingent fee arrangements.

The Wind Down Budget shall constitute a first priority secured debt and obligation of the Debtor and/or the Liquidating Debtor to the Indenture Trustee, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor’s Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other payment being made from the Debtor’s Estate.

Bondholders are notified that the Wind-Down Budget Amount may not be repaid, or may be repaid only in part, and that any repayment of the Wind Down Budget Amount may not be made for several years.

#### ***5. Bar Date for Claims against the Indenture Trustee***

The Indenture Trustee intends to file a motion with the Bankruptcy Court to seek a bar date to be established for the assertion of any claims against U.S. Bank arising in its role as Indenture Trustee or otherwise with regard to the Bonds (the “**Indenture Trustee Bar Date**”). The Indenture Trustee will seek to have the Indenture Trustee Bar Date established prior to confirmation of the Plan by separate order of the Court or as part of the Confirmation Order (in either case, the “**Order Establishing Indenture Trustee Bar Date**”). If the Order Establishing

Indenture Trustee Bar Date is entered, parties in this Case shall be given at least thirty days' notice of the Indenture Trustee Bar Date.

The Indenture Trustee Bar Date, if one is set, shall be prior to the date of the distribution made by the Indenture Trustee to the Bondholders. If any claims are timely asserted against U.S. Bank, then no distribution shall be made to the Bondholders, except in the sole discretion of the Indenture Trustee, until all such claims against U.S. Bank have been resolved and are not subject to appeal.

By service of the Order Establishing Indenture Trustee Bar Date, parties in this Case shall have at least thirty days' notice of the Indenture Trustee Bar Date. The Indenture Trustee shall promptly post notice on EMMA so that that Bondholders may receive at least thirty days' notice of the Indenture Trustee Bar Date, and the Indenture Trustee shall cause all other Parties in this Case to receive at least thirty days' notice of the Indenture Trustee Bar Date. No claim against the Indenture Trustee shall be deemed "asserted" unless a lawsuit is both filed and served on both the Indenture Trustee and its counsel before 3:00 p.m. Eastern Time on the Indenture Trustee Bar Date. Any claims not asserted by a Bondholder or by a party in this Case prior to 3:00 p.m. Eastern Time on the Indenture Trustee Bar Date shall be deemed waived and shall be forever barred.

The establishment of the Indenture Trustee Bar Date is a condition precedent to the occurrence of the Effective Date of the Plan.

#### ***6. Cancellation of the Bonds and Distribution(s) on the Bonds***

After the closing of the Sale, after the Indenture Trustee's receipt of repayment of the DIP Loan and the proceeds of the Sale (as described in Section 5.1.3), and after the Indenture Trustee Bar Date, the Indenture Trustee shall take the following actions:

a) Reserve an amount to fund the fees, costs and expenses expected to be incurred by the Indenture Trustee, including without limitation, fees, costs and expenses related to this Bankruptcy Case, to any litigation proposed by the Debtor, and to any other litigation arising out of the Facilities or the Bonds or otherwise asserted against or involving the Indenture Trustee.

b) Distribute all other amounts held under the Indentures and/or with regard to the Bonds, including the payment of proceeds of Sale and the repayment of the DIP Loan, in accordance with the terms and provisions of the Indentures, as follows: first, to payment of the fees, costs, and expenses of the Indenture Trustee, including the fees and expenses of its counsel; and second, all remaining amounts to partial payment of the principal and interest then due and unpaid upon all of the Bonds, without preference or priority of principal over interest or of interest over principal, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest (the "Sale Closing Distribution to Bondholders"). The Sale Closing Distribution to Bondholders may be the final distribution on the Bonds.

c) Cause the Bonds to be cancelled and of no further force or effect, concurrently with the Sale Closing Distribution to Bondholders. Notwithstanding the

foregoing or anything else in this Plan, (i) the Claim of the Bonds shall not be cancelled and shall remain a debt and obligation of the Debtor, payable as a General Unsecured Claim to the Indenture Trustee; and (ii) the Wind Down Budget Amount shall be a debt and obligation of the Debtor, secured by a first-priority lien on all assets of the Debtor including any and all amounts realized by the Debtor at any time other than the proceeds of the Sale.

d) If monies subsequently become available to the Indenture Trustee, whether from repayment of the Wind Down Budget Amount, distribution to Class 3 General Unsecured Creditors, or monies reserved by the Indenture Trustee but not disbursed (see (a) above), then the Indenture Trustee will make one or more additional disbursements. Such disbursements will be in accordance with (b) above, and will be made on a date and in an amount determined by the Indenture Trustee in its sole discretion and subject to the terms of the Indentures, and will be made to the beneficial holders of the Bonds as of the same record date as the Sale Closing Distribution to Bondholders.

e) The Indenture Trustee will post notice to Bondholders (the “Final Notice to Bondholders”) when no matters or issues are outstanding with respect to the Indenture Trustee or the Bonds. Without limitation, the Final Notice to Bondholders will be posted only when the Debtor has provided notice that it has completed its efforts to liquidate the assets excluded from the Sale, when the Indenture Trustee is not involved in and does not anticipate any litigation as described in (a) above, and when no further monies will be available for disbursement to Bondholders.

## **7. Bond Documents**

Upon the closing of the Sale, the Master Indenture shall be terminated and released solely to the extent that it constitutes a deed of trust and lien upon the Facilities.

Provided that neither the Debtor nor any related person within the meaning of Section 1.103-10(e) of the Regulations (the applicable Income Tax Regulations promulgated under the Internal Revenue Code, as more fully set forth in the Regulatory Agreement) has obtained an ownership interest in the Facilities for tax purposes, and after the Indenture Trustee Bar Date and the subsequent cancellation of the Bonds, a termination of the Regulatory Agreement shall be executed and delivered by the Indenture Trustee, Authority, Debtor and the new owner of the Property. The form of the termination shall be reasonably acceptable to each of them and to the Authority. The termination will be recorded in the Official Records of Gregg County, Texas.

On and after the Effective Date, the Bond Documents will continue in effect (except as to the Master Indenture and Regulatory Agreement, as provided above); however, provisions of the Bond Documents that are inapplicable in light of this Plan will not be enforced by the Indenture Trustee.

The Indentures and other Bond Documents shall be deemed terminated as of the date set forth in the Final Notice to Bondholders, except as to provisions that by their terms survive



termination of the applicable Bond Document. As of such termination date set forth in the Final Notice to Bondholders, all obligations of the Indenture Trustee under the Indentures, with regard to the Bonds, or under or with relation to this Plan, shall be deemed terminated and forever discharged.

**E. Classification and Treatment of Claims and Interests Under the Plan.**

**1. *Treatment of Administrative Expenses and Priority Tax Claims.***

**(a) *Treatment of Allowed Administrative Expenses.***

As set forth in Section 4.1 of the Plan, Allowed Administrative Expenses against the Debtor will be paid in full, in Cash, on the Effective Date, as soon as practicable after the Effective Date, or when an Administrative Expense becomes Allowed.

Administrative Expenses shall include the DIP Loan. The DIP Lender shall receive 100% of the amount of the DIP Loan in Cash at Closing of the Sale. The full amount of the DIP Loan is deemed Allowed and shall be paid from the proceeds of the Sale.

On or before the Effective Date, the Debtor shall pay all amounts owing to the Professionals for all outstanding Professional Claims that have been awarded by the Bankruptcy Court but which were unpaid as of the Effective Date. On or prior to the Administrative Expense Claim Bar Date, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. The Plan Administrator shall pay any outstanding amounts owed to a Professional within ten (10) days after entry of a Final Order with respect to such Professional's final fee application. Any amounts previously paid to a Professional, but not supported by the Final order with respect to such Professional's final fee application, shall be paid directly to the DIP Lender within ten (10) days after entry of such Order.

Each holder of an Allowed Administrative Expense other than the DIP Loan and Professional Claims shall receive 100% of the unpaid Allowed amount of such Administrative Expense in Cash in the ordinary course of business or as soon as reasonably practicable after the later of (i) payment in full of the DIP Loan, or (ii) the date on which the Administrative Expense becomes Allowed.

As of the Effective Date, the Debtor estimates that Administrative Expenses asserted against the Debtor will total approximately \$ 55,000 (which amount excludes Professional Claims that have been paid during the course of the Case).

**(b) *Treatment of Allowed Priority Tax Claims***

As set forth in Section 4.2 of the Plan, Allowed Priority Tax Claims against the Debtor will be paid in full, in Cash, on the Effective Date. As of the Effective Date, the Debtor estimates that Priority Tax Claims asserted against the Debtor under the Plan will total approximately \$0.

**2. *Allowed Class 1 Claim (Secured Claim of the Bonds).***

The Claim of the Bonds is secured by Collateral including, among other assets of the Debtor, the Property (described in Section II.C above). As set forth in Article 5 of the Plan as well as in Section IV.D above, the Allowed amount of the Claim of the Bonds will recover the net proceeds of the Sale of the Property. As of the Effective Date, the Debtor anticipates that the net proceeds from Sale of the Property that will be available to be paid to the Indenture Trustee on account of the Claim of the Bonds will be approximately \$ 14 million.

It is anticipated that the amount of Cash realized from the Sale of the Property (the Collateral of the Bonds) will not be adequate to pay the Claim of the Bonds in full. The shortfall between the Claim of the Bonds and net proceeds from the Sale received by the Indenture Trustee (*i.e.*, the Unsecured Claim of the Bonds) will constitute a Deficiency Claim and will be classified as a Class 3 General Unsecured Claim and receive treatment provided thereunder.

**3. *Allowed Class 2 Claims (Secured Tax Claims).***

As set forth in Section 5.2 of the Plan, Class 2 shall consist of the Secured Tax Claims, which shall constitute Year 2016 secured taxes which will be paid in the ordinary course of business by the Prevailing Bidder or as otherwise provided under the PSA.

**4. *Allowed Class 3 Claims (General Unsecured Claims).***

As set forth in Section 5.3 of the Plan, Distributions shall be paid pro rata to holders of Allowed General Unsecured Claims, after payment in full of the Allowed Administrative Expenses, the Distribution to the Indenture Trustee on account of the Claim of the Bonds, and repayment in full of the Wind Down Budget Amount to the Indenture Trustee, from all remaining property of the Debtor after liquidation of such property, until all Allowed General Unsecured Claims are paid in full or all of the Debtor's remaining property has been distributed. General Unsecured Claims Filed in this Case or listed on the Debtor's Schedules, including the Bondholder Deficiency Claim, total approximately \$ 22.8 million.

Claims have been filed against the Debtor alleging to be secured by the property of the Debtor. The Debtor has reviewed such Claims and believes that they are subordinate and junior to the security interests and liens held by the Indenture Trustee and securing the Claim of the Bonds. Without limitation, the Debtor believes that the Claim alleged by HMC, to the extent it is an Allowed Claim, is contractually subordinate and junior to the Claim of the Bonds. Based on the Debtor's extensive marketing efforts over the course of this Case, the Debtor believes that the results of the Sale will be substantially less than the Claim of the Bonds. As a result, Allowed Claims other than the Claim of the Bonds are expected to be wholly unsecured, and thus would be included in Class 3, General Unsecured Claims.

**5. *Allowed Class 4 Interests.***

As set forth in Section 5.4 of the Plan, Allowed Class 4 Interests will receive no Distribution. All Interests shall be withdrawn as provided in the Plan.

## **F. Release of Liens and Perfection of Liens.**

Except as otherwise provided in the Plan, any Plan Document, the Confirmation Order, or the Sale Order: (a) each holder of a judgment shall on the Effective Date (i) turn over and release to the Plan Administrator any and all Collateral that secures or purportedly secures such Claim, as they pertain to the properties currently owned or leased by the Liquidating Debtor or such Lien shall automatically, and without further action by the Liquidating Debtor or the Plan Administrator, be deemed released, and (ii) execute such documents and instruments as the Liquidating Debtor or the Plan Administrator may request to evidence such Claim holder's release of such property or Lien; and (b) on the Effective Date, all right, title, and interest in any and all property of the Debtor constituting Excluded Assets shall vest in the Liquidating Debtor subject to the security interest and lien of the Indenture Trustee on account of the Wind Down Budget. Any such holder of a judgment that fails to execute and deliver such release of Liens within thirty (30) days of the Effective Date shall be deemed to have no further Claim against the Liquidating Debtor or its assets or property in respect of such Claim and shall not participate in any Distribution hereunder. *Provided, however,* notwithstanding the immediately preceding sentence, any holder of a Disputed Claim shall not be required to execute and deliver such release until such time as the holder's Claim is Allowed or Disallowed.

## **G. Post-Effective Date Governance.**

On the Effective Date, automatically and without further action, (i) any and all remaining officers or directors or managing partners of the Debtor shall be deemed to have resigned or withdrawn; and (ii) the Plan Administrator shall have all right and authority necessary to wind up the Debtor.

## **H. Continuing Existence.**

Pursuant to § 1141(b), except as otherwise specifically provided in the Plan, all property of the Debtor shall remain with the Debtor to be administered and Distributed pursuant to the terms of the Plan, subject to the security interest and lien of the Indenture Trustee on account of the Wind Down Budget.

Upon the Effective Date, the Debtor shall be thereafter referred to as the Liquidating Debtor and the Debtor's Estate shall be referred to as the Liquidating Debtor Estate. From the Effective Date, the Liquidating Debtor shall continue in existence, to the extent necessary, for the purpose of facilitating the efforts of the Plan Administrator, including, but not limited to, the following: (i) wind up the remaining affairs of the Liquidating Debtor; (ii) liquidate, by conversion to Cash or other methods, any remaining assets of the Liquidating Debtor Estate as expeditiously as reasonably possible; (iii) enforce and prosecute claims, interests, rights, and privileges of the Liquidating Debtor; (iv) resolve Disputed Claims; (v) administer the Plan, including distributing all Cash in repayment of the Wind Down Budget Amount and then to holders of Allowed Claims in accordance with the Plan; and (vi) file appropriate tax returns, if any. The Wind Down Budget Amount shall be used in accordance with the Wind Down Budget. The Wind Down Budget Amount shall be a first priority lien on and security interest against the Liquidating Debtor Estate, and shall be repaid to the Indenture Trustee prior to any other payment to any other party and prior to any Distribution any Class.

Unless otherwise set forth in this Plan, upon the liquidation of all assets of the Liquidating Debtor pursuant to the Plan, the payment of all amounts due to be paid by the Debtor or Liquidating Debtor under the Plan, and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court, the Liquidating Debtor shall be deemed dissolved for all purposes without the necessity for any further actions to be taken by or on behalf of the Liquidating Debtor or payments to be made in connection therewith; *provided, however*, that the Plan Administrator shall file with the appropriate state authority a certificate of cancellation. From and after the Effective Date, the Liquidating Debtor shall not be required to file any document, or take any other action, to withdraw its business operation from any state in which the Liquidating Debtor was previously conducting its business operations.

### **I. The Plan Administrator.**

The Debtor shall designate the Plan Administrator not less than ten (10) days prior to the Confirmation Hearing.

On and after the Effective Date, the Plan will be administered by the Plan Administrator on behalf of the Liquidating Debtor and all actions taken thereunder in the name of the Liquidating Debtor shall be taken through the Plan Administrator.

After the Effective Date, the Plan and all remaining property of the Liquidating Debtor Estate shall be managed under the direction of the Plan Administrator as provided by the terms of the Plan. In the performance of his duties hereunder, the Plan Administrator shall have the rights and powers of a debtor-in-possession under § 1107, and such other rights, powers, and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary, including, without limitation, the filing of any necessary tax returns.

From and after the Effective Date, the Plan Administrator may, among other things, use, pledge, acquire, and/or dispose of any Liquidating Debtor Estate's property free of any restrictions imposed under the Bankruptcy Code and without prior Bankruptcy Court approval, provided that it is entirely in conformance with this Plan and that the Bankruptcy Court retains jurisdiction over the Plan Administrator and this Plan.

The Confirmation Order shall provide the Plan Administrator with express authority to convey, transfer, and assign any and all property of the Liquidating Debtor Estate consistent with the terms of the Plan and to take all actions necessary to effectuate same.

The Plan Administrator shall cause the Wind Down Budget Amount to be repaid in full, to the extent funds are available, to the Indenture Trustee, and after the Wind Down Budget Amount has been paid in full, shall make all other Distributions as and when provided for under the Plan.

The Plan Administrator shall have sole responsibility for making Distributions under the Plan and pursuing Causes of Action, including Chapter 5 Causes of Action (as defined in Section 2.1.22 of the Plan) on behalf of the Debtor, and the reasonable fees and expenses of

the Plan Administrator that are within the Wind Down Budget shall be paid from the Wind Down Budget Amount. The Plan Administrator shall also have standing to monitor and seek to enforce the performance of obligations under the Plan, and the performance of other provisions of the Plan that affect the treatment of Claims.

**J. Payment of Fees and Expenses to Plan Administrator.**

The Plan Administrator may employ on behalf of himself, the Liquidating Debtor, and the Liquidating Debtor Estate, without Bankruptcy Court order, professional persons as such term is used in the Bankruptcy Code, to assist the Plan Administrator to carry out the duties under this Plan. The Plan Administrator and his professionals shall be entitled to reimbursement of their reasonable and necessary expenses incurred in carrying out his duties under the Plan. The Plan Administrator and his professionals shall be compensated at their respective standard hourly rates for time spent administering the implementation of the Plan and the resolution of objections to Claims, if any are asserted, without further motion or application to the Bankruptcy Court. Compensation to the Plan Administrator and his professionals shall be made from the Wind Down Budget Amount subject to the Wind Down Budget.

**K. Liquidation of Assets.**

On and after the Effective Date, the Plan Administrator may, without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, or otherwise dispose of at a public or private sale any remaining property of the Liquidating Debtor Estate thereof for the purpose of liquidating and converting such assets to Cash, repaying the Wind Down Budget Amount, making Distributions, and administering and fully consummating the Plan.

**L. Investments.**

All Cash held by the Plan Administrator in any accounts or otherwise shall be invested in accordance with § 345 or as otherwise permitted by a Final Order of the Bankruptcy Court, and that such account shall be held for the benefit of the Indenture Trustee.

**M. Reports.**

The Plan Administrator shall provide monthly reports to the Indenture Trustee which reports shall provide a summary of all actions taken and expenditures made in each line item in the Wind Down Budget in the prior month.

**N. Accounts.**

The Plan Administrator may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of the Plan. To the extent reasonably possible, the Plan Administrator shall attempt to indemnify the funds in accordance with § 345.

**O. Indemnification**

The Liquidating Debtor shall, to the fullest extent permitted by Texas law, indemnify and hold harmless the Plan Administrator 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.

**P. Resignation, Replacement, or Termination of Plan Administrator.**

From and after the Effective Date the Plan Administrator or his successor shall continue to serve in his capacity as the sole officer, director, and responsible person of the Liquidating Debtor through the earlier of (a) the date the Liquidating Debtor is dissolved in accordance with the Plan; and (b) the date the Plan Administrator resigns or is replaced or terminated. In the event that the Plan Administrator resigns or is terminated or is unable to serve, a successor shall be appointed by the Plan Administrator; provided, however, that the Indenture Trustee retains the right to challenge the successor Plan Administrator in the Bankruptcy Court.

**Q. Effectiveness of Securities, Instruments, and Agreements.**

On the Effective Date, the Plan Administrator, on behalf of the Liquidating Debtor, shall be authorized to take all actions necessary to execute and deliver all Plan Documents issued or entered into pursuant to the Plan, including, without limitation, any agreement entered into or instrument issued or in connection with any of the foregoing or any other Plan Document.

**R. Approval of Agreements.**

The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of the Plan Documents and such transactions and authorization for the Plan Administrator and the Debtor, as appropriate, to execute and deliver each of the Plan Documents; provided, however, that all documents pertaining to the Sale shall be subject to the Sale Hearing and the Sale Order.

**S. Cancellation and Surrender of Existing Securities; Cancellation of Indentures.**

On the Effective Date, all promissory notes, stock and/or bond certificates, or other instruments evidencing a Claim or Interest shall be canceled and the holders thereof shall have no rights by reason thereof, and such instruments shall evidence no rights, except the right to receive the Distributions, if any, to be made to holders of such instruments under the Plan.

## **T. Entry of Final Decree.**

As soon as is practicable after the Effective Date, the Plan Administrator shall File an application with the Clerk of the Bankruptcy Court requesting the entry of a Final Decree closing the Case; *provided, however*, the Plan Administrator shall not File an application for Final Decree until and unless the conditions to the Plan becoming effective as set forth herein have been fully met, all pending Causes of Action have been resolved by Final Order of a court of competent jurisdiction or abandoned, and objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court.

## **U. Retention of Rights to Pursue Causes of Action.**

Pursuant to Section 1123(b)(3) of the Bankruptcy Code, as of the Effective Date, the Plan Administrator (as the representative of the Liquidating Debtor's Estate) shall retain and have the exclusive right to enforce against any Entity any and all Causes of Action (including Chapter 5 Causes of Action) that otherwise belong to the Debtor and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan or by other orders of the Bankruptcy Court entered prior to the Effective Date. The Causes of Action retained hereby include, without limitation, all claims and Causes of Action listed or referenced in Appendix 3 of this Disclosure Statement and/or in any of the Plan Documents.

The Plan Administrator (as the representative of the Liquidating Debtor Estate) shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's Estate, other than those expressly released or compromised as part of or pursuant to the Plan or by other orders of the Bankruptcy Court entered prior to the Effective Date. No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by virtue of the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan unless otherwise ordered by the Bankruptcy Court.

The Liquidating Debtor and the Plan Administrator will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether preference and other actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtor or any other party.

## **V. Executory Contracts and Unexpired Leases.**

On the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party that have not otherwise been previously assumed or rejected pursuant to a Final Order of the Court or which are otherwise listed on Exhibit "A" to the Plan, shall be automatically rejected by the Debtor without further notice or order.

The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to § 365 of the Bankruptcy Code, effective as of the Petition Date. Any party to an executory contract or unexpired lease identified for rejection as provided

herein may, within the same deadline and in the same manner established for filing objections to Confirmation, file any objection thereto. Failure to file any such objection within the time period set forth above shall constitute consent and agreement to the rejection.

If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Rejection Claim by the other party or parties to such contract or lease, such Rejection Claim, to the extent that it is timely Filed, shall be classified as a General Unsecured Claim; *provided, however*, any Rejection Claim arising from the rejection of an executory contract or unexpired lease shall be forever barred and shall not be enforceable against the Debtor or its Estate, or after the Effective Date, the Liquidating Debtor and the Liquidating Debtor Estate, unless a proof of Rejection Claim is Filed and served on the Debtor or the Plan Administrator, as applicable, by the Rejection Damages Bar Date (defined in Section 2.1.71 of the Plan). The Plan Administrator shall file any objection to a Rejection Claim on or before the Claim Objection Bar Date.

#### **W. Conditions to Occurrence of the Effective Date of the Plan.**

Under the terms of the Plan, the following are conditions precedent to the occurrence of the Effective Date:

- The Confirmation Order shall have been entered and become a Final Order in form and substance satisfactory to the Debtor and the Indenture Trustee.
- Execution of any Plan Documents necessary to effectuate the transactions contemplated in the Plan, subject to the approval of the Indenture Trustee.
- The Order from the Bankruptcy Court approving the Sale of the Purchased Assets to the Successful Bidder shall have been entered and become a Final Order.
- The Sale shall have Closed.
- The Wind Down Budget shall have been approved and agreed to by the Indenture Trustee.
- The Order from the Bankruptcy Court establishing the Indenture Trustee Bar Date shall have been entered and become a Final Order.
- The Debtor, with the consent of the Indenture Trustee, may waive one or more of the conditions to the occurrence of the Effective Date.

The Debtor believes that all conditions to the Effective Date of the Plan will likely be satisfied and that the Effective Date of the Plan could occur no later than October 20, 2016.



## **X. Effect of Confirmation of the Plan.**

### ***1. Releases and Injunction***

Except as otherwise specifically provided by the Plan, the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, of (a) all Claims and Causes of Action against, liabilities of, liens on, obligations of and Interests in, the Debtor and the assets and properties of the Debtor, whether known or unknown; and (b) all Causes of Action (whether known or unknown, either directly or derivatively through the Debtor) against, Claims (as defined in Section 101 of the Bankruptcy Code) against, liabilities (as guarantor of a Claim or otherwise) of, Liens on the direct or indirect assets and properties of, and obligations of successors and assigns of, the Debtor and its successors and assigns based on the same subject matter as any Claim or Interest or based on any act or omission, transaction, or other activity or security, instrument, or other agreement of any kind or nature occurring, arising, or existing prior to the Effective Date that was or could have been the subject of any Claim or Interest, in each case regardless of whether a proof of Claim or Interest was Filed, whether or not Allowed and whether or not the holder of the Claim or Interest has voted on the Plan. Notwithstanding anything herein to the contrary, nothing in this Plan shall constitute a satisfaction and release of any cause of action against any of the Debtor's current or former officers and directors of Claims arising prior to the Petition Date.

Effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, in its own capacity and as debtor in possession, shall be deemed to have forever released unconditionally, waived and discharged, and hereby is deemed to release unconditionally, waive, and discharge on such date (a) its Chief Restructuring Officer employed by Final Order of the Court in the Case and each consultant, financial advisor, attorney, accountant, and other representative of the Debtor, and (b) each Bondholder, U.S. Bank National Association, including without limitation in its capacities as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender), and each of their respective subsidiaries, affiliates, managed accounts or funds, officers, directors, shareholders, members, parents, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in their respective capacities as representatives of the Bondholders or of U.S. Bank National Association, including without limitation in its capacity as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender) ((a) and (b), collectively, the "Released Parties", or each a "Released Party"), from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon or related to any act or omission, transaction, event, or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtor, taking place on or prior to the Effective Date in any way relating to the Debtor, the Case, the Plan, the Bonds, the Claim of the Bonds, the Indentures, or any other document pertaining to the issuance of the Bonds. Except that no Released Party shall be released from

acts or omissions which are the result of willful misconduct or fraud. Notwithstanding anything herein to the contrary, nothing in this Plan shall constitute a release against any of the Debtor's current or former officers and directors of claims arising prior to the Petition Date held by the Debtor and/or its Estate.

Pursuant to 1141 (d)(3), the Confirmation of the Plan does not operate to discharge Claims against and Interests in the Debtor. However, and except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that all Entities who have held, hold, or may hold Claims against or Interests in the Debtor are, with respect to any such Claims or Interests, permanently enjoined from and after the Confirmation 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 Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, the Debtor, 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 Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtor, or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing Entities; (d) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due to the Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any Debtor; and (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

Furthermore, except as otherwise expressly provided in the Plan, for the consideration described in the Plan, as of the Effective Date, all Entities who have held, hold, or may hold claims released pursuant to the Plan, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date, with respect to any claim released pursuant to the Plan, from (a) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any claim against any Released Party or the property of any of them; (b) seeking the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against any Released Party or the property of any Released Party; (c) creating, perfecting, or enforcing any encumbrance of any kind against any Released Party; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to any Released Party; and (e) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan. In the event that any Entity takes any action that is prohibited by, or is otherwise inconsistent with the provisions of this section or article of the Plan, then, upon notice to the Bankruptcy Court, the action or proceeding in which the Claim of such Entity is asserted shall automatically be transferred to the Bankruptcy Court for enforcement of the provisions of this section and article of the Plan

The foregoing release provisions are an integral part of the Plan and are essential to its implementation. If and to the extent that the Bankruptcy Court concludes that the Plan cannot be confirmed with any portion of the foregoing releases, the Debtor reserves the right to amend the Plan so as to give effect as much as possible to the foregoing releases.

## **2. *Binding Effect.***

Upon Confirmation of the Plan and pursuant to § 1141(a), the provisions of the Plan shall bind the Debtor and all holders of Claims against or Interests in the Debtor, including their successors and assigns, whether or not they vote to accept the Plan. The Distributions made under the Plan are in full and complete settlement of all Claims and Interests against the Debtor.

## **3. *Retention and Enforcement of Causes of Action.***

Pursuant to § 1123(b)(3) of the Bankruptcy Code, as of the Effective Date, the Plan Administrator (as the representative of the Liquidating Debtor Estate) shall retain and have the exclusive right to enforce against any Entity any and all Causes of Action (including Chapter 5 Causes of Action) that otherwise belong to the Debtor and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan or by other order of the Bankruptcy Court entered prior to the Effective Date. The Causes of Action retained hereby include, without limitation, all Causes of Action listed or referenced in the Plan and the Causes of Action set forth on Appendix 3 attached hereto.

The Plan Administrator (as the representative of the Debtor's Estate) shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's Estate, other than those expressly released or compromised as part of or pursuant to the Plan or by other orders of the Bankruptcy Court entered prior to the Effective Date. No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by virtue of the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan unless otherwise ordered by the Bankruptcy Court.

The Debtor and the Plan Administrator will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether preference and other actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtor or any other party.

## **4. *Limitation of Liability.***

None of the Released Parties shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection with or related to formulating, negotiating, implementing, confirming, or consummating the Plan, the Sale, the Disclosure Statement, any Plan Document, or the PSA. The Released Parties shall have no liability to the Debtor, any Creditor, Interest holder, any other party-in-interest in the Case or any other

Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including, without limitation, failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects each Released Party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; *provided, however*, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

**Y. Distributions Under the Plan.**

See Article 8 of the Plan for a detailed description of the procedures by which Distributions will be made to the holders of Allowed Claims against the Debtor.

**Z. Other Provisions of the Plan.**

**1. Set-Offs.**

Except as otherwise provided in the Plan, agreements entered into in connection with the Plan, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor and the Plan Administrator may, but will not be required to, setoff against any Claim and the Distributions made with respect to the Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights, and Causes of Action of any nature that the Debtor may hold against the holder of such Claim; *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other action or omission of the Debtor, nor any provision of the Plan, shall constitute a waiver or release by the Debtor of any such claims, rights, and Causes of Action that the Debtor may possess against such holder. To the extent the Debtor fails to setoff against a holder of a Claim and the Plan Administrator seeks to collect a claim from the holder of such Claim after a Distribution to the holder of such Claim pursuant to the Plan, the Plan Administrator shall be entitled to full recovery on its claim, if any, against the holder of such Claim.

**2. Retention of Jurisdiction.**

Notwithstanding entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, to determine various matters and resolve various disputes, should they arise following the entry of the Confirmation Order. Refer to Section 11.3 of the Plan for a detailed description of the matters over which the Bankruptcy Court shall retain jurisdiction in the Case.

**3. Amendment and Modification to the Plan.**

The Debtor reserves the right, in accordance with the Bankruptcy Code, to amend or modify the Plan prior to the Confirmation Date, subject to the approval of the Indenture Trustee. After the Confirmation Date, the Debtor may, upon order of the Court, amend or modify this Plan in accordance with § 1127(b), or remedy any defect or omission or reconcile

any inconsistency in this Plan in such manner as may be necessary to carry out the purposes and intent of this Plan.

#### **4. *Withdrawal and Revocation of the Plan.***

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan is revoked or withdrawn by the Debtor, or if the Effective Date does not occur with respect to the Debtor, the Plan shall be of no further force or effect.

### **V. RISK FACTORS**

**Bondholders and Holders of Claims should read and consider carefully the factors set forth below, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), prior to voting to accept or reject the Plan.**

#### **A. Risks Related to Projections and Estimates.**

This Disclosure Statement and the materials incorporated by reference herein (the “Incorporated Materials”) include “forward-looking statements” as defined in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical facts included in this Disclosure Statement and the Incorporated Materials regarding the Debtor’s financial position, including but not limited to words such as “anticipates,” “expects,” “estimates,” “believes” and “likely,” are forward-looking statements. The Debtor believes that its current views and expectations are based on reasonable assumptions; however, there are significant risks and uncertainties that could significantly affect expected results. Important factors that could cause actual results to differ materially from those in the forward-looking statements (“Cautionary Statements”) are disclosed throughout this Disclosure Statement. All subsequent written and oral forward-looking statements attributable to the Debtor, or persons acting on its behalf, are expressly qualified in their entirety by the Cautionary Statements. The Debtor does not intend to update or otherwise revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

#### **B. Objection to Classifications.**

§ 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court or other parties-in-interest will reach the same conclusion.

#### **C. Risk of Nonconfirmation of the Plan.**

Even if all Classes of Claims that are entitled to vote accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. § 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the value of Distributions

to dissenting Creditors and Interest holders not be less than the value of Distributions such Creditors and Interest holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. The Debtor believes that the Plan satisfies all the requirements for Confirmation under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for Confirmation of the Plan have been satisfied.

**D. Nonoccurrence of Effective Date of the Plan.**

Even if all Classes of Claims that are entitled to vote accept the Plan, the Effective Date for the Plan may not occur. The Plan sets forth conditions to the occurrence of the Effective Date of the Plan which may not be satisfied. The Debtor believes that it will satisfy all requirements for the occurrence of the Effective Date and the consummation required under the Plan. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for consummation of the Plan have been satisfied.

**VI. CONFIRMATION OF THE PLAN**

**A. Notice to Holders of Claims and Interests**

Approval by the Bankruptcy Court of this Disclosure Statement means that the Bankruptcy Court has found that this Disclosure Statement contains information of a kind and in sufficient and adequate detail to enable Holders of Claims to make an informed judgment whether to accept or reject the Plan.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR THEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

**B. Voting Procedures and Requirements.**

The Debtor is providing copies of this Disclosure Statement and Ballots to all known holders of Impaired Claims who are entitled to vote on the Plan.

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims that are "Impaired" under the terms and provisions of the Plan and entitled to receive a Distribution thereunder are entitled to vote to accept or reject the Plan. Accordingly, Classes of Claims that are not Impaired under the terms and provision of the Plan are *not* entitled to vote on the Plan. In addition, Classes of Claims or Interests that are not entitled to a Distribution under the terms and provisions of the Plan are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

**If you hold an Impaired Claim against the Debtor that is entitled to a Distribution under the Plan, you are entitled to vote on the Plan. If you hold more than one Impaired Claim, you are entitled to cast a vote on account of each such Claim. Some Creditors may therefore be entitled to cast more than one Ballot.**

Under the Plan, only Bondholders (who vote with respect to Classes 1 and 3) and Holders of General Unsecured Claims (who vote with respect to Class 3) (Classes 1 and 3, collectively, the “Voting Classes”) are entitled to vote to accept or reject the Plan. The holders of Claims in Class 2 are Unimpaired and are therefore presumed to have accepted the Plan and the solicitation of votes therefrom is not required under § 1126(f). The holders of Interests in Class 4 (collectively, with Classes 2, the “Non-Voting Classes”) will not receive a Distribution under the Plan. Class 4, therefore, is conclusively presumed to have rejected the Plan, and the solicitation of their votes is not required under § 1126(g).

Some holders of Claims may hold Claims in more than one Impaired Class and must vote separately for each Class. Such holders shall be sent the appropriate Ballots for each Impaired Class by the Balloting Agent.

### **C. Solicitation Materials**

The Debtor, through its voting agent, Globic Advisors, Inc. (the “Voting Agent”), will cause Bondholders and Holders of Claims in Class 3 to receive a Solicitation Package including (a) ballot (and return envelope) to be used in voting to accept or to reject the Plan, (b) the Disclosure Statement and Plan, (c) the Order Approving Disclosure Statement, (d) the notice of, among other things, (i) the date, time and place of the hearing to consider confirmation of the Plan and related matters and (ii) the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”), (e) the Sale Motion, (f) the Bidding Procedures Order, and (g) other materials as authorized by the Bankruptcy Court.

If you are a Bondholder or the holder of a Class 3 General Unsecured Claim, but you did not receive a ballot, or if your ballot is damaged or illegible, or if you have any questions concerning voting procedures, you may contact the Voting Agent as follows:

GLOBIC ADVISORS  
Attn: Robert Stevens  
880 Third Avenue, New York, NY 10022  
Telephone: (212) 227-9699  
Facsimile: (212) 271-3252  
E-mail: rstevens@globic.com

Bondholders may also wish to contact their nominee, such as their broker, bank, transfer agent, dealer, etc.

**D. Voting Procedures, Ballots and Voting Deadline for Bondholders with respect to the Claim of the Bonds (Classes 1 and 3)**

Bondholders may vote on the Plan only if they are beneficial holders of the Bonds as of the Voting Record Date, which is July 11, 2016.

Each such Bondholder has the right to vote to accept or reject the Plan with respect to the Claim of the Bonds, and such vote will be with respect to Class 1 as to the Secured Claim of the Bonds and as to Class 3 as to the Unsecured Claim of the Bonds. Such Bondholders should receive a set of Solicitation Materials (as above) that includes a Bondholder Ballot and a return envelope addressed to their broker, dealer, bank, transfer agent or similar nominee of their Bonds (“Nominee”).

If a Bondholder does not receive all of the Solicitation Materials, they are encouraged to contact the Voting Agent as above, or to contact their Nominee.

Bondholders should read the Disclosure Statement, Plan, and other documents in the Solicitation Packages in their entirety. After carefully reviewing such documents, each Bondholder should complete its Bondholder Ballot, including its vote with respect to the Plan, and return the Bondholder Ballot to the Bondholder’s Nominee as described in, and by the deadline given in, the instructions contained in the Bondholder Ballot.

IN ORDER FOR A BONDHOLDER’S VOTE TO BE COUNTED, ITS BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS CONTAINED IN THE BALLOT AND RECEIVED:

- **NO LATER THAN AUGUST 24, 2016, AT 5:00 P.M. EASTERN TIME**
- **BY THE BONDHOLDER’S NOMINEE** (*i.e.*, its Broker, Dealer, Bank, Transfer Agent or similar Nominee of its Bonds).

BONDHOLDERS SHOULD USE THE RETURN ENVELOPES INCLUDED WITH THEIR SOLICITATION MATERIALS, WHICH SHOULD BE ADDRESSED TO THE BONDHOLDER’S NOMINEE.

Bondholders will be required to vote all of their Bonds either to accept or reject the Plan. Bondholders may not split their vote.

If a Bondholder casts more than one Bondholder Ballot voting the same Bonds before the voting deadline, the last dated Bondholder Ballot received before the Voting Deadline will be deemed to reflect the Bondholder’s intent and thus will supersede its prior ballots.

UNLESS OTHERWISE PROVIDED IN THE INSTRUCTIONS ACCOMPANYING THE BALLOTS, FAXED OR EMAILED BALLOTS WILL NOT BE ACCEPTED. BALLOTS THAT ARE RECEIVED BUT NOT SIGNED WILL NOT BE COUNTED. BALLOTS THAT ARE SIGNED BUT DO NOT SPECIFY WHETHER THE HOLDER ACCEPTS OR REJECTS THE PLAN WILL BE NULL AND VOID.



**E. Voting by the holders of General Unsecured Claims (Class 3) that are not Bondholders**

For non-Bondholder holders of Claims in Class 3, all votes to accept or reject the Plan must be cast by using the form of Ballot enclosed with the Solicitation Package. No votes other than ones using such Ballots will be counted except to the extent the Bankruptcy Court orders otherwise.

The following voting procedures (the “Voting Procedures”) have been established with respect to the Ballots submitted by holders of Class 3 Claims (other than Bondholders):

1. Unless otherwise provided in the Tabulation Rules (described below), a Claim will be deemed temporarily allowed for voting purposes in an amount equal to (i) if a proof of Claim has not been timely Filed, the amount of such Claim as set forth in the Schedules, or (ii) the amount of such Claim as set forth in a timely Filed proof of Claim.

2. If a Claim is deemed Allowed in accordance with the Plan, such Claim will be temporarily allowed for voting purposes in the deemed Allowed amount set forth in the Plan.

3. If a Claim for which a proof of Claim has been timely Filed is marked in whole or in part as contingent, unliquidated or disputed on its face, such portion of the Claim that is marked as contingent, unliquidated or disputed will be temporarily allowed for voting purposes in the amount of \$1.00.

4. If a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim will be temporarily allowed for voting purposes in the amount so estimated or allowed by the Court.

5. If a Creditor casts more than one Ballot voting the same Claim before the Voting Deadline, the last dated Ballot received before the Voting Deadline will be deemed to reflect the voter’s intent and thus will supersede any prior Ballots.

6. Creditors will be required to vote all of their Claims within a particular Class under the Plan either to accept or reject the Plan and may not split their vote. A Ballot (or a group of Ballots within a Plan Class received from a single Creditor) that partially rejects and partially accepts the Plan will not be counted.

In addition, the following tabulation procedures (the “Tabulation Rules”) have been established for the tabulation of Ballots:

- (a) If a Claim Holder identifies a claim amount on its Ballot that is less than the amount otherwise calculated in accordance with these Tabulation Rules, the Claim will be temporarily allowed for voting purposes in the lesser amount identified on such Ballot.
- (b) The Balloting Agent will not accept Ballots by email or facsimile transmission.

- (c) Only Ballots that are timely received with signatures will be counted. Unsigned Ballots will not be counted.
- (d) Ballots that are otherwise validly executed, but do not indicate either acceptance or rejection of the Plan, will not be counted.
- (e) Ballots postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- (f) Ballots that are illegible, or contain insufficient information to permit the identification of the Creditor, will not be counted.
- (g) Questions as to the validity, form, eligibility (including time of receipt) acceptance and revocation or withdrawal of Ballots shall be determined by the Debtor through its Voting Agent, which determination shall be final and binding.
- (h) The Debtor reserves the right to grant extensions to the Voting Deadline with respect to individual holders of the Claims eligible to vote on the Plan, if such extension would be, in the Debtor's business judgment, in the best interest of the Debtor and its Estate.

WITH RESPECT TO HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS WHO ARE NOT BONDHOLDERS, IN ORDER TO BE COUNTED, EXCEPT TO THE EXTENT THE DEBTOR SO DETERMINES OR AS PERMITTED BY THE BANKRUPTCY COURT PURSUANT TO BANKRUPTCY RULE 3018, HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS MUST SIGN AND SEND THEIR BALLOTS SO THAT THEY ARE ACTUALLY RECEIVED BY THE VOTING AGENT NO LATER THAN 5:00 P.M. CENTRAL TIME, ON AUGUST 24, 2016

#### **BALLOTS WILL NOT BE ACCEPTED BY FACSIMILE OR EMAIL**

As mentioned above, if your Ballot is not signed and returned as described, it will not be counted. If your Ballot is damaged or lost, or if you do not receive a Ballot, you may request a replacement by contacting the Voting Agent at the foregoing address. Please follow the directions contained on the Ballot carefully.

#### **F. Acceptance.**

Acceptance of the Plan requires that each Impaired Class of Claims or Interests (as classified therein) accepts the Plan, with certain exceptions discussed below. Thus, acceptance of the Plan requires acceptance by each of the Impaired Classes.

Classes of Claims and Interests that are not Impaired under the Plan are deemed to have accepted the Plan. Acceptances of the Plan are being solicited only from those persons who hold Claims or Interests in an Impaired Class.

The Bankruptcy Code defines acceptance of the Plan by a Class of Claims as acceptance by the holders of at least two-thirds (2/3) in dollar amount and a majority in number of Claims of that Class, but for that purpose, only those Claims, the holders of which actually vote to accept or reject the Plan, are counted.

### **G. Confirmation of the Plan.**

In order to confirm the Plan, § 1129 requires the Bankruptcy Court to make a series of determinations concerning the Plan, including, without limitation: (i) that the Plan has classified Claims and Interests in a permissible manner; (ii) that the contents of the Plan complies with the technical requirements of the Bankruptcy Code; (iii) that the Debtor has proposed the Plan in good faith; and (iv) that the Debtor has made disclosures concerning the Plan which are adequate and include information concerning all payments made or promised in connection with the Plan or otherwise. The Debtor believes that all of these conditions have been or will be met with respect to the Plan.

The Bankruptcy Code requires that, unless the “cramdown” provisions of the Bankruptcy Code (as discussed below) are utilized, as a condition precedent to confirmation, the Plan be accepted by the requisite votes of each Class of Claims and Interests voting as separate Classes. Therefore, the Bankruptcy Court must find, in order to confirm the Plan, that the Plan has been duly accepted. In addition, the Bankruptcy Court must find that the Plan is feasible and that the Plan is in the “best interests” of all holders of Claims and Interests. Thus, even if holders of Claims were to accept the Plan by the requisite number of votes, the Bankruptcy Court is still required to make independent findings respecting the Plan’s feasibility and whether the Plan is in the best interests of holders of Claims and Interests.

#### ***1. The Best Interests Test.***

Whether or not the Plan is accepted by each Impaired Class of Claims entitled to vote on the Plan, in order to confirm the Plan, the Bankruptcy Court must independently determine, pursuant to § 1129(a)(7), that the Plan is in the best interests of each holder of an Impaired Claim or Interest that has not voted to accept the Plan. This requirement is satisfied if the Plan provides each non-accepting holder of a Claim or Interest in such Impaired Class a recovery on account of such holder’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the Distribution each such holder would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

To determine the value that holders of Impaired Claims and Interests would receive if the Debtor were liquidated under chapter 7, the Bankruptcy Court must determine the aggregate dollar amount that would be generated if the Debtor’s Case were converted to chapter 7 and a chapter 7 trustee liquidated the Debtor’s assets (the “Liquidation Value”). The Liquidation Value would consist of the net proceeds from the disposition of the Debtor’s assets, augmented by cash held by the Debtor and reduced by certain increased costs and claims that arise in chapter 7 that do not arise in chapter 11. For further information on the Debtor’s liquidation analysis, see Appendix “2” hereto. Based on the Liquidation Values discussed more fully in Appendix “2” hereto, the Debtor believes that the Plan provides recoveries to holders of Claims and Interests not less than - and likely greater than - the

recoveries to holders of Claims and Interests in a chapter 7 liquidation and, therefore, satisfies § 1129(a)(7).

## **2. Feasibility.**

Even if the Plan is accepted by each Class of Claims and Interests voting on the Plan, and even if the Bankruptcy Court determines that the Plan satisfies the “best interests” test, the Bankruptcy Code requires that, in order for the Plan to be confirmed by the Bankruptcy Court, the Debtor must demonstrate that consummation of the Plan is not likely to be followed by the liquidation or further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed the Debtor’s ability to meet its obligations under the Plan and determined that the Debtor and the Plan Administrator will be able to make all payments contemplated by the Plan.

## **H. Non-Acceptance and Cramdown.**

Pursuant to § 1129(b), the Bankruptcy Court may confirm the Plan despite the nonacceptance of the Plan by an Impaired Class. This procedure is commonly referred to as a “cramdown.” § 1129(b) provides that upon request of the proponent of the Plan, the Bankruptcy Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Bankruptcy Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class; (b) the Plan is “fair and equitable” with respect to each non-accepting Impaired Class; (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders); and (d) the Plan satisfies the requirements set forth in § 1129(a) other than § 1129(a)(8). In general, § 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under the Plan. Notwithstanding anything else herein, the Debtor shall not request that the Plan be confirmed under Section 1129(b) with respect to Class 1 (Claim of the Bonds) unless holders of at least 51% in principal amount of the Bonds vote in favor of the Plan, and the Indenture Trustee does not object to such treatment (*i.e.* cram down).

### **1. The Plan Is Fair and Equitable.**

The Bankruptcy Code establishes different “fair and equitable” tests for holders of Secured Claims, Unsecured Claims and Interests. As to the dissenting Class, the test sets different standards, depending on the type of Claims or Interests in such Class.

#### **(a) Secured Claims.**

With respect to a Class of Secured Claims that does not accept the Plan, the Debtor must demonstrate to the Bankruptcy Court that either (i) the holders of such Secured Claims will retain the liens securing such Claims and will receive on account of such Claim deferred Cash payments totaling at least the Allowed amount of such Claim, of a value, as of the Effective Date, of at least the value of such holder’s interest in such property; or (ii) the holders of such Claims will realize the indubitable equivalent of such Claims under the Plan.

**(b) General Unsecured Claims.**

With respect to a Class of General Unsecured Claims that does not accept the Plan, the Debtor must demonstrate to the Bankruptcy Court that either (i) each holder of a General Unsecured Claim of the dissenting Class receives or retains under the Plan property of a value equal to the Allowed amount of its General Unsecured Claim; or (ii) the holders of Claims or Interests that are junior to the Claims of the holders of such General Unsecured Claims will not receive or retain any property under the Plan.

**(c) Interests.**

With respect to a Class of Interests that does not accept the Plan, the Debtor must demonstrate to the Bankruptcy Court that (i) each holder of an Interest of the dissenting Class receives or retains, on account of such Interest, property of a value equal to the greatest of the Allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such Interest; or (ii) the holders of any Interest that is junior to the Interests of such Class will not receive or retain any property under the Plan.

The Debtor believes that the Plan is fair and equitable with respect to each Class treated therein.

**2. No Unfair Discrimination.**

A Plan “does not discriminate unfairly” with respect to a nonaccepting Class if the value of the Cash and securities to be distributed to the nonaccepting Class is equal or otherwise fair when compared to the value of Distributions to other Classes whose legal rights are the same as those of the nonaccepting Class. Since all similarly situated holders of Claims or Interests are classified together and all Claims or Interests in a given Class are treated identically, the Debtor believes the Plan does not unfairly discriminate against any Class.

**I. Confirmation Hearing / Objections to Plan.**

§ 1128(a) requires the Bankruptcy Court, after notice, to hold a confirmation hearing (the “Confirmation Hearing”). § 1128(b) provides that any party in interest may object to Confirmation of a Plan. Notice of the Confirmation Hearing will be provided to all holders of Claims and Interests and other parties in interest (the “Confirmation Notice”). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be made in writing, specifying in detail the name and address of the person or Entity objecting, the grounds for the objection, and the nature and amount of the Claim or Interest held by the objector. Objections must be Filed with the Bankruptcy Court, together with proof of service, and served upon the parties so designated in the Confirmation Notice, on or before the time and date designated in the Confirmation Notice as being the last date for serving and filing objections to Confirmation of

the Plan. Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014 and the Local Rules of the Bankruptcy Court.

## **VII. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

If the Plan is not confirmed by the Bankruptcy Court and consummated, the alternatives to the Plan include (a) the liquidation of the Debtor under chapter 7 of the Bankruptcy Code; or (b) an alternative Plan under chapter 11 of the Bankruptcy Code.

### **A. Liquidation Under Chapter 7.**

If the Plan cannot be confirmed, the Case may be converted to a case under chapter 7 of the Bankruptcy Code. In that event, a trustee would be appointed to liquidate the assets of the Debtor for Distribution to holders of Claims and Interests in accordance with the priorities established by the Bankruptcy Code. As more fully demonstrated in the Liquidation Analysis included in Appendix “2.” the Debtor believes that Confirmation of the Plan will provide each holder of a Claim entitled to receive a Distribution under the Plan with a recovery that is not less than it would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

**Accordingly, the Debtor recommends that all Creditors vote to accept the Plan.**

### **B. Alternative Plan.**

If the Plan is not confirmed, or if the Debtor’s exclusive period in which to File a plan or plan of reorganization has expired, any other party in interest may be entitled to File a different plan. However, in light of the fact that the Debtor will liquidate substantially all of its assets, the Debtor believes that no feasible plan structure could be proposed other than that contained in the Plan. The Debtor therefore believes that the Plan provides holders of Claims and Interests with the greatest value possible under the circumstances. Furthermore, the Debtor believes that any subsequently-proposed plan would likely provide a less favorable treatment than the Plan by further delaying the payment of Distributions.

## **VIII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

The Plan provides for a liquidation of the Debtor’s assets and the Distribution of the proceeds of that liquidation to the Debtor’s creditors pursuant to the terms of the Plan. All Interests in the Debtor will be withdrawn. Holders of Claims and Interests should consult their own tax advisors regarding the tax consequences of the treatment of the Claims and Interests under the Plan.

## **IX. CONCLUSION AND RECOMMENDATION**

The Debtor believes that Confirmation of the Plan is desirable and in the best interests of all holders of Claims and Interests. The Debtor therefore urges you to vote to accept the Plan.

Dated: July 18, 2016

Respectfully submitted,  
**ZERGA PHIN-KER LP**, Debtor and  
Debtor-in-Possession

/s/ Chad J. Shandler  
Chief Restructuring Officer

Prepared by:  
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**COUNSEL FOR DEBTOR AND  
DEBTOR-IN-POSSESSION**

APPENDIX "1"

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**IN RE:**

**ZERGA PHIN-KER LP,  
  
DEBTOR.**

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§

**CASE NO. 15-42087-BTR  
(Complex Chapter 11)**

**DEBTOR'S SECOND AMENDED CHAPTER 11 PLAN OF  
LIQUIDATION DATED AS OF JULY 18, 2016**

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The above-captioned Debtor and Debtor-in-possession in the above-referenced Chapter 11 bankruptcy case proposes and hereby files the *Debtor's Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016*.

## **ARTICLE 1**

### **INTRODUCTION**

#### **1.1 Introduction.**

This Plan is proposed by and on behalf of the Debtor under Chapter 11 of the Bankruptcy Code. Reference is made to the Disclosure Statement accompanying the Plan for a discussion of the Debtor's history, results of operations, historical financial information and properties, and for a summary and analysis of the Plan. All holders of Claims against the Debtor are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan.

#### **1.2 General Plan Structure; Funding Sources.**

The Plan will be funded, in large part, through (a) the Sale, through an Auction process, of substantially all of the Debtor's assets, i.e., the Property; (b) liquidation of any remaining assets of the Debtor's Estate not sold as part of the Sale, i.e., the Excluded Assets, including pursuit of Causes of Action, which may be subject to the Bondholders' vote regarding funding of the Litigation Budget included in the Wind Down Budget, and (c) the Wind Down Budget Amount. The Wind Down Budget Amount is proceeds of the Sale of the Collateral securing the Bonds, that the Debtor seeks to allocate to fund the administration of this Plan.

The execution and consummation of this Plan will be facilitated through the Plan Administrator who will be designated by the Debtor not less than ten (10) days prior to the Confirmation Hearing. The Plan Administrator shall be authorized pursuant to the terms of this Plan to act on behalf of the Debtor to administer and liquidate, as appropriate, the Debtor's remaining assets, investigate and pursue Causes of Action, and make Distributions pursuant to the terms of the Plan.

On June 28, 2016, the Debtor filed the Sale Motion seeking the Court's approval for the sale of the Property (substantially all of the Debtor's assets, including the Facilities), through an auction process. On July 18, 2016, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. 289). Pursuant to the Bidding Procedures approved by the Bidding Procedures Order, an Auction is scheduled to be held on August 29, 2016. The hearing to approve the Sale of the Property to the Prevailing Bidder selected by the Debtor will be held at the same time as the Confirmation Hearing.

The Closing of the Sale is one of the conditions precedent to the occurrence of the Effective Date of this Plan.

## **ARTICLE 2**

### **DEFINITIONS AND INTERPRETATION**

In addition to such other terms as may be defined in other provisions of the Plan, the following capitalized terms shall have the following meanings:

#### **2.1 Definitions.**

**2.1.1 “Administrative Budget”** please see defined term, “Wind Down Budget.”

**2.1.2 “Administrative Expense”** shall mean (a) any cost or expense of administration in connection with this Case of a kind specified in Sections 364(c)(1), 503(b), or 507(a)(1) of the Bankruptcy Code, including without limitation, the actual, necessary costs and expenses of preserving the Estate, including wages, salaries, or any other compensation for services rendered on or after November 20, 2015, (b) Professional Claims, and (c) all fees and charges assessed against the Estate under 28 U.S.C. § 1930.

**2.1.3 “Administrative Expense Claim Bar Date”** shall mean the thirtieth (30th) day following the Effective Date.

**2.1.4 “Allowed”** shall mean, with respect to Claims and Interests, (a) any Claim against or Interest in the Debtor, proof of which is timely Filed or by order of the Bankruptcy Court is not or will not be required to be Filed; (b) any Claim or Interest that has been or is hereafter listed in the Schedules as neither disputed, contingent, nor unliquidated, and for which no timely Filed proof of Claim has been Filed; (c) any Interest registered in the Debtor’s books and records as of the Petition Date; or (d) any Claim allowed pursuant to the Plan and, in each such case in (a), (b), and (c) above, as to which either (i) no objection to the allowance thereof has been Filed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (ii) such an objection is so Filed and the Claim or Interest shall have been allowed pursuant to a Final Order (but only to the extent so allowed).

**2.1.5 “Auction”** shall mean the auction set as part of the Bidding Procedures as approved by the Bankruptcy Court for the sale of the Property, *i.e.*, substantially all of the Debtor’s assets.

**2.1.6 “Ballot”** shall mean the ballot form on which holders of Impaired Claims entitled to vote on the Plan (other than Bondholders) indicate their acceptance or rejection of the Plan. (Bondholders will be provided a “Bondholder Ballot,” defined below, formatted with respect to the Bonds and Bondholders.)

**2.1.7 “Balloting Agent”** shall mean Globic Advisors, Inc. which will be the agent for the Debtor to prepare and send out Solicitation Packages for voting on the Plan, and to tabulate the results and certify them to the Court.

**2.1.8 “Bankruptcy Code”** shall mean the Bankruptcy Reform Act of 1978, as subsequently amended, principally codified at 11 U.S.C. §§ 101, *et seq.* Unless

otherwise stated herein or the Disclosure Statement, all references to “Section” are to the Bankruptcy Code.

**2.1.9 “Bankruptcy Court” or “Court”** shall mean the United States Bankruptcy Court for the Eastern District of Texas or, if such court ceases to exercise jurisdiction over these proceedings, the court or adjunct thereof that exercises jurisdiction over the Case.

**2.1.10 “Bankruptcy Rules”** shall mean the Federal Rules of Bankruptcy Procedure promulgated by the United States Supreme Court pursuant to 28 U.S.C. § 2075, as subsequently amended, and, where appropriate, the Local Bankruptcy Rules of the Bankruptcy Court.

**2.1.11 “Bar Date”** shall mean and be March 17, 2016, for the Filing of proofs of Claim and proofs of Interest by all parties other than governmental units, and shall mean and be May 18, 2016, for the Filing of proofs of Claims by all governmental units. The Bar Date was the last date on which proofs of Claim or proofs of Interest could be timely Filed against the Debtor.

**2.1.12 “Bidding Procedures”** shall mean the procedures for bidding at Auction to purchase the Property. The Bidding Procedures are attached to, and approved by, the Bidding Procedures Order. A copy of the Bidding Procedures is included in the Solicitation Package.

**2.1.13 “Bidding Procedures Order”** shall mean the *Order Granting Part I of the Debtor’s Motion for (I) Order (A) Approving Bidding Procedures for the Sale of All or Substantially All of Debtor’s Assets, (B) Approval of Designation of Stalking Horse Bidder and Bid Protections, (C) Approval of Procedure to Assume and Assign Executory Contracts and Unexpired Leases, and (D) Scheduling Final Sale Hearing and Approving Form and Manner of Notice Therefore; and (II) Order Authorizing and Approving the Sale of Assets Free and Clear of Liens and Other Interests* (Docket No. 289) entered on July 18, 2016.

**2.1.14 “Bond Documents”** shall mean the Indentures and all other documents related to the issuance of the Bonds.

**2.1.15 “Bondholder”** shall mean any beneficial holder of the Bonds. Beneficial holders of the Bonds as of the Voting Record Date are entitled to vote to accept or reject this Plan, and all references in this Plan or the Disclosure Statement to Bondholders voting shall refer to the beneficial holders of the Bonds as of the Voting Record Date.

**2.1.16 “Bondholder Ballot”** shall mean the form of ballot to be provided to Bondholders, to be formatted with respect to the Bonds and the Bondholders, upon which Bondholders shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the instructions regarding voting by Bondholders.

**2.1.17 “Bondholder Releasees”** shall mean each Bondholder, U.S. Bank National Association, including without limitation in its capacities as the Indenture Trustee (in turn including the Indenture Trustee’s capacities as Bond Trustee, as Master Trustee, and as DIP Lender), and each of their respective subsidiaries, affiliates, managed accounts or funds, officers, directors, shareholders, members, parents, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in their respective capacities as representatives of the Bondholders or of U.S. Bank National Association, including without limitation in its capacity as the Indenture Trustee (in turn including the Indenture Trustee’s capacities as Bond Trustee, as Master Trustee, and as DIP Lender).

**2.1.18 “Bonds”** shall mean those Red River Health Facilities Development Corporation First Mortgage Revenue Bonds (Parkview on Hollybrook Project) Series 2013A and Taxable Series 2013B. The Bonds were issued pursuant to the Indentures.

**2.1.19 “Business Day”** shall mean any day except Saturday, Sunday, or legal holiday in the State of Texas.

**2.1.20 “Case”** shall mean the Chapter 11 case filed by the Debtor, currently pending in the Bankruptcy Court assigned case number 15-42087.

**2.1.21 “Cash”** shall mean cash and cash equivalents that evidence immediately available funds, including, without limitation, currency, certified checks, cashier’s checks, or wire transfers of immediately available funds from any source or a check drawn on a domestic bank.

**2.1.22 “Cause of Action”** shall mean any action, cause of action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, and Claim, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity, or otherwise, including (a) Chapter 5 Causes of Action; (b) damages (general, exemplary, or both) relating to or based on (i) contract, fraud, negligence, gross negligence, willful misconduct, or any tort actions, (ii) violations of federal or state securities laws, (iii) violations of applicable corporate or partnership laws, (iv) breaches of fiduciary or agency duties, or (v) causes of action based upon alter ego or other liability theories; (c) damages based on any other claim of the Debtor, to the extent not specifically compromised or released pursuant to the Plan or an agreement referred to, or incorporated into, the Plan or Final Order entered after notice and opportunity for hearing; (d) any claim of the Debtor for equitable subordination under Section 510(c) of the Bankruptcy Code or under other applicable laws; (e) any claim of the Debtor to recharacterize one or more Claims as Interests; and (f) any unresolved objection to any Disputed Claim.

**2.1.23 “Chapter 5 Cause of Action”** shall mean any Cause of Action arising under Sections 510, 544 through 551, and 553 of the Bankruptcy Code or otherwise arising under the Bankruptcy Code.

**2.1.24 “Chapter 11”** shall mean Chapter 11 of the Bankruptcy Code.

**2.1.25 “Claim”** shall mean a claim against the Debtor, whether or not asserted, as defined in Section 101(5) of the Bankruptcy Code, by whatever right the Creditor may have against the Debtor.

**2.1.26 “Claim of the Bonds” / “Secured Claim of the Bonds” / “Unsecured Claim of the Bonds.”** “Claim of the Bonds” shall mean the Claim held by the Indenture Trustee on account of the Bonds and under the Indentures. As of the Petition Date, the Debtor is indebted under the Bond Documents for all outstanding principal, all accrued and unpaid interest, plus all other amounts due under the Bond Documents including without limitation the fees and expenses of the Indenture Trustee, including the fees and expenses of the Indenture Trustee’s attorneys, consultants and advisors, and the aggregate amount of which shall be an Allowed Claim of the Bonds. The Indenture Trustee has filed a proof of claim asserting a secured claim in at least the amount of \$34,879,927.52 which the Indenture Trustee asserts represent outstanding principal (\$33,910,000) and accrued unpaid interest (\$969,927.52) but does not represent the full amount owed to the Indenture Trustee under the Bond Documents. The Claim of the Bonds is secured by, among other collateral, the Property (the “Secured Claim of the Bonds”); and if the recovery on the collateral securing the Claim of the Bonds is not sufficient to satisfy the aggregate amount of the Claim of the Bonds, then the balance of the Claim of the Bonds shall be treated in accordance with Class 3 as a General Unsecured Claim (the “Unsecured Claim of the Bonds”). Although the Indenture Trustee holds the Claim of the Bonds, Bondholders hold the right to vote with respect to the Claim of the Bonds on whether to accept or to reject this Plan.

**2.1.27 “Claims Objection Deadline”** shall mean a date which is one hundred-twenty (120) days following the Effective Date but which may be further extended by Order of the Bankruptcy Court.

**2.1.28 “Class”** shall mean any group of substantially similar Claims or Interests classified by the Plan pursuant to Section 1122 of the Bankruptcy Code.

**2.1.29 “Closing”** shall mean the closing of the Sale pursuant to the PSA, this Plan as it may be confirmed, and the Sale Order.

**2.1.30 “Collateral”** shall mean any property of the Debtor or the Debtor’s Estate, or any interest of Debtor’s or its Estate’s, that is subject to a Lien to secure the payment of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code.

**2.1.31 “Confirmation”** shall mean the entry of a Confirmation Order.

**2.1.32 “Confirmation Date”** shall mean the date on which the Confirmation Order is entered on the docket for the Case maintained by the Clerk of the Bankruptcy Court.



**2.1.33 “Confirmation Hearing”** shall mean the hearing held by the Bankruptcy Court regarding Confirmation of the Plan, as such may be continued from time to time, pursuant to Section 1129 of the Bankruptcy Code.

**2.1.34 “Confirmation Order”** shall mean the order signed by the Court and caused to be entered that confirms this Plan pursuant to Section 1129 of the Bankruptcy Code.

**2.1.35 “Creditor”** shall mean any Entity that is the holder of a Claim that arose on or before the Petition Date or a Claim of the kind specified in Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**2.1.36 “DIP”** shall mean Debtor-in-possession.

**2.1.37 “DIP Lender”** shall mean the Indenture Trustee solely in its capacity as the lender of the DIP Loan, pursuant to, without limitation, the Final DIP Order.

**2.1.38 “DIP Loan”** shall mean the post-petition secured superpriority loan(s) made by the DIP Lender to the Debtor and approved by the Bankruptcy Court pursuant to the Final DIP Order.

**2.1.39 “Debtor”** shall mean Zerga Phin-Ker LP.

**2.1.40 “Deficiency Claim”** shall mean the amount by which an Allowed Claim exceeds the value of any Collateral securing such Claim as may be determined by the Bankruptcy Court in accordance with Section 506(a) of the Bankruptcy Code. A Deficiency Claim is a General Unsecured Claim but only if the holder of the Claim had recourse against the Debtor prior to any foreclosure on the Collateral.

**2.1.41 “Disclosure Statement”** shall mean that certain *Second Amended Disclosure Statement in Support of the Debtor’s Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016* accompanying this Plan, as approved by the Bankruptcy Court for distribution pursuant to Section 1125 of the Bankruptcy Code and the Order Approving Disclosure Statement, together with any amendments or modifications thereto.

**2.1.42 “Disputed Claim”** shall mean the portion (including, when appropriate, the whole) of a Claim that is not an Allowed Claim as to which: (a) a proof of Claim has been Filed, or deemed Filed under applicable law or order of the Bankruptcy Court; (b) an objection has been or may be timely Filed; and (c) such objection has not been (i) withdrawn, (ii) overruled or denied in whole or in part pursuant to a Final Order, or (iii) granted in whole or part pursuant to a Final Order. Before the time that an objection has been or may be Filed, a Claim shall be considered a Disputed Claim (A) if the amount or classification of the Claim specified in the proof of Claim exceeds the amount or classification of any corresponding Claim scheduled by the Debtor in the Schedules, to the extent of such excess, (B) in its entirety, if any corresponding Claim scheduled by the Debtor has been scheduled as disputed, contingent, or unliquidated in the Schedules, or

(C) in its entirety, if no corresponding Claim has been scheduled by the Debtor in its Schedules. It may also refer to a Disputed Claim in a specified Class. For example, a Disputed General Unsecured Claim is a Disputed Claim in the General Unsecured Claims Class.

**2.1.43 “Distribution”** shall mean any property delivered or payment made under the Plan.

**2.1.44 “Effective Date”** shall mean a Business Day selected by the Debtor that is the first Business Day on which all conditions to the occurrence of the Effective Date have been satisfied or duly waived, including without limitation confirmation of the Plan and the Confirmation Order having become unappealable.

**2.1.45 “Entity”** shall mean any individual, corporation, partnership, joint venture, association, joint stock company, unincorporated organization, estate, trust, governmental unit, or other entity, including the Debtor and the United States Trustee, whether singular or plural.

**2.1.46 “Estate”** shall mean the bankruptcy estate created in this Case pursuant to Section 541 of the Bankruptcy Code.

**2.1.47 “Excluded Assets”** shall mean assets of the Debtor’s Estate that are not purchased by the Prevailing Bidder pursuant to the PSA. The Excluded Assets are listed in the PSA, and include all Causes of Action belonging to the Debtor’s Estate, including all of the Chapter 5 Cause of Action. The PSA containing the list of the Excluded Assets from the PSA is included in the Solicitation Package.

**2.1.48 “Face Amount”** shall mean (a) with respect to a particular Claim, (i) if the Claim is listed in the Schedules and the holder of such Claim has not Filed a proof of Claim within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules, or other applicable law, the amount of such Claim that is listed in the Schedules as not disputed, contingent, or unliquidated, or (ii) if the holder of such Claim has Filed a proof of Claim with the Bankruptcy Court within the applicable period of limitation fixed by the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules, or other applicable law, the liquidated amount stated in such proof of Claim, or such amount as is determined by the Final Order of the Bankruptcy Court; (b) in the case of an Administrative Expense, the liquidated amount set forth in any application Filed with respect thereto, or the amount set forth in the Debtor’s books and records or such amount as is determined pursuant to a Final Order; or (c) in all other cases, zero or such amount as shall be fixed or estimated pursuant to a Final Order.

**2.1.49 “Facilities”** shall mean the uncompleted senior retirement facility in the City of Longview, Gregg County, Texas, to be known as “Parkview on Hollybrook,” consisting of 126 independent living units, an assisted living and memory care facility, and common areas.

**2.1.50 “File” or “Filed” or “Filing”** shall mean file or filed or filing with the Bankruptcy Court in this Case.

**2.1.51 “Final DIP Order”** shall mean the *Final Order (I) Authorizing Debtor to Obtain Senior Secured Super-Priority Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 363, 364 and 507, and (II) Granting Adequate Protection to Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364*, entered by the Bankruptcy Court on February 26, 2016 (Docket No. 143).

**2.1.52 “Final Order”** shall mean an order or judgment of a court that has not been reversed, amended, vacated, or stayed and as to which (a) the time to appeal or to seek certiorari or review has expired and as to which no appeal or petition for certiorari or review has been timely filed, or (b) any timely filed appeal or petition for certiorari or review has been finally determined or dismissed; *provided, however*, that the possibility or reality that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed relating to such order, shall not cause such order not to be a Final Order.

**2.1.53 “General Unsecured Claim”** shall mean any Claim that is not an Administrative Expense, a Priority Tax Claim, the Secured Claim of the Bonds, or a Secured Tax Claim. General Unsecured Claim includes Deficiency Claims.

**2.1.54 “Governmental Unit”** shall have the meaning set forth in Section 101(27) of the Bankruptcy Code.

**2.1.55 “Impaired”** shall have the meaning as set forth in Section 1124 of the Bankruptcy Code.

**2.1.56 “Indenture Trustee”** shall mean U.S. Bank National Association in either or both of its capacities as master trustee under the Master Indenture/Deed of Trust (the “**Master Trustee**”) and as bond trustee (the “**Bond Trustee**”) under Bond Indenture under which the Bonds were issued. Indenture Trustee may also refer to the Indenture Trustee in its capacity as lender of the DIP Loan pursuant to the Final DIP Order. Notwithstanding anything else herein, this Plan applies and shall apply to U.S. Bank National Association solely in its capacity as Indenture Trustee, unless explicitly stated otherwise. (See also the definition of “Indentures.”)

**2.1.57 “Indenture Trustee Bar Date”** shall have the meaning given in Section 5.5 of this Plan.

**2.1.58 “Indentures” / “Master Indenture/Deed of Trust” / “Bond Indenture.”** “**Indentures**” shall mean the Master Trust Indenture, Deed of Trust and Security Agreement, dated as of June 1, 2013, between the Debtor and U.S. Bank National Association as Master Trustee, which was filed and recorded in the Official Public Records of Gregg County, Texas, on July 5, 2013, as supplemented and amended by that Supplemental Indenture Number 1 dated as of the same date (together the “**Master Indenture/Deed of Trust**”) and the Indenture of Trust dated as of June 1, 2013,

between the Red River Health Facilities Development Corporation and U.S. Bank National Association as Bond Trustee (the “**Bond Indenture**”) under which the Bonds were issued. (See also the definition of “Indenture Trustee.”)

**2.1.59 “Interest”** shall mean any membership interest in the Debtor.

**2.1.60 “Lien”** shall mean any security interest, charge against, encumbrance on, or other interest in property, the purpose of which is to secure payment of a debt or performance of an obligation.

**2.1.61 “Litigation Budget”** please see defined term, “Wind Down Budget.”

**2.1.62 “Liquidating Debtor”** shall be how the Debtor will be referred to after the Confirmation of the Plan and occurrence of the Effective Date.

**2.1.63 “Order Approving Disclosure Statement”** shall mean that *Order Approving Debtor’s Disclosure Statement, Setting Confirmation Hearing and Fixing Time for Filing Acceptances and Rejections of Debtor’s Plan of Liquidation* entered by the Bankruptcy Court on July \_\_, 2016 (Docket \_\_\_\_).

**2.1.64 “Order Establishing Indenture Trustee Bar Date”** shall have the meaning given in Section 5.5 of this Plan.

**2.1.65 “Petition Date”** shall mean November 20, 2015, the date on which the Case was commenced.

**2.1.66 “Plan”** shall mean this the *Debtor’s Second Amended Chapter 11 Plan of Liquidation Dated as of July 18, 2016*, including any amendments or modifications hereto as may hereafter be Filed in accordance with the requirements of Section 1127 of the Bankruptcy Code.

**2.1.67 “Plan Administrator”** shall mean the person appointed and designated as the Plan Administrator effective on the Effective Date, and any successor Plan Administrator appointed as provided herein.

**2.1.68 “Plan Documents”** shall mean the agreements, documents, and instruments entered into on or as of the Effective Date as contemplated by, and in furtherance of, the Plan (including all documents necessary to consummate the Sale of the Property and other transactions contemplated in the Plan), copies of which shall be available upon request to Debtor’s counsel.

**2.1.69 “Prevailing Bidder”** shall mean the entity who is reasonably selected by the Debtor in consultation with the Indenture Trustee as having made the highest and best offer for the purchase of the Property at the conclusion of the Auction, such that the Debtor intends to execute the PSA with such Prevailing Bidder and intends to present both the Prevailing Bidder and its PSA to the Bankruptcy Court for approval at the Sale Hearing.

**2.1.70 “Priority Non-Tax Claim”** shall mean a Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment under Section 507(a) of the Bankruptcy Code.

**2.1.71 “Priority Tax Claim”** shall mean a Claim entitled to priority in payment pursuant to Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

**2.1.72 “Professional”** shall mean each Entity either (a) employed by an order of the Court in accordance with Sections 327 or 1103 of the Bankruptcy Code providing for compensation for services rendered prior to the Effective Date pursuant to Sections 327, 328, 329, 330, and 331 of the Bankruptcy Code; or (b) seeking compensation and reimbursement pursuant to Section 503(b)(2) or (4) of the Bankruptcy Code.

**2.1.73 “Professional Claim”** shall mean an Administrative Expense Claim of a Professional for (a) compensation or reimbursement of actual and necessary costs and expenses relating to services provided after the Petition Date and prior to and including the Effective Date, or (b) for compensation and reimbursement that is allowed by the Bankruptcy Court pursuant to Section 503(b)(2) or (4) of the Bankruptcy Code.

**2.1.74 “Property”** shall mean substantially all of the Debtor’s assets, including the Facilities, but not including the Excluded Assets. The Property is being sold to the Prevailing Bidder pursuant to the PSA, the Sale Motion, and this Plan.

**2.1.75 “PSA”** shall mean that purchase and sale agreement executed between the Debtor and the Prevailing Bidder for the purchase of the Property which the Debtor will present to the Bankruptcy Court for approval at the Sale Hearing.

**2.1.76 “Regulatory Agreement” or “LURA”** shall mean that Regulatory and Land Use Restriction Agreement dated as of June 1, 2013, as amended, among the Red River Health Facilities Development Corporation, the Bond Trustee, and the Debtor.

**2.1.77 “Rejection Claim”** shall mean any Claim arising from the rejection of any executory contract or unexpired lease pursuant to this Plan, including, but not limited to, any Claim of (a) a lessor for damages resulting from the rejection of a lease of real property as any such Claim shall be calculated in accordance with Section 502(b)(6) of the Bankruptcy Code; or (b) an employee for damages resulting from the rejection of an employment agreement as any such Claim shall be calculated in accordance with Section 502(b)(7) of the Bankruptcy Code. A Rejection Claim shall constitute a General Unsecured Claim.

**2.1.78 “Rejection Damages Bar Date”** shall mean, unless otherwise established by Final Order of the Bankruptcy Court, the date established pursuant to Section 365 of the Bankruptcy Code but in no event later than thirty (30) days after the Effective Date.

**2.1.79 “Released Parties,” or each a “Released Party”** shall mean, (a) the Debtor’s Chief Restructuring Officer employed by Final Order of the Court in the Case and each consultant, financial advisor, attorney, accountant, and other representative of

the Debtor, and (b) each Bondholder, U.S. Bank National Association, including without limitation in its capacities as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender), and each of their respective subsidiaries, affiliates, managed accounts or funds, officers, directors, shareholders, members, parents, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in their respective capacities as representatives of the Bondholders or of U.S. Bank National Association, including without limitation in its capacity as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender).

**2.1.80 “Sale”** shall mean the sale of the Property to the Prevailing Bidder pursuant to the PSA, the Auction, and the Sale Motion, to be considered for approval by the Bankruptcy Court at the Sale Hearing, and pursuant to the terms of this Plan as it may be confirmed, and the Sale Order.

**2.1.81 “Sale Hearing”** shall mean the hearing held by the Bankruptcy Court to consider Part II of the Sale Motion, *i.e.*, approval of the Sale of the Property to the Prevailing Bidder pursuant to the PSA and the Auction.

**2.1.82 “Sale Motion”** shall mean the *Debtor's Motion for (I) Order (A) Approving Bidding Procedures for the Sale of All or Substantially All of Debtor's Assets, (B) Approval of Designation of Stalking Horse Bidder and Bid Protections, (C) Approval of Procedure to Assume and Assign Executory Contracts and Unexpired Leases; and (D) Scheduling Final Sale Hearing and Approving Form and Manner of Notice Therefore; and (II) Order Authorizing and Approving the Sale of Assets Free and Clear of Liens and Other Interests* (Docket No. 246) filed on June 28, 2016.

**2.1.83 “Schedules”** shall mean the schedules of assets and liabilities and the statement of financial affairs Filed by the Debtor under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007 on December 15, 2015 (Docket Nos. 28 and 29) and as subsequently amended on February 11, 2016 (Docket No. 112) and on July 1, 2016 (Docket Nos. 252 and 253).

**2.1.84 “Secured Claim”** shall mean a Claim that arose before the Petition Date, to the extent secured by a Lien or other security interest on property of the Debtor, which Lien is valid, perfected, and enforceable under applicable law and which is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law and which is duly established in the Case, to the extent of the value of such property (a) as set forth in the Plan, (b) as agreed to by the holder of such Claim and the Debtor, or (c) as determined pursuant to a Final Order in accordance with Section 506(a) or, as applicable, Section 553 to the extent of such setoff.

**2.1.85 “Secured Claim of the Bonds”** shall have the meaning given under “Claim of the Bonds.”

**2.1.86 “Secured Tax Claim”** shall mean a Secured Claim of a Governmental Unit for property taxes assessed or for property taxes if and to the extent that the Lien securing such Claim attached under applicable law before the commencement of the Case.

**2.1.87 “Solicitation Package”** shall mean the package sent by the Balloting Agent to Bondholders and to Holders of Claims in Class 3, including (a) ballot (and return envelope) to be used in voting to accept or to reject the Plan, (b) the Disclosure Statement and Plan, (c) the Order Approving Disclosure Statement, (d) the notice of, among other things, (i) the date, time and place of the hearing to consider confirmation of the Plan and related matters and (ii) the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”), (e) the Sale Motion, (f) the Bidding Procedures Order, and (g) other materials as authorized by the Bankruptcy Court.

**2.1.88 “Unclaimed Property”** shall mean any Distribution made to the Holder of an Allowed Claim pursuant to the Plan that is returned to the Debtor or the Liquidating Debtor as undeliverable and no appropriate forwarding address is received prior to the date on which the Final Decree is entered in the Case. Unclaimed Property shall include: (a) checks (and the funds represented thereby) mailed to an address of a holder of an Allowed Claim and returned as undeliverable without a proper forwarding address; (b) funds for uncashed checks; and (c) checks (and the funds represented thereby) not mailed or delivered because no address to mail or deliver such property was available.

**2.1.89 “Unimpaired”** shall mean a Claim that is not Impaired.

**2.1.90 “Voting Deadline”** shall mean August 24, 2016, at 5:00 p.m. Eastern time, the deadline by which Ballots and Bondholder Ballots must be received by the Balloting Agent, in order for such Ballots to be counted as voting in favor of or against the Plan. The Voting Deadline is established by the Bankruptcy Court in the Order Approving Disclosure Statement.

**2.1.91 “Voting Procedures”** shall mean the procedures for submitting a Ballot to vote for or against the Plan as described in the Disclosure Statement.

**2.1.92 “Voting Record Date”** shall mean July 11, 2016, as established in the Order approving the Disclosure Statement.

**2.1.93 “Wind Down Budget”** shall mean that budget funded from the proceeds of the Sale of the Property, i.e., from the Collateral securing the Claim of the Bonds, and established as follows. The Wind Down Budget shall be divided into two sections, the Administrative Budget and the Litigation Budget. The “Administrative Budget” includes such amounts as are required to administratively wind down and close the Debtor’s estate (*e.g.*, file final tax returns) and must be in amounts acceptable to the Indenture Trustee, but such amounts shall not include any amounts to fund litigation costs or the liquidation of the Excluded Assets. The “Litigation Budget” provides for a capped amount only for expenses incurred related to the investigation or pursuit of claims or Causes of Action; legal fees related to the investigation or pursuit of claims or Causes

of Action shall not be funded from the Wind Down Budget. The Plan Administrator shall seek other options of funding legal fees for the pursuit of claims or Causes of Action. Such alternative funding source or option may include, but shall not be limited to, contingent fee arrangements. The Wind Down Budget shall not include amounts for Distributions to holders of Allowed Claims. The Wind Down Budget shall constitute a first priority secured debt and obligation of the Debtor and/or the Liquidating Debtor to the Indenture Trustee, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor's Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other payment being made from the Debtor's Estate.

**2.1.94 “Wind Down Budget Amount”** shall mean the total amount of the Administrative Budget approved by the Indenture Trustee and the Litigation Budget approved by the Bondholders. The Wind Down Budget Amount shall be used in accordance with the Wind Down Budget.

## **2.2 Interpretation, Rules of Construction, and Other Terms.**

**2.2.1** Any term used in this Plan that is not defined herein, whether in this article or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules and shall be construed in accordance with the rules of construction thereunder.

**2.2.2** The words “herein,” “hereto,” “hereunder,” and others of similar import, refer to the Plan as a whole and not to any particular article, section, or clause contained in this Plan.

**2.2.3** Unless specified otherwise in a particular reference, a reference in this Plan to an article or section is a reference to that article or section of this Plan.

**2.2.4** Unless otherwise provided for herein, any reference in this Plan to an existing document or instrument means such document or instrument as it may have been amended, modified, or supplemented from time to time.

**2.2.5** As contextually appropriate, each term stated in either the singular or plural shall include both the singular and the plural.

**2.2.6** In addition to the foregoing, the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply to this Plan.

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



**2.2.8** All exhibits to this Plan are incorporated into this Plan, and shall be deemed to be included in this Plan, provided that they are Filed with the Court at least fifteen business days prior to the Voting Deadline.

### **ARTICLE 3**

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

#### **3.1 Administrative Expenses and Priority Tax Claims.**

As provided in Section 1123(a) of the Bankruptcy Code, Administrative Expenses and Priority Tax Claims shall not be classified for purposes of voting or receiving Distributions under the Plan. Rather, all such claims shall be treated separately as unclassified claims on the terms set forth in this Plan.

#### **3.2 Classes of Claims and Interests.**

A Claim or Interest is in a particular Class only to the extent the Claim or Interest is an Allowed Claim or Allowed Interest as defined herein. For purposes of organization, voting, and all Confirmation matters, except as otherwise provided herein, all Claims (except for Administrative Expenses and Priority Tax Claims) and Interests shall be classified as follows:

| <b><u>CLASSES OF CLAIMS</u></b> |  |  |   |                           |
|---------------------------------|--|--|---|---------------------------|
| <b>Class</b>                    | <b>Type of Allowed Claim or Interest</b> | <b>Treatment</b>   | <b>Status</b>   | <b>Estimated Recovery</b> |
| 1                               | Secured Claim of the Bonds               | <p>The Indenture Trustee will receive the proceeds realized from the Sale of the Property net of amount to repay in full the DIP Loan and net of the Wind Down Budget Amount. The Wind Down Budget Amount shall be repaid in full prior to any disbursement to any other class. In the event such net proceeds of the Sale of the Property are not sufficient to satisfy the entire Claim of the Bonds, the remaining balance shall constitute the Unsecured Claim of the Bonds and be treated as a Class 3 General Unsecured Claim, receiving a <i>pro rata</i> share of any distribution available to Class 3.</p> <p><b>BONDHOLDERS MAY NOT RECOVER ALL AMOUNTS DUE WITH RESPECT TO THEIR BONDS UNDER THIS PLAN.</b></p> <p>See Section 5.1 below for a more complete description of the treatment of the Claim of the Bonds.</p> | <p>Impaired.<br/>Entitled to vote.</p> <p>(Although the Claim of the Bond is held by the Indenture Trustee, Bondholders, rather than the Indenture Trustee, vote to accept or reject the Plan with respect to the Claim of the Bonds as it pertains to both Class 1 (Secured) and Class 3 (Unsecured). Bondholders are also entitled to vote on the Litigation Budget proposed by the Debtor, because it would be funded by the Collateral of the Bonds.)</p> | Approximately 40%         |
| 2                               | Secured Tax Claims                       | For Year 2016 Secured Tax Claims, paid in the ordinary course by the Prevailing Bidder.  | Unimpaired;<br>Deemed to accept Plan.   | 100%                      |
| 3                               | General Unsecured Claims                 | Paid pro rata share of remaining assets after Distributions to Classes 1 and 2 and repayment of the Wind Down Budget.  | Impaired.<br>Entitled to vote.  | Unknown                   |
| 4                               | Interests in the Debtor                  | No Distribution.   | Impaired.<br>Deemed to reject Plan.   | 0%                        |

**ARTICLE 4**  
**TREATMENT OF CERTAIN UNCLASSIFIED CLAIMS**

**4.1 Administrative Expenses.**

**4.1.1** Administrative Expenses shall include the DIP Loan. The DIP Lender shall receive 100% of the amount of the DIP Loan in Cash at Closing of the Sale. The full amount of the DIP Loan is deemed Allowed and shall be paid from the proceeds of the Sale.

**4.1.2** On or before the Effective Date, the Debtor shall pay all amounts owing to the Professionals for all outstanding Professional Claims that have been awarded by the Bankruptcy Court but which were unpaid as of the Effective Date. On or prior to the Administrative Expense Claim Bar Date, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. The Debtor shall pay any outstanding amounts owed to a Professional within ten (10) days after entry of a Final Order with respect to such Professional's final fee application. Any amounts previously paid to a Professional, but not supported by the Final order with respect to such Professional's final fee application, shall be paid directly to the DIP Lender within ten (10) days after entry of such Order.

**4.1.3** Each holder of an Allowed Administrative Expense Claim other than the DIP Loan and Professional Claims shall receive 100% of the unpaid Allowed amount of such Administrative Expense in Cash in the ordinary course of business or as soon as reasonably practicable after the later of (i) payment in full of the DIP Loan, or (ii) the date on which the Administrative Expense becomes Allowed.

**4.1.4** Applications for allowance and payment of Administrative Expenses that have not been paid, released, or otherwise settled must be filed on or before the Administrative Expense Claim Bar Date or forever be barred from doing so.

**4.1.5** Allowed Administrative Expenses and Allowed Professional Claims, but excluding the DIP Loan, shall be paid from the Administrative Budget included in the Wind Down Budget.

**4.1.6** Notwithstanding any other provision of the Plan, all fees, expenses, and other compensation arising after the Effective Date and due and payable to professionals retained by the Plan Administrator shall be paid by the Plan Administrator from the Wind Down Budget Amount in accordance with the Wind Down Budget.

**4.1.7** All trade payables and current liabilities associated with the Property that arose in the ordinary course of business on or after the Closing shall be paid by the Prevailing Bidder in the ordinary course of business.

## **4.2 Priority Tax Claims.**

Each holder of an Allowed Priority Tax Claim shall receive on account of such Allowed Priority Tax Claim payment in full in Cash of such Allowed Priority Tax Claim pursuant to the terms of the PSA at Closing of the Sale or as soon as practicable after the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, and to the extent interest is required to be paid on any Allowed Priority Tax Claim, the rate of such interest shall be the rate determined under applicable non-bankruptcy law.

## **4.3 Payment of Statutory Fees.**

All fees payable on or before the Effective Date (a) pursuant to 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing; and (b) to the United States Trustee, shall be paid by the Debtor on or before the Effective Date. All such fees payable after the Effective Date shall be paid by the Plan Administrator.

## **4.4 Disallowance of Special Taxes.**

The issuance, transfer, or exchange of a security as defined under the Bankruptcy Code or applicable law, or the making or delivery of any instrument of transfer under this Plan shall not be taxed under any state or local law imposing a stamp tax or similar tax as provided in Section 1146 of the Bankruptcy Code.

# **ARTICLE 5**

## **CLAIM OF THE BONDS**

## **5.1 Claim of the Bonds.**

The Claim of the Bonds consists of the Claim held by the Indenture Trustee on account of the Bonds and under the Indentures. As of the Petition Date, the Debtor is indebted under the Bond Documents for all outstanding principal, all accrued and unpaid interest, plus all other amounts due under the Bond Documents including without limitation the fees and expenses of the Indenture Trustee, including the fees and expenses of the Indenture Trustee's attorneys, consultants and advisors, and the aggregate amount of which shall be an Allowed Claim of the Bonds. The Indenture Trustee has filed a proof of claim asserting a secured claim in at least the amount of \$34,879,927.52 which the Indenture Trustee asserts represent outstanding principal (\$33,910,000) and accrued unpaid interest (\$969,927.52) but does not represent the full amount owed to the Indenture Trustee under the Bond Documents. All findings of fact and conclusions of law in the Final DIP Order pertaining to the Bonds, Bond Documents, and the trust estates established under the Indentures, including the property held in such trust estates, are incorporated herein.

The Claim of the Bonds is secured by, among other collateral, the Property (the "Secured Claim of the Bonds"); and if the recovery on the collateral securing the Claim of the Bonds is not sufficient to satisfy the total amount of the Claim of the Bonds, then the balance of the Claim of the Bonds shall be treated in accordance with Class 3 as a General Unsecured Claim (the "Unsecured Claim of the Bonds").

## 5.2 Voting the Claim of the Bonds.

Although the Claim of the Bonds is held by the Indenture Trustee, it is voted by the beneficial holders of the Bonds as of the Voting Record Date. Such Bondholders have the right to vote, as a class, to accept or reject this Plan with respect to the Claim of the Bonds.

Bondholders are the only parties who vote with respect to Class 1, the Secured Claim of the Bonds. With respect to an Unsecured Claim of the Bonds, the Bondholders' vote will also be tallied in Class 3 (General Unsecured Claims) along with other unsecured creditors.

Pursuant to section 1126(c) of the Bankruptcy Code, all Bondholders shall be deemed to have accepted this Plan if (a) with regard to the collective amount of Bonds that are actually voted, the beneficial holders of at least two-thirds in aggregate principal amount of such Bonds have voted to accept the Plan, and (b) with regard to the Bondholders who actually vote, more than one-half in number of such Bondholders have voted to accept the Plan.

## 5.3 Recovery on the Claim of the Bonds.

The Claim of the Bonds is Impaired.

On the Secured Claim of the Bonds (Class 1), the Indenture Trustee shall receive the proceeds realized from the Sale of the Sale Property, net of repayment in full of the DIP Loan (which repayment is made to the Indenture Trustee as DIP Lender) and net of the Wind Down Budget Amount.

There will be an Unsecured Claim of the Bonds if, as is expected, the proceeds of the Sale of the Sale Property received by the Indenture Trustee are not sufficient to satisfy the entire Claim of the Bonds. In that event, the remaining balance of the Claim of the Bonds shall be treated as a General Unsecured Claim in Class 3 and shall receive a *pro rata* share of any distribution made to Class 3. Bondholders are alerted that the Unsecured Claim of the Bonds in Class 3 may receive no payment or only partial payment, and that any payment on the Unsecured Claim of the Bonds may not be made for several years.

The full amount of the DIP Loan shall be repaid to the Indenture Trustee (as DIP Lender) at closing of the Sale

**BONDHOLDERS MAY NOT RECOVER  
ALL AMOUNTS DUE WITH RESPECT  
TO THEIR BONDS UNDER THIS PLAN.**

The Indenture Trustee shall deposit all amounts received under this Plan into the appropriate fund(s) or account(s) within the trust estates established under the Indentures. All amounts held by the Indenture Trustee, whether currently in the possession of the Indenture Trustee or received pursuant to this Plan or Case, constitute and shall constitute property of the trust estates established under the Indentures. The Trustee shall retain and/or disburse all such amounts subject to the terms and provisions of the Indentures and in accordance with the Final DIP Order and this Plan.

The recovery on the Claim of the Bonds under this Plan shall be the total recovery that the Indenture Trustee shall receive on account of the Bonds and shall be in full settlement and discharge of the Claim of the Bonds. Other than the recovery on the Claim of the Bonds under this Plan, the Indenture Trustee shall not receive any further amounts on account of the Bonds.

#### **5.4 Wind Down Budget.**

The Wind Down Budget Amount shall be funded from the proceeds of the Sale of the Property, i.e., from the Collateral of the Bonds.

The Wind Down Budget shall be attached to the Disclosure Statement and form part of the Solicitation Package. The Wind Down Budget shall be divided into two sections: the “**Administrative Budget**,” meaning such amounts as are required to administratively wind down and close the Debtor’s estate (e.g., file final tax returns) and must be in amounts acceptable to the Indenture Trustee, but such amounts shall not include any amounts to fund litigation costs or the liquidation of the Excluded Assets; and the “**Litigation Budget**,” which provides for a capped amount only for expenses incurred related to the investigation or pursuit of claims or Causes of Action; legal fees related to the investigation or pursuit of claims or Causes of Action shall not be funded from the Wind Down Budget. The Plan Administrator shall seek other options of funding legal fees for the pursuit of Causes of Action. Such alternative funding source or option may include, but shall not be limited to, contingent fee arrangements. No speculation can be made as to whether the Liquidating Debtor would be sufficiently successful in liquidating the Excluded Assets that a significant Distribution would be made to Class 3, General Unsecured Claims. If a Distribution could be made to Class 3, then the Indenture Trustee would receive the *pro rata* share of such Distribution allocated to the Unsecured Claim of the Bonds.

The Wind Down Budget shall constitute a first priority secured debt and obligation of the Debtor and/or the Liquidating Debtor to the Indenture Trustee, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor’s Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other payment being made from the Debtor’s Estate.

Bondholders are notified that the Wind Down Budget Amount may not be repaid, or may be repaid only in part, and that any repayment of the Wind Down Budget Amount may not be made for several years.

#### **5.5 Bar Date for Claims against the Indenture Trustee.**

The Indenture Trustee intends to file a motion with the Bankruptcy Court to seek a bar date to be established for the assertion of any claims against U.S. Bank arising in its role as Indenture Trustee or otherwise with regard to the Bonds (the “**Indenture Trustee Bar Date**”). The Indenture Trustee will seek to have the Indenture Trustee Bar Date established prior to confirmation of the Plan by separate order of the Court or as part of the Confirmation Order (in either case, the “**Order Establishing Indenture Trustee Bar Date**”). If the Order Establishing

Indenture Trustee Bar Date is entered, parties in this Case shall be given at least thirty days' notice of the Indenture Trustee Bar Date.

The Indenture Trustee Bar Date, if one is set, shall be prior to the date of the distribution made by the Indenture Trustee to the Bondholders. If any claims are timely asserted against U.S. Bank, then no distribution shall be made to the Bondholders, except in the sole discretion of the Indenture Trustee, until all such claims against U.S. Bank have been resolved and are not subject to appeal.

By service of the Order Establishing Bar Date, the Indenture Trustee shall give parties in this Case at least thirty days' notice of such bar date. The Indenture Trustee shall cause Holders of the Bonds to receive at least thirty days' notice of such bar date. No claim against the Indenture Trustee shall be deemed "asserted" unless a lawsuit is both filed and served on both the Indenture Trustee and its counsel before the expiration of the Bar Date. Any claims not asserted by a Bondholder or by a party in this Case prior to the expiration of the 30 day notice period shall be deemed waived and shall be forever barred.

The establishment of the Indenture Trustee Bar Date is a condition precedent to the occurrence of the Effective Date of this Plan.

## **5.6 Cancellation of the Bonds and Distribution(s) on the Bonds.**

After the closing of the Sale and the Indenture Trustee's receipt of repayment of the DIP Loan and the proceeds of the Sale (as described in Section 5.1.3), the Indenture Trustee shall take the following actions:

(a) Reserve an amount to fund the fees, costs and expenses expected to be incurred by the Indenture Trustee, including without limitation, fees, costs and expenses related to this Bankruptcy Case, to any litigation proposed by the Debtor, and to any other litigation arising out of the Facilities or the Bonds or otherwise asserted against or involving the Indenture Trustee.

(b) Distribute all other amounts held under the Indentures and/or with regard to the Bonds, including the payment of proceeds of Sale and the repayment of the DIP Loan, in accordance with the terms and provisions of the Indentures, as follows: *first*, to payment of the fees, costs, and expenses of the Indenture Trustee, including the fees and expenses of its counsel; and *second*, all remaining amounts to partial payment of the principal and interest then due and unpaid upon all of the Bonds, without preference or priority of principal over interest or of interest over principal, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest (the "Sale Closing Distribution to Bondholders"). The Sale Closing Distribution to Bondholders may be the final distribution on the Bonds.

(c) Cause the Bonds to be cancelled and of no further force or effect, concurrently with the Sale Closing Distribution to Bondholders. Notwithstanding the foregoing or anything else in this Plan, (i) the Claim of the Bonds shall not be

cancelled and shall remain a debt and obligation of the Debtor, payable as a General Unsecured Claim to the Indenture Trustee; and (ii) the Wind Down Budget Amount shall be a debt and obligation of the Debtor, secured by a first-priority lien on all assets of the Debtor (as in Section 8.3 on the Wind Down Budget).

(d) If monies subsequently become available to the Indenture Trustee, whether from repayment of the Wind Down Budget Amount, distribution to Class 3 General Unsecured Creditors, or monies reserved by the Indenture Trustee but not disbursed (see (a) above), then the Indenture Trustee will make one or more additional disbursements. Such disbursements will be in accordance with (b) above, and will be made on a date and in an amount determined by the Indenture Trustee in its sole discretion and subject to the terms of the Indentures, and will be made to the beneficial holders of the Bonds as of the same record date as the Sale Closing Distribution to Bondholders.

(e) The Indenture Trustee will post notice to Bondholders (the “Final Notice to Bondholders”) when no matters or issues are outstanding with respect to the Indenture Trustee or the Bonds. Without limitation, the Final Notice to Bondholders will be posted only when the Debtor has provided notice that it has completed its efforts to liquidate the assets excluded from the Sale, when the Indenture Trustee is not involved in and does not anticipate any litigation as described in (a) above, and when no further monies will be available for disbursement to Bondholders..

## **5.7 Bond Documents.**

Upon the closing of the Sale, the Master Indenture shall be terminated and released solely to the extent that it constitutes a deed of trust and lien upon the Facilities.

Provided that neither the Debtor nor any related person within the meaning of Section 1.103-10(e) of the Regulations (the applicable Income Tax Regulations promulgated under the Internal Revenue Code, as more fully set forth in the Regulatory Agreement) has obtained an ownership interest in the Facilities for tax purposes, a termination of the Regulatory Agreement shall be executed and delivered by the Indenture Trustee, Debtor and the new owner of the Sale Property. The form of the termination shall be reasonably acceptable to each of them and to the Authority. The termination will be recorded in the Official Records of Gregg County, Texas.

On and after the Effective Date, the Bond Documents will continue in effect (except as to the Master Indenture and Regulatory Agreement, as provided above); however, provisions of the Bond Documents that are inapplicable in light of this Plan will not be enforced by the Indenture Trustee.

The Indentures and other Bond Documents shall be deemed terminated as of the date set forth in the Final Notice to Bondholders, except as to provisions that by their terms survive termination of the applicable Bond Document. As of such termination date set forth in the Final Notice to Bondholders, all obligations of the Indenture Trustee under the Indentures, with regard

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to the Bonds, or under or with relation to this Plan, shall be deemed terminated and forever discharged.

## **ARTICLE 6**

### **TREATMENT OF CLASSES**

#### **6.1 Class 1 – Secured Claim of the Bonds**

Class 1 shall consist of the Secured Claim of the Bonds. As more specifically set forth herein, and without in any way limiting other express terms of this Plan, the Distributions provided in this section are in full settlement, release, and discharge of the Class 1 Secured Claim of the Bonds (provided, however, that the Unsecured Claim of the Bonds may remain outstanding and payable under Class 3, and repayment of the full Wind Down Budget Amount to the Trustee shall be accomplished prior to any distribution to Class 3).

On the Secured Claim of the Bonds (Class 1), the Indenture Trustee shall receive the proceeds realized from the Sale of the Property, net of repayment in full of the DIP Loan (which repayment is made to the Indenture Trustee as DIP Lender) and net of the Wind Down Budget Amount.

Class 1 is impaired. Although the Claim of the Bonds is held by the Indenture Trustee, Bondholders as of the Voting Record Date are entitled to vote to accept or reject the Plan with respect to the Claim of the Bonds. See Section 5.2 above with regard to voting the Claim of the Bonds.

#### **6.2 Class 2 – Secured Tax Claims.**

Class 2 shall consist of Allowed Secured Tax Claims. Unless otherwise agreed by the holder of the Allowed Secured Tax Claim, following the Effective Date, the holder of the Allowed Secured Tax Claim shall receive for Year 2016 Secured Tax Claims, payment in ordinary course of business by the Prevailing Bidder or as otherwise provided under the PSA. As more specifically set forth in, and without any way limiting other express terms of, this Plan, the Distributions provided in this section are in full settlement, release, and discharge of each such holder's Class 2 Secured Tax Claims.

Class 2 is Unimpaired. The holders of any Allowed Secured Tax Claims shall be deemed to have accepted the Plan, and votes to accept or reject the Plan will not be solicited from holders of Class 2 Claims.

#### **6.3 Class 3 – General Unsecured Claims.**

Class 3 shall consist of all General Unsecured Claims. Distributions shall be paid pro rata to holders of Allowed General Unsecured Claims from all remaining property of the Debtor after liquidation of such property and after repayment of the Wind Down Budget Amount to the Indenture Trustee, until all Allowed General Unsecured Claims are paid in full or all of the Debtor's property has been distributed. Distributions to holders of Allowed Class 3 Claims shall be made at such time or times that the Plan Administrator, in his discretion, determines that a

Distribution to holders of Allowed Class 3 Claims is appropriate, taking into consideration the number and amount of Class 3 Claims that remain in dispute. As more specifically set forth in, and without any way limiting other express terms of, this Plan, the Distributions provided in this section are in full settlement, release, and discharge of each such holder's Class 3 General Unsecured Claims.

Claims have been filed against the Debtor alleging to be secured by the property of the Debtor. The Debtor has reviewed such Claims and believes that they are subordinate and junior to the security interests and liens held by the Indenture Trustee and securing the Claim of the Bonds. Without limitation, the Debtor believes that the claim alleged by HMC, to the extent it is an Allowed Claim, is contractually subordinate and junior to the Claim of the Bonds. Based on the Debtor's extensive marketing efforts over the course of this Case, the Debtor believes that the results of the Sale will be substantially less than the Claim of the Bonds. As a result, Allowed Claims other than the Claim of the Bonds are expected to be wholly unsecured, and thus would be included in Class 3, General Unsecured Claims.

Class 3 shall include any Deficiency Claim portion of the Secured Claim of the Bonds to the extent the proceeds from the Sale of the Property are not adequate to pay the Secured Claim of the Bonds in full.

Class 3 is Impaired. Holders of Allowed General Unsecured Claims shall be entitled to vote to accept or reject the Plan.

#### **6.4 Class 4— Holders of Interests.**

Class 4 shall consist of the Allowed Interests. Holders of Interests will receive no Distribution on account of their Interests and such Interests shall be deemed cancelled as of the Effective Date. As more specifically set forth in, and without any way limiting other express terms of, this Plan, the Distributions provided in this section are in full settlement, release, and discharge of each such holder's Class 4 Interests.

Class 4 is Impaired. Holders of Interests shall be deemed to have rejected the Plan.

### **ARTICLE 7** **CONDITIONS TO OCCURRENCE OF THE EFFECTIVE DATE**

#### **7.1 Conditions Precedent to Occurrence of the Effective Date.**

In addition to any other conditions set forth in this Plan, the following are conditions precedent to the occurrence of the Effective Date:

**7.1.1** The Confirmation Order shall have been entered and become a Final Order in form and substance satisfactory to the Debtor and the Indenture Trustee.

**7.1.2** Execution of any other Plan Documents by the Debtor and necessary to effectuate the transactions contemplated in the Plan, subject to the approval of the Indenture Trustee.

**7.1.3** The Order from the Bankruptcy Court approving the Sale of the Property to the Prevailing Bidder shall have been entered and become a Final Order.

**7.1.4** The Sale shall have Closed.

**7.1.5** The Wind Down Budget shall have been approved and agreed to by the Indenture Trustee.

**7.1.6** The Order from the Bankruptcy Court establishing the Indenture Trustee Bar Date shall have been entered and become a Final Order.

**7.1.7** The Debtor, with the consent of the Indenture Trustee, may waive one or more of the conditions to the occurrence of the Effective Date.

## **7.2 Notice of Occurrence of Effective Date.**

No later than one (1) business day after the day selected by the Debtor to be the Effective Date, the Debtor shall File a notice with the Bankruptcy Court announcing the occurrence of the Effective Date.

# **ARTICLE 8 PLAN IMPLEMENTATION**

## **8.1 General Matters.**

The Debtor shall take such action as is necessary under the laws of the State of Texas, federal law, and other applicable law to effect the terms and provisions of the Plan and the Plan Documents.

## **8.2 Post-Effective Date Governance.**

On the Effective Date, automatically and without further action, (a) any and all remaining officers or directors or managing partners of the Debtor shall be deemed to have resigned or withdrawn; and (b) the Plan Administrator shall have all right and authority necessary, as an officer or a representative of the Debtor and pursuant to the authority given to him in this Plan, to wind up the Debtor.

## **8.3 Wind Down Budget**

The Wind Down Budget Amount shall be funded from the proceeds of the Sale of the Property, i.e., from the Collateral of the Bonds.

The Wind Down Budget shall be attached to the Disclosure Statement and form part of the Solicitation Package. The Wind Down Budget shall be divided into two sections: the “**Administrative Budget**,” meaning such amounts as are required to administratively wind down and close the Debtor’s estate (*e.g.*, file final tax returns) and must be in amounts acceptable to the Indenture Trustee, but such amounts shall not include any amounts to fund litigation costs or the

liquidation of the Excluded Assets; and the “**Litigation Budget**,” which provides for a capped amount only for expenses incurred related to the investigation or pursuit of claims or Causes of Action. Legal fees related to the investigation or pursuit of claims or Causes of Action shall not be funded from the Wind Down Budget. The Plan Administrator shall seek other options of funding legal fees for the pursuit of Causes of Action. Such alternative funding source or option may include, but shall not be limited to, contingent fee arrangements. No speculation can be made as to whether the Liquidating Debtor would be sufficiently successful in liquidating the Excluded Assets that a significant Distribution would be made to Class 3, General Unsecured Claims. If a Distribution could be made to Class 3, then the Indenture Trustee would receive the *pro rata* share of such Distribution allocated to the Unsecured Claim of the Bonds.

The Wind Down Budget shall constitute a first priority secured debt and obligation of the Debtor and/or the Liquidating Debtor to the Indenture Trustee, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor’s Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other distributions to creditors being made from the Debtor’s Estate.

Bondholders are notified that the Wind Down Budget Amount may not be repaid, or may be repaid only in part, and that any repayment of the Wind Down Budget Amount may not be made for several years.

## **8.4 Continuing Existence.**

**8.4.1** Except as otherwise specifically provided in the Plan, all property of the Debtor shall remain with the Debtor to be administered and Distributed pursuant to the terms of the Plan. Upon the occurrence of the Effective Date, pursuant to Section 1141(b), the Debtor shall hold the property and assets of its Estate subject to the security interest and lien of the Indenture Trustee with respect to the Wind Down Budget and Wind Down Budget Amount. Any unused portion of the Wind Down Budget Amount shall be promptly transferred by the Debtor to the Indenture Trustee.

**8.4.2** Upon the Effective Date, the Debtor shall be thereafter referred to as the Liquidating Debtor and the Debtor’s Estate shall be referred to as the Liquidating Debtor Estate. From the Effective Date, the Liquidating Debtor shall continue in existence, to the extent necessary, for the purpose of facilitating the efforts of the Plan Administrator, including, but not limited to, the following: (a) wind up the remaining affairs of the Liquidating Debtor; (b) liquidate, by conversion to Cash or other methods, any remaining assets of the Liquidating Debtor Estate as expeditiously as reasonably possible; (c) enforce and prosecute claims, interests, rights, and privileges of the Liquidating Debtor; (d) resolve Disputed Claims; (e) administer the Plan, including distributing all Cash in repayment of the Wind Down Budget Amount and then to holders of Allowed Claims in accordance with the Plan; and (f) file appropriate tax returns, if any. The Wind Down Budget Amount shall be used in accordance with the Wind Down Budget. The Wind Down Budget Amount shall be a first priority lien on and security interest against the

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Debtor's and/or the Liquidating Debtor's Estate, payable to the Indenture Trustee prior to any other payment or any Distribution to any Class being made by the Debtor or the Liquidating Debtor, and the Indenture Trustee shall also have a super priority claim for the amount of the Wind Down Budget. The Wind Down Budget Amount shall be secured by a first priority lien on and security interest in all property of the Debtor or of the Debtor's Estate. The Wind Down Budget Amount shall be repaid to the Indenture Trustee in full prior to any other payment being made from the Liquidating Debtor Estate.

**8.4.3** Unless otherwise set forth in this Plan, upon the liquidation of all assets of the Liquidating Debtor pursuant to the Plan, the payment of all amounts due to be paid by the Debtor or Liquidating Debtor under the Plan, and the filing by the Plan Administrator of a certification to that effect with the Bankruptcy Court, the Liquidating Debtor shall be deemed dissolved for all purposes without the necessity for any further actions to be taken by or on behalf of the Liquidating Debtor or payments to be made in connection therewith; *provided, however*, that the Plan Administrator shall file with the appropriate state authority a certificate of cancellation. From and after the Effective Date, the Liquidating Debtor shall not be required to file any document, or take any other action, to withdraw its business operation from any state in which the Liquidating Debtor was previously conducting its business operations.

## **8.5 Plan Administrator.**

**8.5.1** The Plan Administrator shall be designated ten (10) days prior to the Confirmation Hearing. The Plan Administrator shall be deemed appointed upon entry of the Confirmation Order without further motion, application, notice, hearing, or other order of the Bankruptcy Court.

**8.5.2** On and after the Effective Date, the Plan will be administered by the Plan Administrator on behalf of the Liquidating Debtor and all actions taken thereunder in the name of the Liquidating Debtor shall be taken through the Plan Administrator.

**8.5.3** After the Effective Date, the Plan and all remaining property of the Liquidating Debtor Estate shall be managed under the direction of the Plan Administrator as provided by the terms of the Plan. In the performance of his duties hereunder, the Plan Administrator shall have the rights and powers of a debtor-in-possession under Section 1107 of the Bankruptcy Code, and such other rights, powers, and duties incident to causing performance of the obligations under the Plan or otherwise as may be reasonably necessary, including, without limitation, the filing of any necessary tax returns.

**8.5.4** From and after the Effective Date, the Plan Administrator may, among other things, use, pledge, acquire, and/or dispose of any Liquidating Debtor Estate's property free of the restrictions imposed under the Bankruptcy Code and without prior Bankruptcy Court approval, provided that it is entirely in conformance with this Plan and that the Bankruptcy Court retains jurisdiction over the Plan Administrator and this Plan.

**8.5.5** The Confirmation Order shall provide the Plan Administrator with express authority to convey, transfer, and assign any and all property of the Liquidating Debtor Estate consistent with the terms of the Plan and to take all actions necessary to effectuate same.

**8.5.6** The Plan Administrator shall cause the Wind Down Budget Amount to be repaid in full, to the extent funds are available, to the Indenture Trustee, and after the Wind Down Budget Amount has been paid in full, shall make all other Distributions as and when provided for under the Plan.

**8.5.7** The Plan Administrator shall have sole responsibility for making Distributions under the Plan and pursuing Causes of Action (including Chapter 5 Causes of Action) on behalf of the Liquidating Debtor and the Liquidating Debtor Estate, and the reasonable fees and expenses of the Plan Administrator that are within the Wind Down Budget shall be paid from the Wind Down Budget Amount. The Plan Administrator shall also have standing to monitor and seek to enforce the performance of obligations under the Plan and the performance of other provisions of the Plan the treatment of Claims.

## **8.6 Payment of Fees and Expenses to Plan Administrator.**

The Plan Administrator may employ on behalf of himself, the Liquidating Debtor, and the Liquidating Debtor Estate, without Bankruptcy Court order, professional persons, as such term is used in the Bankruptcy Code, to assist the Plan Administrator to carry out the duties under this Plan. The Plan Administrator and his professionals shall be entitled to reimbursement of their reasonable and necessary expenses incurred in carrying out his duties under the Plan before any Distributions are required to be made to any Creditors. The Plan Administrator and his professionals shall be compensated at their respective standard hourly rates for time spent administering the implementation of the Plan and the resolution of objections to Claims, if any are asserted, without further motion or application to the Bankruptcy Court. Compensation to the Plan Administrator and his professionals shall be made from the Wind Down Budget Amount subject to the Wind Down Budget.

## **8.7 Liquidation of Assets.**

On and after the Effective Date, the Plan Administrator may, without the approval of the Bankruptcy Court, use, sell, assign, transfer, abandon, or otherwise dispose of at a public or private sale any remaining property of the Liquidating Debtor Estate thereof for the purpose of liquidating and converting such assets to Cash, repaying the Wind Down Budget Amount, making Distributions, and administering and fully consummating the Plan.

## **8.8 Reports**

The Plan Administrator shall provide monthly reports to the Indenture Trustee which reports shall provide a summary of all actions taken and expenditures made in each line item in the Wind Down Budget in the prior month.

## **8.9 Investments.**

All Cash held by the Plan Administrator in any accounts or otherwise shall be invested in accordance with Section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court, and such account shall be held for the benefit of the Indenture Trustee.

## **8.10 Accounts.**

The Plan Administrator may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of the Plan. To the extent reasonably possible, the Plan Administrator shall attempt to indemnify the funds in accordance with Section 345 of the Bankruptcy Code.

## **8.11 Indemnification.**

The Liquidating Debtor shall, to the fullest extent permitted by Texas law, indemnify and hold harmless the Plan Administrator 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.

## **8.12 Resignation, Replacement, or Termination of Plan Administrator.**

From and after the Effective Date the Plan Administrator or his successor shall continue to serve in his capacity as the sole officer, director, and responsible person of the Liquidating Debtor through the earlier of (a) the date the Liquidating Debtor is dissolved in accordance with the Plan; and (b) the date the Plan Administrator resigns or is replaced or terminated. In the event that the Plan Administrator resigns or is terminated or is unable to serve, a successor shall be appointed by the Plan Administrator; provided, however, that the Indenture Trustee retains the right to challenge the successor Plan Administrator in the Bankruptcy Court.

## **8.13 Effectiveness of Securities, Instruments, and Agreements.**

On the Effective Date, the Plan Administrator, on behalf of the Liquidating Debtor, shall be authorized to take all actions necessary to execute and deliver all Plan Documents issued or entered into pursuant to the Plan, including, without limitation, any agreement entered into or instrument issued or in connection with any of the foregoing or any other Plan Document.

## **8.14 Approval of Agreements.**

The solicitation of votes on the Plan shall be deemed a solicitation for the approval of the Plan Documents and all transactions contemplated by the Plan. Entry of the Confirmation Order shall constitute approval of the Plan Documents and such transactions and authorization for the Plan Administrator and the Debtor, as appropriate, to execute and deliver each of the Plan Documents; provided, however, that all documents pertaining to the Sale shall be subject to the Sale Hearing and the Sale Order.

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**8.15 Cancellation and Surrender of Existing Securities; Cancellation of Indentures.**

On the Effective Date, all promissory notes, stock and/or bond certificates, or other instruments evidencing a Claim or Interest shall be canceled and the holders thereof shall have no rights by reason thereof, and such instruments shall evidence no rights, except the right to receive the Distributions, if any, to be made to holders of such instruments under the Plan.

**8.16 Release of Liens and Perfection of Liens.**

Except as otherwise provided in the Plan, any Plan Document, the Confirmation Order, or the Sale Order: (a) each holder of a judgment shall on the Effective Date (i) turn over and release to the Plan Administrator any and all Collateral that secures or purportedly secures such Claim, as they pertain to the properties currently owned or leased by the Liquidating Debtor or such Lien shall automatically, and without further action by the Liquidating Debtor or the Plan Administrator, be deemed released, and (ii) execute such documents and instruments as the Liquidating Debtor or the Plan Administrator may request to evidence such Claim holder's release of such property or Lien; and (b) on the Effective Date, all right, title, and interest in any and all property of the Debtor constituting Excluded Assets shall vest in the Liquidating Debtor subject to the security interest and lien of the Indenture Trustee on account of the Wind Down Budget. Any such holder of a judgment that fails to execute and deliver such release of Liens within thirty (30) days of the Effective Date shall be deemed to have no further Claim against the Liquidating Debtor or its assets or property in respect of such Claim and shall not participate in any Distribution hereunder. *Provided, however,* notwithstanding the immediately preceding sentence, any holder of a Disputed Claim shall not be required to execute and deliver such release until such time as the holder's Claim is Allowed or Disallowed.

**8.17 Further Transactions.**

On the Effective Date, the Plan Administrator and the Liquidating Debtor, as applicable, shall execute and deliver such further documents, instruments, and agreements as are necessary to effectuate and further evidence the terms and conditions of the Plan.

**8.18 Entry of Final Decree.**

As soon as is practicable after the Effective Date, the Plan Administrator shall File an application with the Clerk of the Bankruptcy Court requesting the entry of a Final Decree closing the Case; *provided, however,* the Plan Administrator shall not File an application for Final Decree until and unless the conditions to the Plan becoming effective as set forth herein have been fully met, all pending Causes of Action have been resolved by Final Order of a court of competent jurisdiction or abandoned, and objections to Disputed Claims have been resolved by Final Order of the Bankruptcy Court.

**8.19 Retention of Rights to Pursue Causes of Action.**

**8.19.1** Pursuant to Section 1123(b)(3) of the Bankruptcy Code, as of the Effective Date, the Plan Administrator (as the representative of the Liquidating Debtor's Estate) shall retain and have the exclusive right to enforce against any Entity any and all Causes



of Action (including Chapter 5 Causes of Action) that otherwise belong to the Debtor and arose before the Effective Date, including all Causes of Action of a trustee and debtor-in-possession under the Bankruptcy Code, other than those expressly released or compromised as part of or pursuant to the Plan or by other orders of the Bankruptcy Court entered prior to the Effective Date. The Causes of Action retained hereby include, without limitation, all claims and Causes of Action listed or referenced in the Disclosure Statement and/or in any of the Plan Documents.

**8.19.2** The Plan Administrator (as the representative of the Liquidating Debtor Estate) shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's Estate, other than those expressly released or compromised as part of or pursuant to the Plan or by other orders of the Bankruptcy Court entered prior to the Effective Date. . No claim, right, Cause of Action, or other Asset shall be deemed waived or otherwise forfeited by virtue of the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan unless otherwise ordered by the Bankruptcy Court.

**8.19.3** The Liquidating Debtor and the Plan Administrator will continue to review payments made by and transactions involving the Debtor prior to the Petition Date to determine whether preference and other actions to avoid such payments and transactions should be brought. Failure to specifically identify potential actions in the Plan shall not be deemed a waiver of any such action by the Debtor or any other party.

## **ARTICLE 9**

### **DISPUTED CLAIMS, DISPUTED INTERESTS, AND MISCELLANEOUS DISTRIBUTION PROVISIONS**

#### **9.1 Objections.**

An objection to the allowance of a Claim (other than an Administrative Expense) or Interest shall be in writing and may be Filed only by the Plan Administrator, on behalf of the Liquidating Debtor, at any time on or before the Claims Objection Deadline. *Provided, however,* that nothing herein shall prevent a party-in-interest from objecting to Claims at their own expense. The Plan Administrator, on behalf of the Liquidating Debtor, will prosecute any such objection until determined by a Final Order unless the Plan Administrator (a) compromises and settles such objection to a Claim or Interest by written stipulation subject to Bankruptcy Court approval, if necessary, or (b) withdraws such objection. The Plan Administrator shall have the authority to settle or compromise any Claim or Interest that would result in a Distribution of less than \$20,000 without seeking approval of the Bankruptcy Court. Any such compromise or settlement that would result in a Distribution of \$20,000 or more shall require the approval of the Bankruptcy Court.

## **9.2 Amendments to Claims; Claims Filed After the Confirmation Date.**

Except as otherwise provided in the Plan, after the Confirmation Date, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court and, even with such Bankruptcy Court authorization, may be amended by the holder of such Claim solely to decrease, but not to increase, the Face Amount thereof. Except as otherwise provided in the Plan, any new or amended Claim Filed after the Confirmation Date shall be deemed Disallowed in full and expunged without any action by the Debtor or the Plan Administrator.

## **9.3 Distributions.**

The Plan Administrator shall make Distributions to the holders of Allowed Claims on the terms set forth herein.

## **9.4 Distributions on Account of Disputed Claims.**

No Distributions will be made on a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. In determining the amount of Distributions to be made under the Plan to the holders of Allowed Claims on the Effective Date or a Distribution Date, the appropriate Distributions shall be made as if all the Disputed Claims as of such Distribution Date were Allowed Claims in the full amount claimed by the holders thereof, unless otherwise ordered or estimated by the Bankruptcy Court.

## **9.5 Disputed Claim Reserves.**

**9.5.1** The Plan Administrator shall reserve for the account of each holder of a Disputed Claim in the Disputed Claim Reserve Account (a) Liquidating Debtor Estate property that would otherwise be distributable to such holder on such date in accordance with the Plan were such Disputed Claim an Allowed Claim on such date, or (b) such other property as may be agreed upon between the applicable holder of the Disputed Claim and the Plan Administrator. Property reserved under this section shall be set aside and, to the extent practicable, held by the Plan Administrator in an interest bearing account to be established and maintained by the Plan Administrator pending resolution of such Disputed Claims; *provided, however*, that Cash shall be invested in a manner consistent with the requirements of Section 345 of the Bankruptcy Code or as otherwise ordered by the Bankruptcy Court. All interest accruing on funds held in the Disputed Claim Reserve Account shall become part of the Liquidating Debtor Estate's property. To the extent a Disputed Claim becomes an Allowed Claim, the property reserved for the holder thereof shall be distributed by the Plan Administrator to such holder as soon as practicable after such Claim becomes an Allowed Claim pursuant to, and to the extent provided for in, the Plan. To the extent an objection to a Disputed Claim is upheld or a Claim is withdrawn or reduced, the reserves held on account of such Disputed or withdrawn Claim shall be paid pro rata to the holders of Allowed Claims in such class on the next Distribution date. When all Disputed Claims have been resolved and corresponding Distributions made thereon, any amounts remaining in the Disputed Claim Reserve Account shall be paid pro rata to holders of Allowed Claims in such Class. The

Disputed Claim Reserve shall not be funded from the sale of the Property or from the Wind Down Budget.

**9.5.2** For purposes of effecting the reserve provisions of this section and the Distributions of Cash to holders of Allowed Claims, upon a request for estimation by the Debtor or the Plan Administrator, the Bankruptcy Court will determine what amount of Cash is sufficient to reserve on account of any Disputed Claim not otherwise treated in the Plan, pursuant to Section 502 of the Bankruptcy Code or other applicable law, in which event the amount so determined will be reserved on account of such Disputed Claim for purposes of the Plan, or, in lieu thereof, the Bankruptcy Court will determine the maximum amount for such Disputed Claim, which amount will be the maximum amount in which such Claim may ultimately be Allowed, if such Claim is Allowed in whole or in part. If no such estimation is requested with respect to a liquidated Disputed Claim, the Plan Administrator will reserve Cash in the Disputed Claim Reserve Account based on the Face Amount of such Claim until the Claim is Allowed by an order of the Bankruptcy Court, at which time the reserve amount pending a Final Order may be the amount so Allowed.

## **9.6 Undeliverable or Unclaimed Distributions.**

**9.6.1** If a check issued by the Plan Administrator for Cash Distribution under the Plan is not cashed within ninety (90) days after issuance, at the discretion of the Plan Administrator, a stop payment order may be given with respect to the check and at the election of the Plan Administrator, no further Distribution shall be made to such holder on account of such Allowed Claim. Such Allowed Claim shall be expunged, discharged and forever barred from assertion against the Liquidating Debtor or the Liquidation Debtor Estate.

**9.6.2** If the Distribution to any holder of an Allowed Claim is returned to the Plan Administrator as undeliverable, no further Distribution will be made to such holder unless and until the Plan Administrator is notified in writing of such holder's current address; *provided, however*, that the Plan Administrator shall make reasonable efforts to contact the holder of such Allowed Claim, identify the correct mailing address, and resend the Distribution. All requests for the resend of a Distribution that is returned as undeliverable must be made before ninety (90) days after the date the first Distribution was made which was returned as undeliverable. After such ninety (90) days, the Allowed Claim of such holder shall be expunged, discharged and forever barred notwithstanding any federal or state escheatment laws to the contrary.

**9.6.3** No Cash Distribution of less than \$100 shall be made by the Plan Administrator.

## **9.7 Allocation of Consideration.**

The aggregate consideration to be distributed to a holder of an Allowed Claim under the Plan shall be treated as first satisfying an amount equal to the stated principal amount of

such Allowed Claim and any remaining consideration as satisfying accrued but unpaid interest, if any, thereon.

## **9.8 Transmittal of Distributions and Notices.**

**9.8.1** Any property or notice other than Cash Distributions made through this Plan in forms other than a check which an Entity is or becomes entitled to receive pursuant to the Plan shall be delivered by regular mail, postage prepaid, in an envelope addressed to that Entity at the address indicated on any notice of appearance Filed by that Entity or his authorized agent prior to the Effective Date. If no notice of appearance has been Filed, notice shall be sent to the address indicated on a properly Filed proof of Claim or, absent such a proof of Claim, the address that is listed on the Schedules for that Entity. The date of Distribution shall be the date of mailing, and property distributed in accordance with this section shall be deemed delivered to such Entity regardless of whether such property is actually received by that Entity.

**9.8.2** A holder of a Claim or Interest may designate a different address for notices and Distributions by notifying the Debtor or, following the Effective Date, the Plan Administrator, of that address in writing. The new address shall be effective upon receipt by the Debtor or Plan Administrator, as the case may be.

## **9.9 Method of Cash Distributions.**

Any Cash payment to be made pursuant to the Plan may be made, at the option of the Plan Administrator, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law; provided that payment or Distribution to the Indenture Trustee shall be by wire transfer, using wire transfer instructions provided by the Indenture Trustee.

## **9.10 Distributions on Non-Business Days.**

Any Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

## **9.11 Withholding Taxes.**

Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. The Plan Administrator shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Cash Distribution to a holder of an Allowed Claim shall be treated as part of the Distribution to such holder. All holders of an Allowed Claim shall be required to provide any information necessary to effect information reporting and withholding of such taxes. Each holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Distribution. If a request is made by the Plan Administrator to the holder of an Allowed

Claim to complete forms related to withholding taxes and the holder of such Allowed Claim fails to comply with the request within ninety (90) days, such Allowed Claim shall be expunged, discharged and forever barred from assertion against the Liquidating Debtor or the Liquidation Debtor Estate. Notwithstanding this paragraph, no payment or Distribution to the Indenture Trustee shall have any taxes or other amounts withheld.

#### **9.12 Setoffs.**

Except as otherwise provided in the Plan, agreements entered into in connection with the Plan, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor or the Plan Administrator may, but will not be required to, setoff against any Claim and the Distributions made with respect to the Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights, and Causes of Action of any nature that a Debtor may hold against the holder of such Claim; *provided, however*, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other action or omission of a Debtor, nor any provision of the Plan, shall constitute a waiver or release by the Debtor of any such claims, rights, and Causes of Action that the Debtor may possess against such holder. To the extent the Debtor fails to setoff against a holder of a Claim or Interest and the Plan Administrator seeks to collect a claim from the holder of such Claim or Interest after a Distribution to the holder of such Claim or Interest pursuant to the Plan, the Plan Administrator shall be entitled to full recovery on its claim, if any, against the holder of such Claim or Interest

#### **9.13 Charitable Gift.**

If at any time the Plan Administrator determines that the expense of administering the assets of the Liquidating Debtor Estate so as to make a final Distribution on Allowed Claims is likely to exceed the value of the assets remaining in the estate, or the amount of Cash is not sufficient for a pro rata Distribution to the holders of Allowed Claims, the Plan Administrator shall pay such amount to the Indenture Trustee, unless the Wind Down Budget Amount and the Claim of the Bonds have been paid in full. If the Wind Down Budget Amount and the Claim of the Bonds have been paid in full, then the Plan Administrator shall have the authority to (i) reserve any amounts necessary to close the Case, (ii) donate any balance to a non-denominational charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code that is unrelated to the Plan Administrator, and (iii) close the Case in accordance with the Bankruptcy Code or Bankruptcy Rules.

#### **9.14 Distributions to the Indenture Trustee on Account of the Allowed Secured Claim of the Bonds.**

Distribution with regard to the Class 1 Secured Claim of the Bonds shall be made by the Plan Administrator to the Indenture Trustee. Distribution with regard to the Allowed Deficiency Claim of the Secured Claim of the Bonds shall also be made by the Plan Administrator to the Indenture Trustee. All amounts received by the Indenture Trustee shall be treated as in Article 5 above.

## **ARTICLE 10**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **10.1 Rejection of Executory Contracts.**

**10.1.1** On the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party that have not otherwise been previously assumed or rejected pursuant to a Final Order of the Court or which are otherwise listed on Exhibit "A" hereto shall be deemed rejected without further notice or order.

**10.1.2** The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to Section 365 of the Bankruptcy Code, effective as of the Petition Date. Any party to an executory contract or unexpired lease identified for rejection as provided herein may, within the same deadline and in the same manner established for Filing objections to Confirmation, file any objection thereto. Failure to file any such objection within the time period set forth above shall constitute consent and agreement to the rejection.

#### **10.2 Bar Date for Filing Rejection Claims.**

If the rejection of an executory contract or unexpired lease pursuant to this Plan gives rise to a Rejection Claim by the other party or parties to such contract or lease, such Rejection Claim, to the extent that it is timely Filed, shall be classified as a General Unsecured Claim; *provided, however*, any Rejection Claim arising from the rejection of an executory contract or unexpired lease shall be forever barred and shall not be enforceable against the Debtor, the Estate, or after the Effective Date, the Liquidating Debtor and the Liquidating Debtor Estate, unless a proof of Rejection Claim is Filed and served on the Debtor or the Plan Administrator, as applicable, by the Rejection Damages Bar Date (which Rejection Damages Bar Date is thirty (30) days after the Effective Date). The Plan Administrator shall file any objection to a Rejection Claim on or before the Claims Objection Deadline.

## **ARTICLE 11**

### **RELEASES; INDEMNIFICATION; PLAN INJUNCTION**

#### **11.1 Releases.**

**11.1.1** Except as otherwise specifically provided by the Plan, the Distributions and rights that are provided in the Plan shall be in complete satisfaction and release, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, of (a) all Claims and Causes of Action against, liabilities of, liens on, obligations of and Interests in, the Debtor and the assets and properties of the Debtor, whether known or unknown; and (b) all Causes of Action (whether known or unknown, either directly or derivatively through the Debtor) against, Claims (as defined in Section 101 of the Bankruptcy Code) against, liabilities (as guarantor of a Claim or otherwise) of, Liens on the direct or indirect assets and properties of, and obligations of successors and assigns of, the Debtor and its successors and assigns based on the same subject matter as any Claim or Interest or based on any act or omission, transaction, or other activity or

security, instrument, or other agreement of any kind or nature occurring, arising, or existing prior to the Effective Date that was or could have been the subject of any Claim or Interest, in each case regardless of whether a proof of Claim or Interest was Filed, whether or not Allowed and whether or not the holder of the Claim or Interest has voted on the Plan. Notwithstanding anything herein to the contrary, nothing in this Plan shall constitute a satisfaction and release of any cause of action against any of the Debtor's current or former officers and directors of Claims arising prior to the Petition Date.

**11.1.2** Effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, in its own capacity and as debtor in possession, shall be deemed to have forever released unconditionally, waived and discharged, and hereby is deemed to release unconditionally, waive, and discharge on such date (a) its Chief Restructuring Officer employed by Final Order of the Court in the Case and each consultant, financial advisor, attorney, accountant, and other representative of the Debtor, and (b) each Bondholder, U.S. Bank National Association, including without limitation in its capacities as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender), and each of their respective subsidiaries, affiliates, managed accounts or funds, officers, directors, shareholders, members, parents, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in their respective capacities as representatives of the Bondholders or of U.S. Bank National Association, including without limitation in its capacity as the Indenture Trustee (in turn including the Indenture Trustee's capacities as Bond Trustee, as Master Trustee, and as DIP Lender) ((a) and (b), collectively, the "Released Parties", or each a "Released Party"), from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon or related to any act or omission, transaction, event, or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtor, taking place on or prior to the Effective Date in any way relating to the Debtor, the Case, the Plan, the Bonds, the Claim of the Bonds, the Indentures, or any other document pertaining to the issuance of the Bonds. Except that no Released Party shall be released from acts or omissions which are the result of willful misconduct or fraud. Notwithstanding anything herein to the contrary, nothing in this Plan shall constitute a release against any of the Debtor's current or former officers and directors of claims arising prior to the Petition Date held by the Debtor and/or its Estate.

**11.1.3** The foregoing release provisions are an integral part of the Plan and are essential to its implementation. If and to the extent that the Bankruptcy Court concludes that the Plan cannot be confirmed with any portion of the foregoing releases, the Debtor reserves the right to amend the Plan so as to give effect as much as possible to the foregoing releases.

## 11.2 Injunction.

**11.2.1** Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that all Entities who have held, hold, or may hold Claims against or Interests in the Debtor are, with respect to any such Claims or Interests, permanently enjoined from and after the Confirmation 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 Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor-in-interest to, the Debtor, 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 Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, the Debtor, or any property of any such transferee or successor; (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any of the foregoing Entities; (d) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due to the Debtor, the Released Parties, any of their property, or any direct or indirect transferee of any property of, or successor-in-interest to, any Debtor; and (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

**11.2.2** Furthermore, except as otherwise expressly provided in the Plan, for the consideration described in the Plan, as of the Effective Date, all Entities who have held, hold, or may hold claims released pursuant to this Article, whether known or unknown, and their respective agents, attorneys, and all others acting for or on their behalf, shall be permanently enjoined on and after the Effective Date, with respect to any claim released pursuant to this Article, from (a) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any claim against any Released Party or the property of any of them; (b) seeking the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against any Released Party or the property of any Released Party; (c) creating, perfecting, or enforcing any encumbrance of any kind against any Released Party; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to any Released Party; and (e) taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan. In the event that any Entity takes any action that is prohibited by, or is otherwise inconsistent with the provisions of this section or article if the Plan, then, upon notice to the Bankruptcy Court, the action or proceeding in which the Claim of such Entity is asserted shall automatically be transferred to the Bankruptcy Court for enforcement of the provisions of this section and article of the Plan.



## **ARTICLE 12**

### **MISCELLANEOUS**

#### **12.1 Conflicts Between Plan and Confirmation Order.**

In the event the terms of this Plan and the Confirmation Order conflict, the terms of the Confirmation Order shall govern.

#### **12.2 Term of Injunction or Stays.**

Unless otherwise provided, any injunction or stay imposed by operation of Sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the Effective Date rather than the Confirmation Date. Nothing in this section, however, shall be construed as a limitation of the permanent injunctions provided for in this Plan.

#### **12.3 Retention of Jurisdiction.**

Notwithstanding entry of the Confirmation Order, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

**12.3.1** To determine (a) any Disputed Claims, Disputed Interests, and all related Claims accruing after the Confirmation Date, including, but not limited to, rights and liabilities under contracts giving rise to such Claims; (b) the validity, extent, priority, and non-avoidability of consensual and nonconsensual Liens and other encumbrances; (c) pre-Confirmation tax liability pursuant to Section 505 of the Bankruptcy Code; and (d) controversies and disputes regarding the interpretation of the Plan and documents executed in connection therewith;

**12.3.2** To allow, disallow, estimate, liquidate, or determine any Claim or Interest against the Debtor and to enter or enforce any order requiring the Filing of any such Claim or Interest before a particular date;

**12.3.3** To approve all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of the Debtor pursuant to Section 365 of the Bankruptcy Code and the terms of this Plan;

**12.3.4** To determine any request for payment of an Administrative Expense or an Administrative Operating Expense entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, but not limited to, compensation of parties entitled thereto;

**12.3.5** To determine the allowance and payment of any Professional Claim;

**12.3.6** To resolve controversies and disputes regarding the interpretation and implementation of the Plan, any disputes relating to whether or not a timely and proper proof of Claim or Interest was Filed, or whether a Disallowed Claim or Disallowed Interest should be reinstated;

**12.3.7** To implement the provisions of the Plan and entry of orders in aid of Confirmation and consummation of the Plan, including, but not limited to, any disputes concerning the enforceability or applicability of the releases and injunctions contained herein;

**12.3.8** To modify the Plan pursuant to Section 1127 of the Bankruptcy Code;

**12.3.9** To adjudicate any and all Causes of Action that arose in the Case prior to the Confirmation Date or in connection with the implementation of the Plan, whether or not pending on the Confirmation Date, including, but not limited to, any remands of appeals;

**12.3.10** To resolve any disputes concerning whether a person or entity had sufficient notice of the Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is discharged hereunder or for any other purpose;

**12.3.11** To determine any and all applications, Claims, Interests, pending adversary proceedings, and contested matters (including, without limitation, any adversary proceeding or other proceeding to recharacterize agreements or reclassify Claims or Interests) in this Case;

**12.3.12** To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

**12.3.13** To seek the issuance of such orders in aid of execution of the Plan, to the extent authorized by Section 1142 of the Bankruptcy Code;

**12.3.14** To consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, but not limited to, the Confirmation Order;

**12.3.15** To recover all assets of the Debtor and property of the Estate, wherever located, including any Cause of Action under Sections 544 through 551 of the Bankruptcy Code;

**12.3.16** To resolve any dispute relating to the approval and payment of the fees and expenses of the Plan Administrator, or his Professionals;

**12.3.17** To resolve matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

**12.3.18** To hear any other matter not inconsistent with the Bankruptcy Code;

**12.3.19** To resolve any and all disputes or controversies relating to Distributions to be made, and/or reserves or escrows to be established, under the Plan;

**12.3.20** To enter the Final Decree closing this Case;

**12.3.21** To appoint a successor Plan Administrator;

**12.3.22** To enforce the injunctions granted under this Plan; and

**12.3.23** To approve settlements relating to the above.

#### **12.4 Successors and Assigns.**

The rights, benefits, and obligations of any Entity 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 Entity.

#### **12.5 Cram Down.**

If all of the applicable requirements for Confirmation of the Plan are met as set forth in Section 1129(a) of the Bankruptcy Code except subsection (8) thereof, the Debtor may request the Bankruptcy Court to confirm the Plan pursuant to Section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of Section 1129(a)(8) of the Bankruptcy Code, on the basis that the Plan is fair and equitable as to the Debtor's Creditors and does not discriminate unfairly with respect to any Impaired Class of Claims against the Debtor that does not vote to accept the Plan as described in the Disclosure Statement. The Debtor reserves the right to alter the treatment of any Class in order to effectuate a cram down under Section 1129(b) of the Bankruptcy Code. Notwithstanding anything else herein, the Debtor shall not request that the Plan be confirmed under Section 1129(b) with respect to Class 1 (Claim of the Bonds) unless holders of at least 51% in principal amount of the Bonds vote in favor of the Plan, and the Indenture Trustee does not object to such treatment (i.e. cram down).

#### **12.6 Modification of the Plan.**

The Debtor reserves the right, in accordance with the Bankruptcy Code, to amend or modify this Plan prior to the Confirmation Date, subject to the approval of the Indenture Trustee. After the Confirmation Date, the Debtor may, with the approval of the Indenture Trustee, upon order of the Court, amend or modify this Plan in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purposes and intent of this Plan. Further, since the Debtor has separate voting Classes, the Debtor reserves the right to file a new Plan, convert the Debtor's Case to a case under chapter 7, and/or take such other actions as it deems appropriate, all subject to the approval of the Indenture Trustee.

#### **12.7 Withdrawal or Revocation of the Plan.**

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan is revoked or withdrawn by the Debtor, or if the Effective Date does not occur, the Plan shall be of no further force or effect.

## **12.8 Notices.**

All notices, requests, elections, or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested, and sent to the following:

Counsel for the Debtor: Vickie L. Driver  
Lewis Brisbois Bisgaard & Smith, LLP  
2100 Ross Ave., Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 722-7100  
Facsimile: (214) 722-7111

All notices and requests to Creditors and Interest holders shall be sent to their last known addresses. The Debtor and any Creditors or Interest holders, may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt.

## **12.9 Governing Law.**

Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

## **12.10 Severability.**

Should any term or provision of the Plan be determined by the Bankruptcy Court to be invalid, void, or unenforceable, such determination shall in no way limit or affect the enforceability or operative effect of any other provision of the Plan. If any term or provision of the Plan is of such a character as to deny Confirmation, the Debtor reserves the right to strike such provisions from the Plan and seek Confirmation of the Plan as modified. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

## **12.11 All Claims.**

This Plan is intended to deal with all Claims against the Debtor of whatever character whether or not disputed, contingent, or liquidated and whether or not allowed by the Bankruptcy Court under Section 502 of the Bankruptcy Code. However, only those Claims Allowed under Section 502 of the Bankruptcy Code shall be entitled to receive the treatment afforded by the Plan.

## 12.12 Exculpation.

Neither the Debtor nor any of the Released Parties (collectively, the “**Exculpated Persons**”) shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection with or related to formulating, negotiating, implementing, confirming, or consummating the Plan or the Sale, including any settlement referenced therein, the Disclosure Statement, any Plan Document or the PSA. The Exculpated Persons shall have no liability to the Debtor, any Creditor, Interest holder, any other party-in-interest in the Case or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including, without limitation, failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects the Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; *provided, however*, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

Dated: July 18, 2016

Respectfully submitted,

ZERGA PHIN-KER LP

/s/ Chad J. Shandler

Chad J. Shandler

Chief Restructuring Officer

Prepared by:

Vickie L. Driver

Texas State Bar No. 24026886

Emily S. Chou

Texas State Bar No. 24006997

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2100 Ross Avenue, Suite 2000

Dallas, Texas 75201

Telephone: (214) 722-7100

Facsimile: (214) 722-7111

Counsel for the Debtor and Debtor-in-Possession

**EXHIBIT "A"**

**[to be supplemented 5 days prior to the Confirmation Hearing]**

## APPENDIX 2

**Zerga Phin-Ker LP**  
**Liquidation Analysis**  
**Draft - Subject to Adjustment**

|   | <u>Book Value<br/>(May 2016)<sup>1</sup></u> | <u>Liquidation<br/>Value</u>      |                       |
|---|--|-----------------------------------|-----------------------|
| Land, improvements & furnishings  | \$30,425,325                                 | \$12,500,000                      |                       |
| Cash and cash equivalents   | 156,873                                      | -                                 |                       |
| Prepaid expenses and other assets   | 140,596                                      | -                                 |                       |
| Avoidance actions and litigation claims   |  | TBD                               |                       |
| <b>Total Assets</b>   | <b><u>\$30,722,794</u></b>                   | <b><u>\$12,500,000</u></b>        |                       |
| Less: Costs of Liquidation  |  |                                   |                       |
| Chapter 7 Trustee Fee   |  | 375,000                           |                       |
| Chapter 7 Professional Fees   |  | 125,000                           |                       |
| Operating and Wind down expenses  |  | 125,000                           |                       |
| <i>Estimated Gross Proceeds Available for Distribution</i>  |  | <b><u>11,875,000</u></b>          |                       |
|   | <u>Claim Amount</u>                          | <u>Projected<br/>Distribution</u> | <u>Recovery<br/>%</u> |
| <u>Less Secured Claims:</u>   |  |                                   |                       |
| DIP Loan <sup>2</sup>   | \$1,636,681                                  | \$1,636,681                       | 100.0%                |
| Bond Holder Secured Claim <sup>3</sup>  | \$34,879,928                                 | 10,238,319                        | 29.4%                 |
| <i>Estimated Proceeds Available for Distribution to Administrative and<br/>Unsecured Creditors:</i> |  | <u>-</u>                          |                       |
| <u>Less Administrative and Priority Unsecured Claims:</u>   |  |                                   |                       |
| Administrative Claims <sup>2</sup>  | \$515,942                                    | -                                 | 0.0%                  |
| Priority Claims   | \$0  | -                                 | 0.0%                  |
| <i>Estimated Proceeds Available for Distribution to Unsecured<br/>Creditors<sup>3</sup>:</i>        | \$1,861,953                                  | <b><u>\$ -</u></b>                | 0.0%                  |

<sup>1</sup> Approximate values based on Debtor's May 2016 monthly operating report.

<sup>2</sup> Projected amount as of September 30, 2016.

<sup>3</sup> Amount based on proof of claim 13-1 filed 3/14/2016. Amount includes principal amount of bonds and accrued and unpaid interest outstanding as of the petition date. However, this amount does not take into account approximately \$6.6 million in restricted cash held by the Indenture Trustee at the petition date.

## **DRAFT – SUBJECT TO ADJUSTMENT**

### **Zerga Phin-Ker LP Liquidation Analysis Assumptions:**

The liquidation analysis includes all assets of the Debtor that is the property of its estate and could potentially be used to satisfy the obligations of pre- and post-petition date creditors in the event of a conversion to Chapter 7 under the Bankruptcy Code. For each asset an estimated recovery value is listed, understanding that the certainty of a specific recovery cannot be assured. Underlying the Liquidation Analysis is a number of estimates and assumptions that, although considered to be reasonable, are inherently subject to uncertainties beyond the control of the Debtor. Neither the Debtor nor any other party makes any representation or warranty that the actual result of liquidation would or would not approximate the assumptions contained herein.

#### Timing

For purposes of the liquidation analysis, it is assumed the Debtor's conversion to Chapter 7 would occur on or about September 30, 2016 and will require approximately 60 days to effectuate a sale of the assets.

#### Cash

It is anticipated that all cash would be consumed by September 30, 2016. In addition, all cash is subject to liens from the DIP lender. Accordingly, no cash is considered in analysis.

#### Prepaid expenses and other assets

It is assumed that prepaid expenses and other assets would be consumed or applied during the liquidation of the assets.

#### Land, improvements and furnishings

The Debtor's primary assets consist of a substantially completed assisted living/memory care facility and an independent living facility that is under development. Collectively these assets are referred to as the "Facilities". The Facilities are located in Longview, Texas.

The value used in the liquidation analysis is based upon the Debtor's estimate of sale proceeds and also considers the letters of intent received from various parties to acquire the Facilities. The recovery shown is net of a real estate brokerage commission (6% of sale proceeds).

#### Avoidance Actions and Litigation Claims

It is assumed that potential recoveries from avoidance actions and litigation claims will have the same outcome in either Chapter 11 or in the event of a conversion to Chapter 7.

#### Chapter 7 Trustee Fee and Professional Fees

Bankruptcy Code § 326 limits trustee fees to 3% of gross liquidation proceeds. The estimate assumes 3% of the value of the gross liquidation proceeds.

The Liquidation Analysis assumes that a Trustee would engage its own professionals to assist in the liquidation of the Debtor's assets at a cost of approximately \$125,000.

#### Operating and Wind down expenses

It is assumed that the Facilities will incur approximately \$50,000 in costs to maintain the Facilities during the 60 day liquidation process. In addition, it is assumed that the Trustee will require 30-45 days to administratively wind down the Debtor at a cost of approximately \$75,000.



### APPENDIX 3

#### RETENTION AND ENFORCEMENT OF CAUSES OF ACTION

##### Preference Actions:

The Debtor and the Plan Administrator reserve the right to pursue any and all claim, rights and Causes of Action arising under 11 U.S.C. §§ 510, 544 through 551 and 553 against the parties referenced in the Debtor's *Statement of Financial Affairs*, filed December 15, 2015 and as amended from time to time, including in response to Question 3 thereof, regarding each Debtor's payments to creditors. The Debtor has yet to conduct a thorough analysis of Chapter 5 Causes of Action. Notwithstanding the current lacking Chapter 5 Cause of Action analysis, the Debtor does not waive any such claim, right and/or Cause of Action, except that the Debtor acknowledges and agrees that it has no Cause of Action against the Indenture Trustee or with respect to the Bonds.

##### Potential Fraudulent Transfers:

The Debtor and the Plan Administrator reserve the right to pursue the following:

Any and all claims, rights and Causes of Action arising under 11 U.S.C. §§ 510, 544 through 551 and 553 against the parties referenced in each Debtor's *Statement of Financial Affairs*, filed December 15, 2015 and as amended from time to time, including in response to Question 3 thereof, regarding Debtor's payments to creditors, except that the Debtor acknowledges and agrees that it has no Cause of Action against the Indenture Trustee or with respect to the Bonds.

Any and all claims, rights and Causes of Action arising under 11 U.S.C. §§ 510, 544 through 551 and 553 against the following Entities and/or any of their respective present or former owners, officers, directors, employees, consultants, financial advisors, attorneys, accountants and other representatives to the extent not specifically released under the terms of the Plan:

HMC Contracting Services, LLC

##### General Litigation:

The Debtor and the Plan Administrator reserve the right to pursue potential litigation against HMC Contracting Services, LLC, and/or any of its respective present or former owners, officers, directors, employees, consultants, financial advisors, attorneys, accountants and other representatives, arising under or related to: (1) AIA Document A133- 2009 Standard Form Agreement Between Owner and Construction Manager as Constructor dated as of May 1, 2013 between Zerga Phin-Ker LP as the Owner and HMC Contracting Services, LLC as the Construction Manager for the Project referred to as the Parkview Assisted Living and Memory Care (the "AL/MC Construction Agreement"), and (2) AIA Document A133- 2009 Standard Form Agreement Between Owner and Construction Manager as Constructor dated as of May 1, 2013 between Zerga Phin-Ker LP as the Owner and HMC Contracting Services, LLC as the Construction Manager for the Project referred to as the Parkview Independent Living (the "IL Construction Agreement"), and collectively with the AL/MC Construction Agreement, the "Construction Agreements"). Claims include, but are not limited to, fraud, fraudulent transfer,

breach of contract, fraudulent inducement, breach of warranty, tortious interference, breach of fiduciary duty, piercing the corporate veil, alter ego, and negligence.

Active Litigation:

The Debtor and the Plan Administrator reserve the right to pursue any and all claims, rights and Causes of Action in regard to active litigation matters against the parties referenced in each Debtor's Statement of Financial Affairs, including in response to Question 4 thereof. The subject matter of the various active litigation matters currently involving each Debtor is listed in the *Statement of Financial Affairs*.

Potential Claims Relating to Surety Bonds:

The Debtor and the Plan Administrator reserve all rights of the Debtor to file claims against Hartford Fire Insurance under the Surety Bonds issued on account of the Construction Agreements. The Surety Bonds are recorded in the real property records of Gregg County, Texas under recording numbers 201503429 and 20153430.

**ZERGA PHIN KER, LP DEBTOR  
PARKVIEW ON HOLLYBROOK  
WIND-DOWN BUDGET**

**APPENDIX 4**

**Preliminary & Draft - For Discussion Purposes Only**

|  | <b>Wind-down<br/>Budget<sup>1</sup></b> |
|--|---|
| <b>DISBURSEMENTS - PROPERTY</b>  |   |
| Plant - Utilities - Electric   | \$ 5,500                                |
| Plant - Utilities - Gas  | 150                                     |
| Plant - Utilities - Water/Sewer  | 2,500                                   |
| A&G - Fees - Management Fee  | 12,600                                  |
| A&G - Tax Preparation (estimated retainer)                                   | 5,000                                   |
| A&G - IT - Acctg Software - MRI  | 471                                     |
| A&G - Leases Equipment - Copier  | 406                                     |
| A&G - Monitor facilities   | 3,000                                   |
| A&G - Storage Offsite  | 1,500                                   |
| A&G - Travel   | 800                                     |
| <b>TOTAL DISBURSEMENTS - PROPERTY<sup>2</sup></b>                            | <b>31,927</b>                           |
| <b>US TRUSTEE FEES<sup>3</sup></b>   | <b>24,875</b>                           |
| Post-confirmation amounts incurred during the wind-down period: <sup>4</sup> |   |
| Professional Fees & Expenses - Debtor - Legal - BK                           | 45,000                                  |
| Professional Fees & Expenses Debtor - CRO/Financial Advisor                  | 45,000                                  |
|  | <b>90,000</b>                           |
| <b>TOTAL FUNDING REQUIRED DURING WIND-DOWN PERIOD</b>                        | <b>146,802</b>                          |
| Pre-confirmation carve-out amounts due as of 9/30/2016: <sup>5</sup>         |   |
| Professional Fees & Expenses - Debtor - Legal - BK                           | 189,308                                 |
| Professional Fees & Expenses Debtor - CRO/Financial Advisor                  | 276,634                                 |
|  | <b>465,942</b>                          |
| <b>TOTAL FUNDING REQUIRED FOR ADMINISTRATIVE EXPENSES<sup>6</sup></b>        | <b>\$ 612,744</b>                       |
| <b>FUNDING REQUIRED FOR LITIGATION BUDGET<sup>7</sup></b>                    | <b>\$ 50,000</b>                        |
| <b>TOTAL FUNDING REQUIRED FOR WIND-DOWN</b>                                  | <b>\$ 662,744</b>                       |

**Notes:**

- 1 Wind-down period is estimated to be approximately 30-45 days following the closing of the sale of Debtor's assets projected to occur on or by 9/30/2016.
- 2 Represents property disbursements for expenses (i.e., administrative claims) incurred prior to the sale of the Debtor's assets but invoiced during the wind-down period.
- 3 US Trustee fees are estimated to be \$20,000 for the quarter ended 9/30/2016. The amount of US Trustee fees due for disbursements made during the wind-down period are projected to be \$4,875.
- 4 The Debtor anticipates that it will incur approximately \$90,000 in professional fees to wind-down the administrative affairs of the estate.
- 5 Represents Debtor's professional fee carve-out amounts projected as of 9/30/2016 in the amount of \$515,942 less the application of the CRO retainer of \$50,000.
- 6 Total funding required for projected administrative expenses for the wind-down of the estate does not include refunds from the cancellation of insurance policies or for other recoveries that cannot not be quantified at this time.
- 7 Total funding for pursuit of potential litigation claims during the wind-down period not to exceed \$50,000.