

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION  
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IN RE:

Case No. 17-40185-KKS

CAMPBELLTON-GRACEVILLE HOSPITAL  
CORPORATION,<sup>1</sup>

Chapter 11

Debtor.

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**JOINT DISCLOSURE STATEMENT IN CONNECTION WITH**  
**CHAPTER 11 PLAN OF LIQUIDATION OF**  
**CAMPBELLTON-GRACEVILLE HOSPITAL CORPORATION**  
**FILED BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED**  
**CREDITORS**

**December 29, 2017**

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<sup>1</sup> The last four digits of the taxpayer identification number for the Debtor are 9709. The mailing address for the Debtor is 5429 College Drive, Graceville, FL 32440.

## **1. DISCLOSURE STATEMENT**

The Debtor, Campbellton-Graceville Hospital Corporation (the “**Debtor**”) and the Official Committee of Unsecured Creditors of the Debtor (“Committee”) provides this Disclosure Statement to all known creditors of the Debtor in order to disclose the information deemed to be material, important, and necessary for the creditors to arrive at a reasonably informed decision in exercising their right to abstain from voting or to vote for acceptance or rejection of the Plan of Reorganization (the “**Plan**”) proposed by the Debtor and Committee. A copy of the Plan is being filed in the Bankruptcy Case<sup>2</sup> simultaneously herewith, and will be provided all known creditors.

### **1. INTRODUCTION**

This Disclosure Statement is presented to certain holders of Claims against and Interests in the Debtor in accordance with the requirements of section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “**Code**”). Section 1125 of the Code requires that a disclosure statement provide information sufficient to enable a hypothetical and reasonable investor, typical of the debtor’s creditors and interest holders, to make an informed judgment whether to accept or reject a plan. This Disclosure Statement may not be relied upon for any purpose other than that described above.

This Disclosure Statement and the Plan are an integral package, and they must be considered together for the reader to be adequately informed. This introduction is qualified in its entirety by the remaining portions of this Disclosure Statement (including its Exhibits or Schedules), and this Disclosure Statement in turn is qualified in its entirety by the Plan. This

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<sup>2</sup> Capitalized terms used herein have the meanings assigned to them in the Definitions section in the Plan. Whenever the words “include,” “includes” or “including” are used in this Disclosure Statement, they are deemed to be followed by the words “without limitation.”

Disclosure Statement contains only a summary of the Plan. You are strongly urged to review the Plan, a copy of which is provided herewith, before casting a Ballot.

No representations concerning the Debtor (particularly as to the values of its property) are authorized other than as set forth in this Disclosure Statement. You should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan other than as contained in this Disclosure Statement, and such additional representations and inducements should be reported to Debtor's counsel, who will in turn deliver such information to the proper authorities for such action as may be appropriate.

The information contained in this Disclosure Statement, including any exhibits concerning the financial condition of the Debtor, has not been subjected to an audit or independent review except as expressly set forth herein. The Debtor has endeavored in good faith to be accurate in this Disclosure Statement.

The statements contained in this Disclosure Statement are made as of the date of this Disclosure Statement unless another time is specified. There is no guaranty that facts will not change after this Disclosure Statement was filed; and it must be assumed that some facts will indeed change from that time until the hearing on the approval of the Disclosure Statement (discussed below), and thereafter during the periods in which the Debtor makes payments under the Plan.

This Disclosure Statement was prepared in accordance with section 1125 of the Code 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 and the Securities and Exchange Commission has not passed upon the accuracy or adequacy of the statements contained herein; nor may this Disclosure Statement be construed to be advice on the tax, securities or other legal effects of the Plan. You should, therefore, consult with your own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan or the transactions contemplated thereby.

## **2. OVERVIEW OF CHAPTER 11**

### **(a) Chapter 11 Generally**

Chapter 11 comprises the chapter of the Code primarily used for business reorganization. Formulating a plan to restructure a debtor's finances forms a fundamental purpose of a case under chapter 11 of the Code. Businesses also sometimes use chapter 11 as a means to conduct asset sales and other forms of liquidation.

Generally, the debtor (or any plan proponent) must file and get court approval of a written disclosure statement before there can be a vote on the plan of reorganization. 11 U.S.C. §§ 1121, 1125. The disclosure statement is a document that must contain information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor to make an informed judgment about the debtor's plan of reorganization. 11 U.S.C. § 1125. The disclosure statement must provide "adequate information" concerning the affairs of the debtor to enable the holder of a claim or interest to make an informed judgment about the plan. 11 U.S.C. § 1125.

The contents of the plan must include a classification of claims and must specify how each class of claims will be treated under the plan. 11 U.S.C. § 1123. Creditors whose claims are "impaired," i.e., those whose contractual rights are to be modified or who will be paid less than the full value of their claims under the plan, vote on the plan by ballot. 11 U.S.C. § 1126. Upon

approval of a disclosure statement, the plan proponent must mail the following to the U.S. trustee and all creditors and equity security holders: (1) the plan, or a court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) such other information as the court may direct. Fed. R. Bankr. P. 3017(d). In addition, the debtor must mail to the creditors and equity security holders entitled to vote on the plan: (1) notice of the time fixed for filing objections; (2) notice of the date and time for the hearing on confirmation of the plan; and (3) a ballot for accepting or rejecting the plan. After the disclosure statement is approved by the court and the ballots are collected and tallied, the court will conduct a confirmation hearing to determine whether to confirm the plan. 11 U.S.C. § 1128.

Section 1123(a) of the Code lists the mandatory provisions of a chapter 11 plan, and section 1123(b) lists the discretionary provisions. Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization. Generally, a plan will classify claim holders as secured creditors, unsecured creditors entitled to priority, general unsecured creditors, and equity security holders.

Under section 1126(c) of the Code, an entire class of claims is deemed to accept a plan if the plan is accepted by creditors that hold at least two-thirds ( $2/3$ ) in amount and more than one-half ( $1/2$ ) in number of the allowed claims in the class. Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one (1) class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, or contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are deemed to have accepted the plan.

Under section 1127(a) of the Code, the plan proponent may modify the plan at any time

before confirmation, but the plan as modified must meet all the requirements of chapter 11. When there is a proposed modification after balloting has been conducted, and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification is deemed to have been accepted by all creditors who previously accepted the plan. Fed. R. Bankr. P. 3019. If it is determined that the proposed modification does have an adverse effect on the claims of non-consenting creditors, then another balloting must take place.

Any party in interest may file an objection to confirmation of a plan. The Code requires the court, after notice, to hold a hearing on confirmation of a plan. If no objection to confirmation has been timely filed, the Code allows the court to determine whether the plan has been proposed in good faith and according to law. Fed. R. Bankr. P. 3020(b)(2). Before confirmation can be granted, the court must be satisfied that there has been compliance with all the other requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find, among other things, that: (1) the plan is feasible; (2) it is proposed in good faith; and (3) the plan and the proponent of the plan are in compliance with the Code. In order to satisfy the feasibility requirement, the court must find that confirmation of the plan is not likely to be followed by liquidation (unless the plan is a liquidating plan) or the need for further financial reorganization.

**(b) This Case**

As explained above, a chapter 11 plan sets forth and governs the treatment and rights that creditors and interest holders will receive with respect to their claims against and equity interests in a debtor's bankruptcy estate. The Code entitles only holders of impaired claims or equity interests who receive some distribution under a proposed plan to vote to accept or reject the plan.

The Code conclusively presumes that holders of unimpaired claims or equity interests under a proposed plan have accepted the plan and need not vote on it.

The Claims in Class 2 of this Plan are impaired and thus may vote either to accept or reject the Plan. The Debtor has enclosed a Ballot with this Disclosure Statement to solicit the votes of the Creditors in Class 2. Those Creditors (i.e., you) may vote on the Plan by completing the enclosed Ballot and mailing it to the following address<sup>3</sup>:

BERGER SINGERMANN LLP  
*Counsel for Debtor-in-Possession*  
313 North Monroe Street, Suite 301  
Tallahassee, FL 32301  
Tel. (850) 561-3010  
BRich@bergersingerman.com

Those Creditors should use the Ballot sent with this Disclosure Statement to cast a vote for or against the Plan. Creditors may not cast Ballots or vote orally or by facsimile. **For a Ballot to be considered by the Bankruptcy Court, it must be received at the above address by 5:00 p.m. (prevailing Eastern time) by the date fixed by the Bankruptcy Court on the accompanying scheduling order (the “Voting Deadline”).** If you are a Creditor in Class 2 and did not receive a Ballot with this Disclosure Statement, please contact:

BERGER SINGERMANN LLP  
*Counsel for Debtor-in-Possession*  
313 North Monroe Street, Suite 301  
Tallahassee, FL 32301  
Tel. (850) 561-3010  
BRich@bergersingerman.com

A ballot that does not indicate acceptance or rejection of a plan will not be considered. An impaired class of claims accepts a plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims in the class that actually vote are cast in favor of

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<sup>3</sup> Claims that have been objected to may not be entitled to vote on the Plan, unless their claims have been allowed or estimated for voting purposes.

the plan. A class of interests accepts a plan if at least two-thirds (2/3) in amount of the allowed interests of such class that actually vote are cast in favor of the plan. Whether or not you vote, you will be bound by the terms and treatment set forth in the Plan if the Court confirms the Plan. The Court may disallow any vote accepting or rejecting the Plan if the vote is not cast in good faith.

Once it is determined which impaired classes have accepted a plan, the Court will determine whether the plan may be confirmed. Section 1141(d)(1) generally provides that confirmation of a plan discharges a debtor from any debt that arose before the date of confirmation. After the plan is confirmed, the debtor is required to make plan payments and is bound by the provisions of the plan of reorganization. The confirmed plan creates new contractual rights, replacing or superseding pre-bankruptcy contracts.

For a plan to be confirmed, the Code requires, among other things, that the plan be proposed in good faith and comply with the other applicable provisions of chapter 11 of the Code, including a requirement that at least one class of impaired claims accept the plan, and that confirmation of the plan is not likely to be followed by the need for further financial reorganization. The bankruptcy court will confirm a plan only if it finds that all of the requirements enumerated in section 1129 of the Code have been met. The Debtor believes that the Plan satisfies all of the requirements for confirmation.

One requirement for confirmation of a plan is called the “best interests test.” Notwithstanding acceptance of the plan by each impaired class of claims, in order to confirm a plan, if even one member of an impaired class votes to reject the plan, the bankruptcy court must determine that the plan is in the best interests of each holder of a claim or interest in such class. The best interests test requires that the bankruptcy court find that the plan provides to each



member of such impaired class a recovery on account of the class member's claim or interest that has a value, as of the Effective Date of the Plan, at least equal to the value of the distribution that each such class member would have received if the debtor's assets were liquidated under chapter 7 of the Code on such date.

The Code also requires that, in order to confirm a plan, the Court must find that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor ("financial feasibility test"). For a plan to meet this test, the Court must find that the Debtor's estate and the Reorganized Debtor possess the capital and should generate the other resources to meet their respective obligations under the Plan. The Debtor believes that following confirmation of the Plan, the Reorganized Debtor will be able to fully perform all obligations under the Plan without any need for liquidation or further financial reorganization.

The bankruptcy court may confirm a plan notwithstanding the plan's rejection by some impaired classes, if the bankruptcy court finds that at least one impaired class of claims (not including any acceptances by "insiders" as defined in section 101(31) of the Code) has accepted the plan and that the plan satisfies certain additional conditions. This provision, found in section 1129(b) of the Code, is generally referred to as the "cramdown" provision. Pursuant thereto, the bankruptcy court may confirm a plan over the rejection by a class of secured claims if the plan is fair and equitable and satisfies one of the alternative requirements of section 1129(b)(2)(A) of the Code (otherwise known as "cram down"). Likewise, the bankruptcy court may confirm a plan over the rejection by a class of unsecured claims if the plan is fair and equitable and if the non-accepting claimants will receive the full value of their claims, or (even if the non-accepting claimants receive less than full value), if no class of junior priority will receive or retain anything

on account of its pre-petition claims or interests.

**THESE ARE COMPLEX STATUTORY PROVISIONS, AND THE PRECEDING PARAGRAPHS ARE NOT INTENDED TO BE A COMPLETE SUMMARY OF THE LAW. IF YOU DO NOT UNDERSTAND THESE PROVISIONS, PLEASE CONSULT WITH YOUR ATTORNEY. THE DEBTOR MAY HAVE TO RELY UPON THE “CRAMDOWN” PROVISION OF SECTION 1129(b) OF THE CODE IN ORDER TO CONFIRM THE PLAN.**

The Court has set a hearing on confirmation of the Plan for \_\_\_\_\_ at 110 E. Park Avenue, 2<sup>nd</sup> Floor Courtroom, Tallahassee, Florida. Creditors may vote on the Plan by filling out and mailing the accompanying ballot form to counsel for the Debtor. Your Ballot must be mailed to the address above on or before \_\_\_\_\_2018, the Voting Deadline.

**3. BACKGROUND OF DEBTOR AND EVENTS LEADING TO THE FILING OF THE BANKRUPTCY CASE**

**(a) History of Debtor**

The Debtor is a non-profit corporation established pursuant to the laws of the State of Florida in 1961 and operated as a not-for-profit 25-bed critical access hospital serving northern Florida, as well as surrounding areas in Georgia and Alabama, and had approximately 100 employees. The Debtor offered comprehensive medical care, including emergency services, general hospitalization, X-Ray and laboratory services, swing bed, and physical therapy. The Debtor was directed by its Board of Trustees.

**(b) Events Leading to the Filing**

For several years the Debtor had been experiencing financial distress. This was due to a number of factors; including changing demographics, changes, reductions in overall reimbursement rates and timing and changes in the medical care field. In early 2015, the Debtor was experiencing extreme financial distress and lacked adequate funds to meet certain of its financial obligations. In fact, the Debtor announced at that time that it would permanently close its doors effective April 20, 2015. In that critical time, the Debtor was approached by The

People's Choice Hospital ("**PCH**") with a solution. PCH proposed that it would take over management of the hospital and fund operating losses. In an effort to save the hospital, the Debtor entered into a "Consulting Agreement" with PCH, dated May 11, 2015, in which PCH would provide healthcare management and related services for the Debtor (the "**Consulting Agreement**").<sup>4</sup> In exchange for these services, PCH received a monthly consulting fee of \$30,000 and reimbursement for its expenses.

PCH made the necessary investments to keep the hospital open and operational, including paying all outstanding payroll taxes, eliminating the risk of personal liability for such taxes. To provide PCH with security for amounts owed in connection with the foregoing arrangement, including under the Consulting Agreement, the Debtor purportedly executed (a) a Security Agreement dated as of May 27, 2015 in favor of PCH,<sup>5</sup> granting PCH a security interest in all assets of the Debtor. On June 1, 2015, PCH perfected its security interest by filing a UCC-1 financing statement.<sup>6</sup> PCH's secured claim was alleged to be in excess of \$1.3 million on the Petition Date. Disputes arose pre-petition between the Debtor and PCH regarding the management of the hospital, including the hiring of a CEO, Jorge A Perez ("Perez") who had access to the Debtor's patient records, financial information and the Reference Lab Program as described herein.

On June 21, 2016, the Debtor filed a one count complaint against PCH in the Circuit

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<sup>4</sup> The Consulting Agreement is attached to *PCH's Omnibus Objection to First-Day Pleadings* ("**Omnibus Objection**") [ECF No. 22] as Exhibit A.

<sup>5</sup> A copy of which is attached to the Omnibus Objection [ECF No. 22] as Exhibit B.

<sup>6</sup> A copy of which is attached to the Omnibus Objection [ECF No. 22] as Exhibit C.<sup>7</sup> Providers of service participating in the Medicare program, such as the Debtor, are required to submit information to achieve settlement of costs relating to health care services rendered to Medicare beneficiaries ("**Cost Reports**"). 42 U.S.C. § 1395g. For cost reporting purposes, Medicare requires submission of annual reports covering a 12-month period of operations based upon the provider's accounting year. 42 C.F.R. § 413.20(b). The filing of the cost report is mandatory and failure to do so results in all payments to be deemed overpayment and 100 percent withhold until the cost report is received.

Court for the Fourteenth Judicial Circuit, Jackson County, Florida, captioned as Case No. 2016-CA-136 (the “State Court Litigation”) and obtained *ex parte* relief prohibiting PCH from having access to the Debtor’s bank accounts and generally banning PCH from the hospital. The suit, after initially being removed to federal court (Case No. 16-cv-00222-MW-GRJ, Northern District of Florida), was then remanded to state court. PCH filed an Answer, Affirmative Defenses, and Counterclaim against the Debtor in the State Court Litigation, asserting claims for breach of the Consulting Agreement, unjust enrichment for use of software installed and implemented by PCH, and for unjust enrichment for use of equipment and supplies. Both the Debtor and PCH disputed the allegations against one another.

The State Court Litigation emanated from a “Reference Lab Program” implemented in October 2015 during PCH’s management, which was sold to the hospital as a way for the hospital to generate additional revenue through blood and urine sample analysis from the Debtor’s diagnostic clinical laboratory. Outside independent lab testing services were aggressively driven through the Debtor’s existing reimbursement contracts throughout the life of the Reference Lab Program, which continued for some time after PCH was removed, in total disregard of the hospital’s provider agreements with third party payors. Multiple independent labs sued the Debtor claiming that they provided services in connection with the Reference Lab Program, but that they have not been paid for their services. These lawsuits aggregated in excess of \$6 million in addition to their other claims for recoupment or reimbursement. The U.S. Office of Personnel Management, Office of the Inspector General, and a special insurance investigator, began investigating the Debtor with respect to alleged fraudulent and illegal billing practices related to the Reference Lab Program in August 2016. Additionally, other investigations were being undertaken by insurers such as Blue Cross Blue Shield of Florida and United Healthcare.

After PCH assumed control over the Debtor, they (or Perez) integrated several software programs to support all areas of hospital operations. The software would have included the ability to manage, track and organize: (1) patient health information; (2) all billing and financial records of the Debtor, through its software suite for Laboratory Information Systems, Radiology Information Systems, Pharmacy Information Systems, Surgical Management Systems; and other patient information systems including the Empower Financial System (collectively the “Empower Software”). This Empower Software was provided by Emergency Care Dictation Services, Inc. d/b/a Empower Systems, an entity affiliated with PCH. The President of Empower Systems is Seth Guterman, whom is also the President of PCH. Based on discussions with PCH and its counsel, it is now believed that a separate software system outside of the Empower Software was responsible for the accounting and billing information for the Debtor and the Reference Lab Program. This program identified as Empower H.I.S. was owned by a separate entity, Empower H.I.S., LLC (“Empower HIS”). Perez is the President of Empower HIS.

When PCH (and ultimately Perez) was removed from management, the Debtor’s access to the Empower Software, was terminated. PCH alleged that the Debtor had not paid for these services. Although PCH and its affiliates provided the Debtor with the raw data on the Empower Software (as it requested in connection with the state court litigation), the Debtor found that it needed full access to the Empower Software to prepare reports and otherwise access and use the information. The issues surrounding the Debtor’s access to the Empower Software and PCH’s rights therein was hotly contested by each side. The Debtor’s lack of access to the Empower Software and the Empower HIS software, and resultant inability to use and work with its patient and billing information, prevented the Debtor from complying with statutory reporting

obligations and submitting critical Cost Reports.<sup>7</sup>

While the Debtor was unable to obtain a full financial picture of what transpired while PCH controlled the hospital and ran the Reference Lab Program, as of the Petition Date, the Debtor believed that a substantial fraud occurred as hundreds of millions of dollars were billed and routed through the Debtor. PCH denied all allegations of impropriety concerning PCH's conduct and has alleged that it complied with its obligations under the Consulting Agreement. PCH has also alleged that any fraudulent activities were engaged by Perez and his related parties other than PCH and its affiliates.

The Debtor's lack of access to the Empower Software, and resultant inability to manipulate and work with its patient data, has prevented the Debtor from complying with statutory reporting obligations and submitting critical Cost Reports.<sup>8</sup> Without the ability to file these costs reports, CMS ceased funding Medicare and Medicaid reimbursements in February 2017. These reimbursements represented a significant percentage of the Debtor's revenue. This suspension of reimbursements further exacerbated the Debtor's precarious financial condition. Extensive efforts were made to extend the time period for filing cost reports, but those requests were denied. Thus, the Debtor was running out of cash, was facing extensive exposure from

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<sup>7</sup> Providers of service participating in the Medicare program, such as the Debtor, are required to submit information to achieve settlement of costs relating to health care services rendered to Medicare beneficiaries ("Cost Reports"). 42 U.S.C. § 1395g. For cost reporting purposes, Medicare requires submission of annual reports covering a 12-month period of operations based upon the provider's accounting year. 42 C.F.R. § 413.20(b). The filing of the cost report is mandatory and failure to do so results in all payments to be deemed overpayment and 100 percent withhold until the cost report is received.

<sup>8</sup> Providers of service participating in the Medicare program, such as the Debtor, are required to submit information to achieve settlement of costs relating to health care services rendered to Medicare beneficiaries ("Cost Reports"). 42 U.S.C. § 1395g. For cost reporting purposes, Medicare requires submission of annual reports covering a 12-month period of operations based upon the provider's accounting year. 42 C.F.R. § 413.20(b). The filing of the cost report is mandatory and failure to do so results in all payments to be deemed overpayment and 100 percent withhold until the cost report is received.

litigation claims and could not sustain its operations.

These events led to the Debtor filing a voluntary petition for relief under chapter 11 of the Code on May 5, 2017 (the “**Petition Date**”).

#### **4. DEBTOR’S OPERATION IN CHAPTER 11**

Section 1107 of the Bankruptcy Code places the debtor in possession in the position of a fiduciary, with the rights and powers of a chapter 11 trustee, and it requires the debtor to perform all but the investigative functions and duties of a trustee. These duties, set forth in the Code and Federal Rules of Bankruptcy Procedure, include accounting for property, examining and objecting to claims, and filing informational reports as required by the court and the U.S. trustee, such as monthly operating reports. 11 U.S.C. §§ 1106, 1107; Fed. R. Bankr. P. 2015(a). The debtor in possession also has many of the other powers and duties of a trustee, including the right, with the court's approval, to employ attorneys, accountants, appraisers, auctioneers, or other professional persons to assist the debtor during its bankruptcy case. Other responsibilities include filing tax returns and reports which are either necessary or ordered by the court after confirmation, such as a final accounting.

The Debtor has been operating its business and managing its affairs as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Code. The Debtor’s priority has been to continue to provide healthcare to the community, continue to provide jobs, attempt to complete cost reports to restart Medicare/Medicaid reimbursement. Initially, the Debtor worked to cut costs and to reduce the monthly cash burn, but also recognized that it need to promptly find a transaction partner to purchase the assets of the hospital to continue the goal of providing the healthcare to the local community, albeit in a different form.

##### **(a) Retention of Professionals**

On, May 5, 2017, the Debtor filed its application to retain Berger Singerman, LLP (“**BSLLP**”) to represent the Debtor in this case, *nunc pro tunc*, to the Petition Date (“**BSLLP Application**”) [ECF No. 7]. BSLLP accepted a fee retainer from the Debtor in the amount of \$186,744.52. [ECF No. 65] Of the \$186,744.52 paid, the sum of \$34,368.27 was applied toward payment in full of all prepetition fees and expenses incurred by Berger Singerman LLP. Accordingly, the remaining balance is \$152,376.25 (the “**Bankruptcy Retainer**”), which is being held in Berger Singerman LLP's trust account, pending further order of the Court. The Court approved the BSLLP Application on June 6, 2017 [ECF No. 115].

As special counsel to the Debtor, the Debtor has sought to employ Kathryn Michelle Blankenship Jordan, Esq. and Blankenship Jordan, P.A. [ECF No. 9] on May 5, 2017, which the Court approved on June 26, 2017 [ECF No. 139].

Also on May 5, 2015, the Debtor sought the employment of Marshall Glade of GlassRatner Advisory & Capital Group, LLC, *nunc pro tunc* to the Petition Date (“**GlassRatner Application**”) [ECF No. 6] The Court approved the Glass Ratner Application on June 9, 2017 [ECF No. 124].

On May 17, 2017, the Debtor sought to employ Sandra P. Greenblatt and the Law Firm of Lubell Rosen as Special Health Care Counsel to the Debtor [ECF No. 63], which the Court approved on June 6, 2017 [ECF No. 114].

On June 9, 2017, Frank P. Terzo, Esq. filed an Application to Employ Frank P. Terzo, Esq. and the Law Firm of Broad and Cassel LLP as Counsel to Official Committee of Unsecured Creditors Committee [ECF No. 127] which the Court approved on July 19, 2017 [ECF No. 157].

On July 11, 2017, the Debtor filed an Application to Employ Pamela C. Marsh, Esq. and the Law Firm of Ausley McMullen as Special Counsel to the Debtor, *nunc pro tunc* to July 3,



2017 [ECF No. 152], which was granted by the Court on August 11, 2017 [ECF No. 191].

On October 4, 2017, the Committee filed an Application to Employ Wayne Black of Wayne Black and Associates, Inc. (Doc. 256) as an Investigatory Assistant to further the Committee's investigation into the Laboratory Program and to assist Oscar Delatorre as a certified Encase program specialist. The Court approved this Application on October 12, 2017 (ECF No. 262).

On October 5, 2017, the Committee filed an Application to Employ Oscar Delatorre of Detekted, Inc., as an I.T. professional to provide ESI support and imaging services. The Court approved this Application on October 12, 2017 (ECF No. 263).

On November 16, 2017, the Committee filed an Application to Employ Kevin Hunter of Colaborate, Inc., as a Laboratory Consultant to further the Committee's investigation into the Laboratory Program. The Court approved this Application on November 27, 2017

**(b) Use of Cash Collateral**

A debtor in possession may not use "cash collateral" without the consent of the secured party or authorization by the court, which must first examine whether the interest of the secured party is adequately protected. 11 U.S.C. § 363. Section 363 defines "cash collateral" as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, whenever acquired, in which the estate and an entity other than the estate have an interest. It includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a creditor's security interest.

When "cash collateral" is used (spent), the secured creditors are entitled to receive additional protection under section 363 of the Code. The debtor in possession must file a motion

requesting an order from the court authorizing the use of the cash collateral. Pending consent of the secured creditor or court authorization for the debtor in possession's use of cash collateral, the debtor in possession must segregate and account for all cash collateral in its possession. 11 U.S.C. § 363(c)(4). A party with an interest in property being used by the debtor may request that the court prohibit or condition this use to the extent necessary to provide “adequate protection” to the creditor.

PCH filed Omnibus Objections to the Debtor’s first day motions and asserted arguments that the Debtor has failed to identify PCH as the Debtor’s senior secured creditor, despite PCH’s purported liens on all of the Debtor’s assets, including its accounts receivable. *See* [ECF No. 22] PCH objected to the Debtor’s use of cash collateral and alleged that it held a first priority lien on all of the Debtor’s property, including cash collateral by virtue of the Consulting Agreement and associated security documents and UCC filings described in detail in the Limited Objection. PCH asserted that it was owed at least \$1.3 million.

PCH also asserted, among other things, that PCH at all times complied with its obligations under the Consulting Agreement and that it was improperly terminated from its role. PCH has also made clear that notwithstanding the foregoing situation, and all of the animosity that has accompanied it, it has no desire to see the hospital close. The Debtor asserted that PCH’s lien does not attach to the Debtor’s cash but PCH disagreed.

With all parties recognizing the need to promptly resolve the issues facing the Debtor and PCH in order to provide the Debtor a chance to survive, the Debtor and PCH entered into an agreement whereby the Debtor was allowed to use PCH’s purported cash collateral until June 14, 2017. *See* [ECF No. 39, 93].

**(c) Settlement with The People's Choice Hospital**

Since the commencement of this case, it was clear to bankruptcy counsel for the Debtor and for PCH that the result of continued litigation – including contested fights over cash collateral cash collateral use, competing affirmative claims, and the use of the proprietary Empower Software – would almost certainly result in the hospital closing. In an effort to avoid that, in the less than two weeks after the Debtor filed for bankruptcy protection, PCH and the Debtor engaged in intensive discussions in an effort to achieve a global resolution of entrenched disputes that were been ongoing since mid-2015. The result of those discussions was the global resolution embodied in a Settlement Agreement,<sup>9</sup> which was beneficial for the Debtor's estate and for all of the parties involved. The Settlement Agreement was believed to be the only path that would allow the Debtor to achieve its goal of keeping the hospital open to serve the emergency and medical needs of the community.

On May 19, 2017, the Debtor filed an *Emergency Motion to Approve Compromise or Settlement Between (I) the Debtor, Campbellton-Graceville Hospital Corporation and (II) The People's Choice Hospital and Certain Related Parties* ("**Settlement Motion**") [ECF No. 73] and the Court held a hearing on May 26, 2017 on an expedited basis.

Without the approval of the Settlement Agreement, the Debtor would not have been able to pay its employees and would run out of money while litigating issues surrounding the priority, validity, and extent of PCH's security interests in the Debtor's assets. In that circumstance, the hospital would be forced to close and the community would suffer a true hardship that could cause the loss of lives for patients who have to travel to other facilities for care. The terms in the

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<sup>9</sup> The Settlement Agreement was filed with the Court on May 19, 2017 [ECF No. 82].  
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Settlement Agreement were in the best interest of all creditors and the bankruptcy estate, and are summarized as follows:

***Access to Empower Software.*** PCH will provide the Debtor with access, without cost, to the Empower Software for the purpose of helping the Debtor complete Cost Reports for sixty (60) days, and for a reasonable fee if access is required beyond that period.

***Releases.*** Each Party will execute mutual releases of claims, including: (a) Claims allegedly held by PCH against the Debtor; and (b) All liens and security interests that PCH has against the Debtor's real and personal property, including its cash (resolving the cash collateral dispute).

***Allowed Claims.***

(a) PCH and its owner, Dr. Seth Guterman ("**Dr. Guterman**"), shall have a contingent allowed claim (the "**PCH-GE Claim**") in the amount that that they are required to pay, if any, on account of their guaranty dated as of February 3, 2014 (collectively, the "Guaranty"). The Guaranty guarantees the Debtor's obligations under an April 1, 2016 Assignment and Assumption Agreement of an equipment finance agreement with GE Healthcare Financial Services, dated February 3, 2014 (the "**GE Agreement**").

(i) If the GE Agreement is (i) assumed and assigned and PCH and Dr. Guterman are released from the Guaranty; or (ii) PCH and Dr. Guterman are otherwise released from the Guaranty, in each case without any payment from PCH or Dr. Guterman, the PCH-GE Claim shall be disallowed in its entirety.

(b) PCH may file an allowed general unsecured claim in the amount of \$500,000 (the "**PCH General Unsecured Claim**") and collectively with the PCH-GE Claim, the

**“PCH Claims”**). The PCH Claim shall not be entitled to a distribution until all other general unsecured creditors receive an aggregate distribution of \$5.0 million.

***Participation in Bankruptcy Case.*** With respect to PCH Claims, PCH and Dr. Guterman agree to waive any rights as unsecured creditor to (a) be considered a party in interest under § 1109(b) of the Bankruptcy Code; (b) vote on any plan proposed by the Debtor or any successor of the Debtor; except PCH may vote in favor of any plan proposed by the Debtor or any successor of the Debtor; and (c) to otherwise participate in the bankruptcy case.

***GE Agreement.*** With respect to the PCH-GE Claim, the Debtor agrees to (i) continue making all payments under the GE Agreement, and will (a) not assume and assign the GE Agreement without either (i) PCH and Dr. Guterman’s written consent or (ii) obtaining a cancellation of the Guaranty; or (b) not reject the GE Agreement without providing PCH at least five (5) business days prior written notice. PCH shall have the right to participate in all respects in any proceeding related to, or arising out of, the GE Agreement provided that it shall only be heard with respect to such agreement. Ultimately, PCH and GE reached an agreement regarding the GE Equipment and same was retrieved by PCH, with no further liability to the Debtor.

***Cooperation.*** Both Parties agree to cooperate in litigation against Jorge Perez and Reliance Laboratory Testing, Inc. (**“Reliance”**) provided that PCH retains its right to pursue Jorge Perez and Reliance and any entity controlled by him or his family for damages caused to PCH.

The Court approved the Settlement Motion on May 26, 2017 [ECF No. 92], subject to the limitations on the releases as set forth in the Settlement Motion.

**(d) Post-Petition Sale/Lease**

Although the preparation, confirmation, and implementation of a plan of reorganization is at the heart of a chapter 11 case, other issues may arise that must be addressed by the debtor in possession. The debtor in possession may use, sell, or lease property of the estate in the ordinary course of its business, without prior approval, unless the court orders otherwise. 11 U.S.C. § 363(c). If the intended sale or use is outside the ordinary course of its business, the debtor must obtain permission from the court.

On July 5, 2017, the Debtor filed its Emergency Motion to Sell Property under Section 363(b) (for Order Approving Substantially All of the Debtor's Assets Free and Clear From All Liens, Claims and Encumbrances to Northwest Florida Healthcare, Inc. (“NWFH” or “Buyer”), in addition to Motion to Assume Lease or Executory Contract and for Assignment of Certain Executory Contracts and Leases (“**Sale Motion**”) [ECF No. 143], seeking entry of an order (i) approving the sale of substantially all of the assets of the Debtor used in the operation of the Debtor’s business (the “**Business**”) located at 5429 College Drive, Graceville, FL 32440 (the “**Real Property**”), free and clear of any and all liens, claims, encumbrances, and interests, to NWFH, and (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases which Buyer agrees to assume, within Buyer’s sole discretion. The asset purchase agreement (“**APA**”) was filed with the Court on July 14, 2017 [ECF No. 155].

The assets include, without limitation, the Real Property, including any improvements thereon, all equipment, tools, furniture, fixtures, motor vehicles, inventory, work product, books

and records, and all other tangible personal property, other than the Excluded Assets<sup>10</sup>; all intellectual property (including, but not limited to, trade names, trademarks, copyrights, patents, licenses, data, software, domain names, and website content to the extent the Debtor is able to transfer such intellectual property, using its best efforts); patient lists, medical records, and goodwill; all rights and causes of action relating to the assets; and all other intangible and tangible property owned by the Debtor and/or used in, associated with, or necessary to operate the Debtor's business (collectively, the "**Assets**"). The Buyer would acquire title to, and ownership of, the Real Property, and shall assume the outstanding indebtedness to ServiceFirst (the "**Lender**") currently encumbering the Real Property, which, as of the date of a letter of intent ("**LOI**"), is approximately \$420,000.00 in the aggregate (the "**Assumed Indebtedness**"). The purchase price for the sale of the Assets will be the principal balance of the Assumed Indebtedness as of the Closing (the "**Purchase Price**"). The Purchase Price would be satisfied by the assumption of the Assumed Indebtedness. The Court approved the Sale Motion, however, the Debtor and NWFH were unable to consummate the sale due to the inability to meet certain conditions precedent.

The Debtor and NWFH continued to work towards a solution. Accordingly, on September 7, 2017, the Debtor filed its Emergency Motion To Approve Lease Agreement, With Purchase Option, By And Between (I) The Debtor, Campbellton-Graceville Hospital Corporation; And (Ii) Northwest Florida Healthcare, Inc. [ECF No. 230] (the "Lease Motion"). The Lease Motion sought approval of a transaction between the Debtor and NWFH that that will

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<sup>10</sup> The Excluded Assets are defined as (a) those seven items of medical equipment on the premises of the hospital the purchase of which was financed by General Electric and that are subject to liens in favor of General Electric and leases which shall be rejected; (b) the cash, cash equivalents, and accounts receivables of the Debtor; (c) Causes of Action, including Chapter 5 avoidance actions; and (d) certain excluded tangible personal property to be retained by the estate.

allow NWFH to lease the Debtor's real estate property, acquire the tangible personal property (excluding the tangible personal property that was previously excluded and which will be sold by the Debtor), maintain the Clinic's operations and provide healthcare and jobs for the community with NWFH bearing the operational costs associated with the property. The Debtor and NWFH will work diligently to have the law that may prohibit the conveyance of the real property clarified to clearly permit such conveyance. Upon such change in the legislation, NWFH would then have the option to purchase the assets being leased on substantially the same terms as set forth in the original Sale Motion. During the lease term NWFH would be responsible for the costs and maintenance of patient records and continuing the operation of the Clinic on the premises during business hours.

The Debtor considered all alternatives, with the assistance of its advisors, and determined that the immediate lease and sale of substantially all of its assets is in the best interests of its estate and creditors in order to preserve and maximize the value of the Debtor's assets. The ultimate lease was made pursuant to section 363 of the Code and will return a greater benefit to the Debtor's estate and its creditors than any alternatives. Absent the lease transaction, the Debtor would cease operating and close its doors.

Northwest Florida Healthcare, Inc. (the Lessee/Buyer) operates a hospital in Chipley, Florida. It is geographically well-situated to continue to operate the Debtor's healthcare clinic, has already hired some employees at the Chipley hospital, and will hire as many additional employees as is necessary to operate the Business, in the Buyer's sole discretion. Additionally, the Buyer will use commercially reasonable efforts to identify a third party that will utilize the Debtor's hospital facility for new services such as a geriatric psychological facility or memory care facility that is needed in the area and which may provide many jobs for the community.



This lease is the best alternative available under the facts and circumstances of this case as it will provide for the best possible alternative for the community and the Debtor's constituents and employees.

**(i) Court Approval.**

The Court held a final hearing on the Lease Motion on September 19, 2017 and approved the transaction.

**Miscellaneous Motions and Proceedings**

In addition to the significant matters described above, the following matters were heard by the Court or occurred in the early stages of the case:

The Section 341 Meeting of Creditors was held and concluded on June 13, 2017.

The Debtor filed a Motion for Entry of Order Finding that the Appointment of a Patient Care Ombudsman is Unnecessary [ECF No. 55]. The Court granted that Motion on June 2, 2017 [ECF No. 109].

The Debtor filed an Emergency Motion for Interim and Final Orders Determining Adequate Assurance of Payment for Future Utility Service [ECF No. 12]. This Motion was granted on an interim basis and on a final basis.

The Debtor filed an Emergency Motion for Authorization to (I) Continue to Administer Insurance Policies and Related Agreements; and (II) Honor Certain Obligations in Respect Thereof [ECF No. 15]. This Court granted that Motion on May 11, 2017 [ECF No. 49].

The Debtor filed its Motion seeking approval of procedures for monthly and interim compensation procedures [ECF No. 121]. The Court granted that motion on July 26, 2017 [ECF No. 177].

The Debtor filed its Schedules of Assets and Liabilities and Statement of Financial Affairs on June 2, 2017 [ECF Nos. 101 and 103].

On September 5, 2017, the Debtor filed its Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement [ECF No. 228]. This Motion was granted on October 24, 2017 [ECF No. 277].

On October 27, 2017, the Debtor and the Committee filed their Joint Motion for Order Establishing Procedures to Conduct Rule 2004 Examinations [ECF No. 286]. This Motion was granted on November 6, 2017 [ECF No. 290]. The procedures set forth in this Motion permit the taking and conducting of 2004 Examinations through the issuance of notices, with all rights and objections preserved. The Debtor and Committee have actively sought to conduct discovery in this manner, although certain objections have been received. These issues will be resolved through agreement or Court Order.

## **5. THE CREDITORS COMMITTEE**

The United States Trustee docketed a Notice of Appointment of a Committee of Creditors Holding Unsecured Claims (as defined, the “*Creditors’ Committee*”) pursuant to 11 U.S.C. § 1102 [ECF No. 120] on June 8, 2017. The members of the Creditors Committee include: Sun Ancillary Management, LLC, Mission Toxicology, LLC, Physicians Stat Lab, Inc., Park Avenue Capital LLC, Gilpin Givhan, PC and Smith’s Inc. of Dothan. The Committee, through its counsel and the professionals approved by the court as described above, has been actively involved in the case, including an intense investigation of the Reference Lab Program.

On August 22, 2017, the Court entered an order granting the Committee’s Motion to Establish Creditor Information Protocols to Provide Access to Information to Unsecured Creditors [ECF No. 202].

**6. THE DEBTOR'S ASSETS AND LIABILITIES**

As set forth in the Debtor's Case Management Summary, the Debtor's assets consisted of real property that includes the hospital building, the clinic building and a storage building. The Debtor has minimal remaining personal property which shall be liquidated, accounts receivables that total \$2.1 Million (some of which may be uncollectable) and significant litigation claims, including Chapter 5 avoidance actions and potential claims against Directors and Officers (D&Os). A summary of potential litigation claims is attached hereto as Exhibit B. Additionally, the Debtor may have available certain ad valorem taxes collected for the year 2017 in the approximate amount of \$400,000 provided from the Taxing District. The ability to utilize these funds will need to be ultimately determined. As of the Petition Date, the Debtor was generally current on its financial obligations to trade creditors but the litigation claims commenced against the Debtor exceeded \$6 Million. Furthermore, governmental agencies were seeking recoupment of overpayments (including CMS seeking repayment of the HITECH incentive) and several insurance companies have filed proof of claims of claims aggregating in excess of \$110 million.

**7. THE CLOSING OF THE HOSPITAL AND PLACING THE LICENSE ON INACTIVE STATUS**

In connection with the sale process and based upon the fact that the Debtor, despite reducing costs, was still not getting reimbursements, the Debtor closed the hospital on June 30, 2017. The clinic remained open, but the Debtor's license was placed on "inactive status". The closure of the hospital, while difficult, was required under the Asset Purchase Agreement with the buyer and necessary to keep costs down.

## **8. FORENSIC ACCOUNTING AND LITIGATION CLAIMS**

With the sale completed, the remaining primary assets of the Debtor consist of litigation claims. The Reference Lab Program appears to have been fraud based and the Debtor asserts that significant litigation claims exist. The Debtor, through Glass Ratner, has initiated a detailed forensic accounting and submits that significant claims to recover preferences, fraudulent transfers and other claims exist against a significant number of parties. The face value of these claims may exceed \$100 Million. However, the pursuit and ultimate recovery of these claims will depend on a number of factors. On September 27, 2017, the Debtor sent out twenty eight (28) demand letters to Laboratories that, pursuant to the forensic accounting performed by Glass Ratner, participated in the Laboratory Program. The Debtor demanded that these Laboratories deliver to Debtor funds received from the Debtor as fraudulent transfers, within 14 days of receipt. The total sum of the demand on these laboratories equate to \$128 Million dollars. The Debtor has received some responses and is negotiation some settlements related to these claims. Claims that cannot be settled will be litigated.

## **9. THE DEBTOR'S LICENSES AND STATUS**

The Debtor's licenses are attached hereto on Exhibit C.11

## **10. CLAIMS RESOLUTION PROCESS**

The Code defines a claim as: (1) a right to payment; (2) or a right to an equitable remedy for a failure of performance if the breach gives rise to a right to payment. 11 U.S.C. § 101(5). Generally, any creditor whose claim is not scheduled (i.e., listed by the debtor on the debtor's schedules) or is scheduled as disputed, contingent, or unliquidated must file a proof of claim (and attach evidence documenting the claim) in order to be treated as a creditor for purposes of voting

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<sup>11</sup> It should be noted that the lab license on the attached schedule indicates that the hospital was licensed to perform both qualitative and quantitative toxicology tests on its patients.

on the plan and distribution under it. Fed. R. Bankr. P. 3003(c)(2). But filing a proof of claim is not necessary if the creditor's claim is scheduled (but is not listed as disputed, contingent, or unliquidated by the debtor) because the debtor's schedules are deemed to constitute evidence of the validity and amount of those claims. 11 U.S.C. § 1111. If a scheduled creditor chooses to file a claim, a properly filed proof of claim supersedes any scheduling of that claim. Fed. R. Bankr. P. 3003(c)(4). It is the responsibility of the creditor to determine whether the claim is accurately listed on the debtor's schedules.

The claims bar date for all creditors (other than governmental entities) was September 13, 2017. The claims bar date for all governmental entities was December 11, 2017. Pursuant to the Plan, the Debtor may object to any scheduled claim or Proof of Claim filed against the Debtor. Such an objection shall preclude the consideration of any claims as "allowed" for the purposes of timely distribution in accordance with the Plan. However, payment on account of the pro rata amount shall be set aside in a Disputed Claim Reserve. The Debtor anticipates filing objections to claims of various creditors pursuant to the procedures and time-frame established in the Plan and Confirmation Order.

## **11. BRIEF SUMMARY OF THE PLAN**

### **(a) Treatment of Claims and Equity Interests Under the Plan.**

**THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE, CLASSIFICATION, TREATMENT AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT "A".**

The Claims against the Debtor are divided into Classes according to their seniority and other criteria. The Classes of Claims for each of the Debtors and the funds and other property to be distributed under the Plan are described more fully below.

### **(i) Administrative and Priority Claims.**

a. Administrative Expense Claims.

The Debtors shall pay each holder of an Allowed Administrative Claim, in satisfaction of such Allowed Administrative Claim, the full unpaid amount of such Allowed Administrative Claim in Cash: (1) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (2) if such Claim is Allowed after the Effective Date, on the date such Claim is Allowed or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as practicable thereafter); (3) at such time and upon such terms as may be agreed upon by such holder and the Debtors; or (4) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

b. Accrued Professional Compensation Claims.

The deadline for submission by Professionals for Bankruptcy Court approval of Accrued Professional Compensation Claim shall be set by the Bankruptcy Court. Any Professional or other Person or Entity that is required to file and serve a request for approval of Accrued Professional Compensation and fails to timely file and serve such request on or before such date shall be forever barred, estopped and enjoined from asserting such request or participating in Distributions under the Plan on account thereof. All Professionals employed by the Debtors or the Creditors' Committee, shall provide in their final fee applications to be filed in connection with confirmation of the Plan an estimate of their Accrued Professional Compensation through the Effective Date (including an estimate for fees and expenses expected to be incurred prior to the Effective Date to prepare and prosecute allowance of final fee applications). From and after the Confirmation Date until the Effective Date, the Debtors, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, shall pay the reasonable

fees and expenses of Professionals during such period in accordance with the Interim Compensation Order; provided, however, that the Interim Compensation Order is hereby modified to provide for one hundred (100%) percent of reasonable fees and expenses during the period covering the Confirmation Date through the Effective Date.

c. Priority Tax Claims.

The Debtor shall pay each holder of an Allowed Priority Tax Claim, in satisfaction of such Allowed Priority Tax Claim, the full unpaid amount of such Allowed Priority Tax Claim in Cash, on the later of (i) the Effective Date, (ii) the date such Allowed Priority Tax Claim becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy law; provided, however, that the Debtors shall not pay any premium, interest or penalty in connection with such Allowed Priority Tax Claim.

(ii) Classification of Claims and Equity Interests.

a. Classified Claims Against and Equity Interests in the Debtors.

Except as set forth in the Plan, all Claims against and Equity Interest are placed in a particular Class. The Debtors have not classified Administrative Claims, Accrued Professional Compensation Claims or Priority Tax Claims.

The following table classifies Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of

such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated hereunder as a distinct Class for voting and Distribution purposes.

The following lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan. The current proposed treatment of the secured claims is as follows:

Class 2. Secured Claim of Cardinal Health 200, LLC (Amount of Claim \$7,855.78) \$1,355.44 secured and \$6,520.34 unsecured for products sold.

Allowed Unsecured Claims are claims that are not secured by property of the Debtors' bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under Section 506 of the Code. These claims included allowed unsecured claims, undersecured claims and deficiency claims

Class 3. General Unsecured and Deficiency Claims (\$118,465,785.27 in General Unsecured Claims. The general unsecured claims consist primarily of third party payors alleging overpaid insurance claims not properly reimbursed by Debtor. The majority of remaining claims were received by reference laboratories that participated in the Laboratory Program alleging unpaid invoices for services performed.

| Class | Type of Claim or Equity Interest | Status     | Entitled to Vote              | Estimated Amount of Allowed Claims / Approx. Percentage Recovery |
|-------|----------------------------------|------------|-------------------------------|--|
| 1     | Other Priority Claims            | Unimpaired | No; Deemed to Accept the Plan |  |



| Class | Type of Claim or Equity Interest | Status     | Entitled to Vote                  | Estimated Amount of Allowed Claims / Approx. Percentage Recovery |
|-------|----------------------------------|------------|-----------------------------------|--|
| 2     | Secured Claims                   | Unimpaired | No; Deemed to Accept the Plan     |  |
| 3     | General Unsecured Claims         | Impaired   | Yes; Entitled to Vote on the Plan |  |
| 4     | Equity Interests                 | Impaired   | No; Deemed to Reject the Plan     | \$N/A/ 0%  |

**(b)** Means for Implementing the Plan. To support the Plan and Liquidating Trust, the Debtor has been in final negotiations and expects to finalize DIP/Exit Financing to provide sufficient liquidity to satisfy administrative expense claims and to aggressively pursue the Litigation Claims.

**(c)** The Debtor will work with NWFH to obtain the appropriate legislative change to clearly permit the sale of the Debtor's real estate during the Lease Term. Upon such resolution, the real estate will be sold pursuant to the purchase option as set forth in the Lease Motion. If the Lease is terminated without a sale, the Debtor will seek alternative sale options for its real estate assets. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**(d)** A Liquidating Trust will be created. A copy of the proposed Trust Agreement will be filed with the Court no later than ten (10) days prior to the confirmation hearing. All

assets of the Debtor will be transferred and/or assigned to the Trust for the purpose of commencing, prosecuting, settling, or otherwise resolving such Litigation Claims, any and Causes of Action. The Liquidating Trustee will liquidate any and all remaining assets and aggressively collect the outstanding account receivables. The forensic accounting and review all potential litigation claims that may be commenced will continue. The sale of assets, collection of accounts receivables and the pursuit and recovery from these litigation claims will generate funds to pay Allowed Unsecured Claims. It is impossible to determine the extent of the recovery at this time. Likewise, claims against the estate may exceed \$100 Million. All claims will be reconciled and Allowed Claims will receive pro rata distribution from the recoveries. Marshall Glade shall serve as the Liquidating Trustee.

#### **Assignment of Creditor Causes of Action**

On the Effective Date of the Plan, and without further order of the Bankruptcy Court, the Creditor Causes of Action owned by Assigning Creditors, shall be assigned to or otherwise transferred to the Liquidating Trust for the purpose of commencing, prosecuting, settling, releasing, and/or liquidating the Creditor Causes of Action for the benefit of Liquidating Trust Beneficiaries. All such Creditor Causes of Action of Assigning Creditors shall be treated as Litigation Claims.

To the Extent that the Liquidating Trustee obtains any benefit or collects any consideration arising out of a Creditor Cause of Action assigned by an Assigning Creditor, the Liquidating Trustee shall request Court approval, upon notice and a hearing, to increase the allowed amount of such Assigning Creditor's Allowed Class 3 Claim based on such obtained benefit and/or collected consideration by an appropriate amount of up to fifty percent (50%) of the Net Proceeds attributable to such Creditor Cause of Action.

Notwithstanding anything to the contrary in the Plan, it shall be a condition to any effective transfer of a Creditor Cause of Action by a Holder of an Unsecured Claim, and therefore a condition to benefitting from this section, that such Holder (a) evidence its ownership of such Creditor Cause of Action to the Liquidating Trustee and (b) execute an assignment agreement

## **12. CLAIMANTS AND IMPAIRED INTEREST HOLDERS**

Claimants and interest holders entitled to vote under the Plan must affirmatively act in order for the Plan to be confirmed by the Court. According to the Debtor's Plan, Class 3 is "impaired" within the meaning of § 1124 of the Code. These classes, accordingly, must vote to accept the Plan in order for the Plan to be confirmed without a cram down. A claimant who fails to vote to either accept or reject the Plan will not be included in the calculation regarding acceptance or rejection of the Plan.

A ballot to be completed by the holders of claims and/or interests is included in the packet being mailed out to creditors. Instructions for completing and returning the ballots are set forth thereon and should be reviewed at length. The Plan will be confirmed by the Court and made binding upon all claimants and interest holders if (a) with respect to impaired Classes of claimants, the Plan is accepted by holders of two-thirds (2/3) in amount and more than one-half (1/2) in number of claims in each such class voting upon the Plan and (b) with respect to classes of interest holders, if the Plan is accepted by the holders of at least two-thirds (2/3) in amount of the allowed interests of such class held by holders of such interests. In the event the requisite acceptances are not obtained, the Court may, nevertheless, confirm the Plan if it finds that the Plan accords fair and equitable treatment to any class rejecting it. Your attention is directed to Section 1129 of the Code for details regarding the circumstances of such "cram down"

provisions, and as explained above.

### **13. LIQUIDATION ANALYSIS**

Although this Disclosure Statement is intended to provide information to assist a claim or interest holder in determining whether to vote for or against the Plan, a summary of the alternatives to confirmation of the Plan may be helpful. If the Plan is not confirmed, the following alternatives are available: (a) confirmation of another Chapter 11 plan; or (b) dismissal of the Chapter 11 Case leaving creditors and interest holders to pursue available non-bankruptcy remedies. These alternatives to the Plan are very limited and not likely to benefit creditors.

As this is a liquidating Plan, no liquidation analysis is required.

### **14. RISK ANALYSIS**

The Debtor believes there is minimal risk to the creditors if the Plan is confirmed. However, in deciding how to cast your vote, you should consider the following risk factors.

#### **(a) Failure to Satisfy Vote Requirement**

The Debtor is seeking to receive votes in number and representing claims in amount sufficient to enable the Court to confirm the Plan. If the Plan does not receive sufficient votes for Confirmation pursuant to section 1129(a) of the Code, then the Debtor may and specifically reserve the right to seek to employ the "cram down" procedures set forth in section 1129(b) of the Code.

#### **(b) The Plan May Not Be Accepted or Confirmed**

While the Debtor believes the Plan is confirmable under the standards set forth in section 1129 of the Code, there can be no guarantee that the Court will find the Plan to be confirmable. Additionally, the Plan as drafted requires acceptance by at least one of the impaired classes. And if the conditions precedent to the Effective Date have not been satisfied or waived, the

Confirmation Order may not be entered and/or the Court may vacate the Confirmation Order. However, there can be no assurance that all of the various conditions to effectiveness of the Plan will be timely satisfied or waived. In the event that the conditions to effectiveness have not been timely satisfied or waived, the Plan would be deemed null and void and the Debtor may propose or solicit votes on an alternative plan that may not be as favorable to parties in interest as the Plan.

**(c) Allowed Claims May Exceed Estimates**

The timing and amount of projected distributions set forth in the Plan and described in this Disclosure Statement are based upon the Debtor's good faith estimates and the Projections attached hereto, including projections of the amount of Plan expenses that will be incurred and total amount of claims in each class that will ultimately be allowed. The actual amount of Plan expenses could be greater than expected for a variety of reasons, including greater than anticipated administrative and litigation costs associated with resolving disputed claims. Additionally, the actual amount of Allowed Claims in any class could be materially greater than anticipated (based on, among other things, success in disputing claims), which will impact the timing and amount of distributions to be made on account of Allowed Claims.

**15. CONFIRMATION BY CRAM DOWN**

For a plan to be confirmed, the Code requires, among other things, that the plan be proposed in good faith and comply with the other applicable provisions of chapter 11 of the Code, including a requirement that at least one class of impaired claims accept the Plan, and that confirmation of the plan is not likely to be followed by the need for further financial reorganization. The Court will confirm a plan only if it finds that all of the requirements

enumerated in section 1129 of the Code have been met. The Debtor believes that the Plan satisfies all of the requirements for Confirmation.

The Debtor reserves the right, in the event that impaired classes reject the Plan, to seek confirmation of the Plan if the Court finds that the Plan does not discriminate unfairly and is fair and equitable with respect to each dissenting class.

The Plan is deemed fair and equitable if it provides (i) that each holder of a Secured Claim retains its lien and receives deferred cash payments totaling at least the allowed amount of its claim, of a value, as of the effective date of the Plan, of at least the value of its secured interest in the property subject to his lien, and (ii) that each holder of an Unsecured Claim receives property of a value equal to the allowed amount of its claim, or no holder of a junior claim receives or retains any property.

#### **16. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE PLAN**

The Plan shall not become effective and the Effective Date shall not occur unless and until:

- a. Fourteen days shall have passed from the Confirmation Date;
- b. The Bankruptcy Court shall have entered the Confirmation Order in form and substance satisfactory to the Debtor authorizing and directing the Debtor to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, indentures and other agreements or documents created, amended, supplemented, modified, or adopted in connection with the Plan;
- c. The Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to section 1125 of the Code;
- d. No stay of the Confirmation Order shall be in effect at the time the other conditions set

forth in this Section are satisfied, or, if permitted, waived;

- e. All documents, instruments and agreements, in form and substance satisfactory to each of the Debtor, provided for under this Plan or necessary to implement this Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby; and
- f. The Plan has not been withdrawn, which right the Debtor fully reserves through the date of Confirmation.

#### **17. EFFECT OF CONFIRMATION**

**Pursuant to Sections 105, 1123, 1129 and 1141 of the Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, Liability or Interest that is discharged or terminated pursuant to the terms of the Plan are and shall be permanently enjoined and forever barred from taking any of the following actions on account of any such discharged or terminated Claims, Debts, Liabilities, or Interests, other than actions brought to enforce any rights or obligations under the Plan or the Plan Documents: (a) commencing or continuing in any manner any action or other proceeding against the Debtor and its Property or Business; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor and its Property or Business; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtor, and its Property or Business; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; (e) commencing or continuing, in any manner or in any place, any action that**

**does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; or (f) interfering with or in any manner whatsoever disturbing the rights and remedies of the Debtor. The Debtor shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained herein, the provisions of this Article shall not release or be deemed a release of any of the Causes of Action.**

#### **18. PRESERVATION OF ACTIONS AND CAUSES OF ACTIONS**

The debtor in possession or the trustee, as the case may be, has what are called “avoiding” powers. These powers may be used to undo a transfer of money or property made during a certain period of time before the filing of the bankruptcy petition. By avoiding a particular transfer of property, the debtor in possession can cancel the transaction and force the return or "disgorgement" of the payments or property, which then are available to pay all creditors. Generally, and subject to various defenses, the power to avoid transfers is effective against transfers made by the debtor within 90 days before filing the petition. But transfers to "insiders" (i.e., relatives, general partners, and directors or officers of the debtor) made up to a year before filing may be avoided. 11 U.S.C. §§ 101(31), 101(54), 547, 548. In addition, under 11 U.S.C. § 544, the trustee is authorized to avoid transfers under applicable state law, which often provides for longer time periods. Avoiding powers prevent unfair prepetition payments to one creditor at the expense of all other creditors.

From and after the Effective Date, to the extent not otherwise adjudicated or settled prior to or as a part of the Plan, all rights pursuant to sections 502, 510, 541, 544, 545 and 546 of the Code; all preference claims pursuant to section 547 of the Code; all fraudulent transfer claims



pursuant to section 544 or 548 of the Code; all claims relating to post-petition transactions under section 549 of the Code; all claims recoverable under section 550 of the Code; and, all claims (including claims arising at common law or equity) against any person, entity, etc., on account of any debt, other claim or right in favor of the Debtor, including claims to equitably subordinate their claim, seek a determination that they are under-secured or wholly unsecured, that they do not have a lien on the Debtor's assets, including cash, that their claim should be disallowed and or other legal or equitable claims, and any and all claims against Perez and/or his successors and assigns, are hereby preserved, retained and assumed for enforcement by the Debtor, who shall, at its election, have the right to prosecute or settle, to execute and enforce any judgment or settlement agreement therein and to exercise all such avoidance powers. The Debtor reserves the right to investigate any and all claims and file causes of action if appropriate.

#### **19. U.S. FEDERAL INCOME TAX CONSIDERATIONS**

A summary description of certain U.S. federal income tax consequences of the Plan is provided below. This description is for informational purposes only and is subject to significant uncertainties. Only the principal consequences of the Plan for the Debtor and for the holders of Claims and Interests who are entitled to vote to confirm or reject the Plan are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the Internal Revenue Service ("**IRS**") or any other tax authorities have been obtained or sought with respect to the Plan, and the description below is not binding upon the IRS or such other authorities.

The following discussion of U.S. federal income tax consequences is based on the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), regulations promulgated and

proposed thereunder and judicial decisions and administrative rulings and pronouncements of the IRS as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to holders. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

**THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE OR LOCAL TAX CONSEQUENCES OF THE PLAN, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS. FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE GENERALLY NOT DISCUSSED HEREIN.**

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

Holders of Claims should generally recognize gain (or loss) to the extent the amount realized under the Plan (generally the amount of Cash received) in respect of their Claims exceeds (or is exceeded by) their respective tax bases in their Claims. The tax treatment of holders of Claims and the character and amount of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan will depend upon, among other things, (a) the nature and origin of the Claim, (b) the manner in which a holder acquired a Claim, (c) the length of time a Claim has been held, (d) whether the Claim was acquired at a discount, (e) whether the holder has taken a bad debt deduction in the current or prior years, (f) whether the holder has previously included in income accrued but unpaid interest with respect to a Claim, (g) the method of tax accounting of a holder; and (h) whether a Claim is an

installment obligation for U.S. federal income tax purposes. **Therefore, holders of Claims should consult their own tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequence to such holders as a result thereof.**

The tax treatment of a holder of a Claim that receives distributions in different taxable years is uncertain. If such a holder treats the transaction as closed in the taxable year it first receives (or is deemed to have received) a distribution of Cash and/or other property, it should recognize gain or loss for such tax year in an amount equal to the cash and the value of other property actually (and deemed) received in such tax year (other than that received in respect of accrued interest) with respect to its Claim (other than any portion of the Claim that is attributable to accrued interest) plus the estimated value of future distributions (if any) less its tax basis in its Claim (except to the extent its Claim is for accrued interest). A holder should then subsequently recognize additional income or loss when additional property distributions are actually received in an amount equal to the Cash and/or value of such other property (other than that received in respect of accrued interest) less the holder's allocable tax basis in its Claim with respect to such subsequent distribution. A holder may have to treat a portion of any such subsequent distribution as imputed interest recognizable as ordinary income in accordance with the holder's method of tax accounting. If instead the open transaction doctrine applies as a result of the value of the Subsequent Distributions that a holder may receive not being ascertainable on the Effective Date, such holder should not recognize gain (except to the extent the value of the Cash and/or other property already received exceeds such holder's adjusted tax basis in its Claim (other than any Claim for accrued interest)) or loss with respect to its Claim until it receives the final distribution thereon (which may not be until the Final Distribution Date). It is the position of the IRS that the

open transaction doctrine applies only in rare and extraordinary cases. The Debtor believes that the open transaction doctrine should not apply and that holders may be entitled to take the position that on the Effective Date no value should be assigned to the right to receive any Subsequent Distributions. **Creditors are urged to consult their own tax advisors regarding the application of the open transaction doctrine and how it may apply to their particular situations, whether any gain recognition may be deferred under the installment method, whether any loss may be disallowed or deferred under the related party rules and the tax treatment of amounts that certain Creditors may be treated as paying to other Creditors.**

Holders of Allowed Claims will be treated as receiving a payment of interest (in addition to any imputed interest as discussed in the preceding paragraph) includible in income in accordance with the holder's method of accounting for tax purposes, to the extent that any Cash and/or other property received pursuant to the Plan is attributable to accrued but unpaid interest, if any, on such Allowed Claims. The extent to which the receipt of Cash and/or other property should be attributable to accrued but unpaid interest is unclear. The Plan provides, and the Debtor intends to take the position, that such Cash and/or other property distributed pursuant to the Plan will first be allocable to the principal amount of an Allowed Claim and then, to the extent necessary, to any accrued but unpaid interest thereon. Each holder should consult its own tax advisor regarding the determination of the amount of consideration received under the Plan that is attributable to interest (if any) and whether any such interest may be considered to be foreign source income. A holder generally will be entitled to recognize a loss to the extent any accrued interest was previously included in its gross income and is not paid in full.

Certain payments, including the payments of Claims and Interests pursuant to the Plan, are generally subject to information reporting by the payor to the IRS. Moreover, such

reportable payments are subject to backup withholding under certain circumstances. Under the backup withholding rules, a holder of a Claim may be subject to backup withholding at the applicable tax rate with respect to distributions or payments made pursuant to the Plan, unless the holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury as to the correctness of its taxpayer identification number and certain other tax matters. Backup withholding is not an additional tax. Rather, the U.S. federal income tax liability of those subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of U.S. federal income taxes, a holder may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the IRS.

**THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES OF THE PLAN ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**CIRCULAR 230 DISCLAIMER:** The IRS now requires written advice (including electronic communications) regarding one or more Federal (i.e., United States) tax issues to meet certain standards. Those standards involve a detailed and careful analysis of the facts and applicable law which we expect would be time consuming and costly. We have not made and have not been asked to make that type of analysis in connection with any advice given in this Disclosure Statement. As a result, we are required to advise you that any Federal tax advice rendered in this e-mail is not intended or written to be used and cannot be used for the purpose of avoiding penalties that may be imposed by the IRS.

## **20. MISCELLANEOUS PROVISIONS**

A. Notwithstanding any other provisions of the Plan, any Claim which is scheduled as disputed, contingent, or unliquidated or which is objected to in whole or in part on or before the date for distribution on account of such claim shall not be paid in accordance with the provisions of the Plan until such claim has become an Allowed Claim by a Final Order. If allowed, the Claim shall be paid on the same terms as if there had been no dispute.

B. At any time before the Confirmation Date, the Proponents may modify the Plan, but may not modify the Plan so that the Plan, as modified, fails to meet the requirements of sections 1122 and 1123 of the Code. After the Proponents file a modification with the Bankruptcy Court, the Plan, as modified, shall become the Plan.

C. At any time after the Confirmation Date, and before Substantial Consummation of the Plan, the Proponents may modify the Plan with permission of the Court so that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Code. The Plan, as modified under this paragraph, shall become the Plan.

D. After the Confirmation Date, the Proponents may, with approval of the Court, and so long as it does not materially and adversely affect the interest of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Order of Confirmation, in such manner as may be necessary to carry out the purposes and effect of the Plan.

E. The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6), within ten (10) days from the entry of an order confirming this Plan, for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period. The Debtor, as

a reorganized debtor, shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. §1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. §1930(a)(6), based upon post-confirmation disbursements made by the Reorganized Debtor, until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court, or upon the entry of an order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code, and the reorganized debtor shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

## **21. CONCLUSION**

Under the Debtor and Committee's Plan, all Creditors and interest holders of Debtor will participate in some manner in the distribution to be made thereunder. Debtor and Committee believe that the distributions contemplated in its Plan are fair and afford all Claimants and interest holders' equitable treatment. ACCORDINGLY, THE DEBTOR AND COMMITTEE RECOMMEND THAT ALL CLAIMANTS AND INTEREST HOLDERS VOTE TO ACCEPT THE PLAN.

DATED: December 29, 2017.

CAMPBELLTON-GRACEVILLE  
HOSPITAL CORPORATION  
5429 College Drive  
Graceville, FL 32440

By: /s/ Marshall Glade  
Marshall Glade, Chief Restructuring Officer

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**EXHIBIT A**  
Plan

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION  
[www.flnb.uscourts.gov](http://www.flnb.uscourts.gov)

IN RE:

Case No. 17-40185-KKS

CAMPBELLTON-GRACEVILLE HOSPITAL  
CORPORATION,<sup>1</sup>

Chapter 11

Debtor.

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**JOINT CHAPTER 11 PLAN OF LIQUIDATION PURSUANT TO  
CHAPTER 11 OF THE BANKRUPTCY CODE, FILED BY THE DEBTOR  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**December 29, 2017**

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<sup>1</sup> The last four digits of the taxpayer identification number for the Debtor are 9709. The mailing address for the Debtor is 5429 College Drive, Graceville, FL 32440.

## **INTRODUCTION**

Campbellton-Graceville Hospital Corporation, as debtor and debtor-in-possession (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”)(collectively, the Debtor and the Committee are the “Proponents”) propose this Chapter 11 Plan of Liquidation (including all addenda, exhibits, schedules, and other attachments hereto, as any of the same may be amended from time to time, all of which are incorporated herein by reference, the “Plan”) pursuant to the provisions of Chapter 11 of the Bankruptcy Code (as defined in Section 1.2.10 below.)

The Proponents urge all Holders of Claims entitled to vote on the Plan to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. To the extent, if any, that the Disclosure Statement is inconsistent with the Plan, the Plan will govern. No solicitation materials other than the Disclosure Statement and any schedules and exhibits attached thereto or referenced therein, or otherwise enclosed with the Disclosure Statement served by the Debtor on interested parties, have been authorized by the Proponents or the Bankruptcy Court for use in soliciting acceptances of the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Federal Bankruptcy Rule 3019, the Proponents expressly reserve the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation.

## **ARTICLE I** **DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION**

1.1 **Scope of Definitions.** For the purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, respectively. Whenever the context requires, capitalized terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

1.2 **Definitions.** In addition to such other terms as are defined in other Sections of the Plan, the following terms (which appear in the Plan as capitalized terms) used herein shall have the respective meanings defined below.

(a) **Administrative Claim** means a Claim for payment of an administrative expense under section 503 of the Code that is entitled to priority under section 507(a)(1) of the Code and any fees or charges assessed against the Estate pursuant to 28 U.S.C. § 1930.

(b) **Administrative Claimant** means the holder of an Administrative Claim.

(c) **Allowed Amount** means, with respect to a Claim, (a) the amount of a Claim that was listed in the Debtor’s Schedules (as originally filed in the Case) as not disputed, contingent or unliquidated, if the holder of such Claim has not filed a proof of claim with the Court within the applicable period of limitation fixed by the Court pursuant to Rule 3003(c)(3) of

the Rules, or (b) if a holder of a Claim has filed a proof of claim with the Court within the applicable period of limitation fixed by the Court pursuant to Rule 3003(c)(3) of the Rules: (i) the amount stated in such proof of claim or in the Schedules if no objection to such proof of claim or amount listed in the Schedules has been interposed within the applicable period of limitation fixed by the Code or Rules, or as otherwise fixed by the Court, or (ii) such amount as shall be fixed by an order of the Court which has become a Final Order, if an objection has been interposed within the applicable period of limitation fixed by the Code, the Rules, or the Court, or (c) with respect to a Fee Request, such amount as shall be fixed by an order of the Court which has become a Final Order. In no event shall the Allowed Amount of any Priority Claim or Unsecured Claim include interest accrued on such Claim after the Petition Date.

(d) **Allowed Claim** means any Claim which is not a Disputed Claim for which an Allowed Amount has been finally determined in such or any portion thereof, Allowed Amount, or which no objection has been filed by the deadline set forth in Rule 3007-1(G) of the Local Rules of the United States Bankruptcy Court for the Northern District of Florida. Any such claim shall be an Allowed Claim as to the undisputed portion or amount. The Allowed Amount of each Secured Claim, if any, shall not include, pursuant to section 506(b) of the Code, interest on such Claim, and any reasonable fees, costs, or charges provided for under the agreement(s) under which such Claim arose incurred as a result of any breach or default, act or omission occurring through the Effective Date or by reason of the Plan, Confirmation or Substantial Consummation.

(e) **Allowed Interest** means any Interest which has not been timely disputed, or if timely disputed, which has been allowed by order of the Court which has become a Final Order.

(f) **Article** means one of the numbered Articles of the Plan.

(g) **Assets** means all of the right, title and interest of the Debtor in and to property of any type or nature, including, but not limited to Litigation Claims.

(h) **Avoidance Actions** means any and all causes of action which a trustee, debtor-in-possession, the estate or other appropriate party in interest, if appropriate, may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code (other than those which are released or dismissed as part of and pursuant to the Plan or any previous Order of the Bankruptcy Court), including the Debtor's rights of setoff, recoupment, contribution, reimbursement, subrogation or indemnity (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction) and any other direct or indirect claim of any kind whatsoever, whenever and wherever arising or asserted.

(i) **Ballot** means the form of approved ballot accompanying the approved Disclosure Statement upon which Holders of Claims entitled to vote on the Plan shall indicate their acceptance or rejection of the Plan in accordance with the instructions regarding voting.

(j) **Bar Date** means September 13, 2017, which was established by the Bankruptcy Court as the deadline for filing and serving all proofs of claim (other than with respect to Governmental Unit Claims) against the Debtor in this Case.

(k) **Bar Date for Governmental Unit Claims** means December 11, 2017, which was established by the Bankruptcy Court as the deadline for Governmental Units to file and serve all proofs of claim against the Debtor in this Case, including, without limitation, claims for Taxes.

(l) **Books and Records** means, with respect to the Debtor, all books and records of the Debtor, including, without limitation, all documents and communications of any kind, whether physical or electronic.

(m) **Business Day** means any day other than a Saturday, Sunday or a Legal Holiday (as such term is defined in Federal Bankruptcy Rule 9006(a)).

(n) **Cash** means cash and cash equivalents in certified or immediately available U.S. funds, including, but not limited to bank deposits, checks and similar items.

(o) **Causes of Action** means any and all actions, claims, rights, defenses, third-party claims, damages, executions, demands, crossclaims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, accounts receivable, notes receivable and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, uncontingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, accruing to the Debtor, whether sounding in tort or contract.

(p) **Chapter 11 Case** means this chapter 11 case of the Debtor pending before the Bankruptcy Court, Case No. 17-40185-KKS.

(q) **Claim** means a right of a Creditor against the Debtor, whether or not asserted or allowed, of the type described in section 101(5) of the Bankruptcy Code, as construed by section 102(2) of the Bankruptcy Code.

(r) **Class** means a group of Claims or Interests classified together pursuant to Article 2 of the Plan.

(s) **Class 1** means Allowed Other Priority Claims.

(t) **Class 2** means the Allowed Secured Claim of Cardinal Health 200, LLC.

(u) **Class 3** means Allowed Unsecured and Deficiency Claims.

(v) **Class 4** means Interests of Equity Holders of the Debtor.

(w) **Code** means the United States Bankruptcy Code, 11 U.S.C. §§ 101 – 1532.

(x) **Collateral** means any property or interest in property of the estate of the Debtor subject to a lien, charge or other encumbrance to secure the payment or performance of a Claim, which lien, charge or other encumbrance is not subject to avoidance or is otherwise invalid under the Bankruptcy Code or applicable state law.

(y) **Confirmation Date** means the date on which the Bankruptcy Court enters the Confirmation Order on its docket.

(z) **Confirmation Hearing** means the duly noticed hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to Bankruptcy Code section 1128, including any continuances thereof.

(aa) **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, as such order may be amended, modified or supplemented.

(bb) **Court** means the United States Bankruptcy Court for the Northern District of Florida (Tallahassee Division) having jurisdiction over this Case and, to the extent of any withdrawal of the reference under section 157 of title 28 of the United States Code, the United States District Court for the Northern District of Florida.

(cc) **Creditor** means any Person holding a Claim or Interest, including Administrative Claimants and Claims of the kind specified in sections 502(b), 502(h) and 502(i) of the Code, and such Person's heirs, successors, assigns, executors and personal representatives.

(dd) **Creditors' Committee** or **Committee** has the meaning set forth in the preamble hereof.

(ee) **Debtor or Debtor in Possession** means Campbellton-Graceville Hospital Corporation, including in its capacity as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

(ff) **Disallowed** means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which (i) has been disallowed, in whole or part, by a Final Order of the Bankruptcy Court, (ii) has been withdrawn and/or waived by agreement of the Debtor and the Holder thereof, in whole or in part, (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as Disputed, contingent or unliquidated and in respect of which a Proof of Claim or a Proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order of the Bankruptcy Court or other applicable bankruptcy law, (v) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any Proof of Claim or Proof of Interest, or (vi) is deemed to be Filed under applicable law or order of the Bankruptcy Court or which is required to be Filed by order of the Bankruptcy Court but as to which such Proof of claim or Proof of Interest was not timely or properly Filed. In each case a Disallowed Claim or Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

(gg) **Disallowed Claim** means a Claim, or any portion thereof, that is Disallowed.

(hh) **Disallowed Interest** means an Interest, or any portion thereof, that is Disallowed.

(ii) **Disbursement Agent** means the person or entity empowered and authorized to make all Distributions under the Plan.

(jj) **Disclosure Statement** means that certain *Joint Disclosure Statement in Connection with Chapter 11 Plan of Liquidation of Campbellton-Graceville Hospital Corporation*, including the schedules and exhibits attached thereto, as amended, modified or supplemented from time to time, that is prepared and will be distributed (upon approval of the Bankruptcy Court) in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law.

(kk) **Disputed** means with respect to a Claim or Interest, any Claim or Interest that has not been Allowed by a Final Order as to which (a) a Proof of Claim or Interest has been Filed with the Bankruptcy Court, or is deemed Filed under applicable law or order of the Bankruptcy Court, and (b) an Objection to such Claim or Interest has been or may be timely Filed or deemed Filed under applicable law by the Debtor or any other party in interest, and any such Objection has not been (i) withdrawn, (ii) overruled or denied by a Final Order or (iii) granted by a Final Order. For purposes of the Plan, a Claim or Interest that has not been Allowed by a Final Order shall be considered a Disputed Claim or Interest, whether or not an Objection has been or may be timely Filed, to the extent (A) the amount of the Claim or Interest specified in the Proof of Claim or Interest exceeds the amount of any corresponding Claim or Interest in the Schedules, (B) the classification of the Claim or Interest specified in the Proof of claim or Interest differs from the classification of any corresponding Claim or Interest listed in the Schedules, (C) any corresponding Claim or Interest has been listed in the Schedules as zero or as Disputed, contingent or unliquidated, (D) no corresponding Claim or Interest has been listed in the Schedules or (E) such Claim or Interest is reflected as zero or as unliquidated or contingent in the Proof of Claim or Interest Filed in respect thereof.

(ll) **Disputed Claim** means a Claim, or any portion thereof, that is Disputed.

(mm) **Distribution** means each distribution of Cash to Holders of Allowed Claims pursuant to and under the terms of this Plan by the Plan Administrator on each Distribution Date.

(nn) **Distribution Date** means the date or dates on which a Holder of an Allowed Claim shall receive a distribution of Property under the terms of the Plan.

(oo) **Effective Date** means the tenth day after the Confirmation Order becomes a Final Order.

(pp) **Entity** has the meaning set forth in section 101(15) of the Bankruptcy Code.

(qq) **Estate** means the estate created in the Debtor's Case pursuant to section 541 of the Code.

(rr) **Executory Contract** means a contract or unexpired lease to which the Debtor is a party, and that is executory within the meaning of section 365 of the Code.

(ss) **Face Amount** means, with respect to a particular Claim, (a) if the holder of such Claim has not filed a proof of claim with the Court within the applicable period of limitation fixed by the Court pursuant to Rule 3003(c)(3) of the Rules, the amount of such Claim that was listed in the Schedules (as originally filed in each Case) as not disputed, contingent or unliquidated; or (b) if the holder of such Claim has filed a proof of claim with the Court within the applicable period of limitation fixed by the Court pursuant to Rule 3003(c)(3) of the Rules, the amount stated in such proof of claim, or (c) with respect to a Fee Request, the net amount to which the applicant would be entitled if its application were to be granted in full.

(tt) **Fee Request** means an application or request for payment by the Estate of fees, compensation for services rendered or reimbursement of expenses, pursuant to Rule 2016 of the Rules or other applicable provision of the Code or the Rules.

(uu) **Final Decree** means the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

(vv) **Final Order** means an order or judgment of the Court as entered on the docket that has not been reversed, stayed, modified or amended, and respecting which the time to appeal, petition for certiorari or seek reargument, review or rehearing has expired and as to which no appeal, reargument, petition for certiorari, review or rehearing is pending or as to which any right to appeal, reargue, petition for certiorari or seek review or rehearing has been waived in writing in a manner satisfactory to the Plan Proponent, or, if any appeal, reargument, petition for certiorari, review or rehearing thereof has been denied, the time to take any further appeal or to seek certiorari or further rehearing, review of reargument has expired.

(ww) **General Unsecured Claim** means all Unsecured Claims against the Debtor.

(xx) **Holder** means the legal or Beneficial Holder of a Claim or Interest (and, when used in conjunction with a Class or type of Claim or Interest, means a Holder of a Claim or Interest in such Class or of such type).

(yy) **Impaired** shall have the meaning ascribed to it in section 1124 of the Bankruptcy Code when used with reference to a Claim or an Interest.

(zz) **Interests** means as of the Petition Date, any and all currently owned equity interests, ownership interests or shares in the Debtor and issued by the Debtor prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in any of the Debtor, partnership interests in any of the Debtor's stock appreciation rights, conversion rights, repurchase rights, redemption rights (other than rights exercised by former shareholders of the Debtor who were given promissory notes by the Debtor in respect of the shares they held), dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtor or



obligating the Debtor to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated “stock” or a similar security.

(aaa) **Lien** means a charge against, interest in or other encumbrance upon property to secure payment of a debt or performance of an obligation.

(bbb) **Liquidating Trust** means the grantor trust to be created upon the Effective Date for the benefit of the Trust Beneficiaries.

(ccc) **Liquidating Trust Advisory Committee** means the committee formed in accordance with this Plan and which shall direct the Liquidating Trustee to carry out its powers in accordance with the Plan and Confirmation Order.

(ddd) **Liquidating Trust Agreement** means the agreement governing the operations of the Liquidating Trust, as it may be subsequently modified from time to time.

(eee) **Liquidating Trust Assets** means the assets held in the Liquidating Trust comprised of (i) all Causes of Action of the Debtor, including, without limitation, any and all Causes of Action for which the Creditors’ Committee was granted standing and authority to prosecute, resolve, settle and compromise in the Chapter 11 Case, but excluding those expressly waived herein, and (ii) all other unencumbered assets of the Debtor’s Estate remaining after all required payments have been made pursuant to the Plan, Confirmation Order and Liquidating Trust Agreement, as applicable, on the Effective Date; and (iii) any other Causes of Action acquired by the Liquidating Trust on or after the Effective Date.

(fff) **Liquidating Trust Distributable Cash** means the Cash and any other assets of the Liquidating Trust reduced to Cash net of all expenses and costs of operating or effectuating the duties of the Liquidating Trust and establishing any reserves as the Liquidating Trustee may determine is necessary in its sole discretion pursuant to the terms of this Plan and the Liquidating Trust Agreement.

(ggg) **Liquidating Trustee** means the individual or entity designated and retained as the trustee to the Liquidating Trust, as of the Effective Date or as soon as reasonably practicable thereafter, as the fiduciary responsible for administering the Liquidating Trust.

(hhh) **Local Rules** means the Local Rules of the United States Bankruptcy Court for the Northern District of Florida and the guidelines and requirements of the Office of the United States Trustee for the Northern District of Florida.

(iii) **Non-Assumed Contracts** means any contracts to which the Debtor is a party but that are not Assigned Contracts.

(jjj) **Objection** means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to Disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Expense Claim) or Interest other than a Claim or an Interest that is Allowed.

(kkk) **Person** means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a joint venture, an unincorporated organization, or a governmental unit as defined in section 101(41) of the Bankruptcy Code.

(lll) **Petition Date** means May 5, 2017, the date the Debtor filed its chapter 11 petition with the Court.

(mmm) **Plan** means this Chapter 11 plan of liquidation and all exhibits annexed hereto or referenced herein, as it may be amended, modified or supplemented from time to time in accordance with the provisions of the Plan or the Bankruptcy Code and Bankruptcy Rules.

(nnn) **Plan Proponent** means the Debtor and the Committee.

(ooo) **Priority Claim** means a Claim (other than an Administrative Claim) that is entitled to priority under section 507 of the Code.

(ppp) **Priority Tax Claim** means a Claim (other than an Administrative Claim) that is entitled to priority under section 507(a)(8) of the Code.

(qqq) **Professional** means a Person (a) employed in this Case pursuant to a Final Order in accordance with sections 327 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

(rrr) **Professional Claim** means a Claim of a Professional retained in this Case by the Debtor pursuant to a Final Order in accordance with sections 327 of the Bankruptcy Code, for compensation or reimbursement of actual and necessary costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date.

(sss) **Proof of Claim** means any proof of Claim filed with the Bankruptcy Court with respect to the Debtor pursuant to Bankruptcy Rules 3001 or 3002.

(ttt) **Proof of Interest** means any proof of Interest filed with the Bankruptcy Court with respect to the Debtor pursuant to Bankruptcy Rule 3002.

(uuu) **Property** of the Estate means the property defined in section 541 of the Code and any other property right or interest of the Debtor.

(vvv) **Pro Rata** means proportionately, so that the ratio of the amount of consideration distributed on account of a particular Allowed Claim to the Allowed Amount of such Claim is the same as the ratio of the amount of consideration distributed on account of all Allowed Claims of the Class in which the particular Claim is included to the amount of all Allowed Claims of that Class. Whenever a Disputed Claim has not been finally resolved, an appropriate reserve for payment of such Disputed Claim shall be established so that there will be sufficient monies available to make a Pro Rata distribution to the holder of such Disputed Claim upon final resolution of the dispute.

(www) **Rules** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code, (c) the Local Rules of the United States Bankruptcy Court for the Northern District of Florida and the guidelines and requirements of the Office of the United States Trustee, and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Case or proceedings herein, as the case may be.

(xxx) **Sale Order** means the Order approving the Lease Motion entered on September 19, 2017.

(yyy) **Scheduled** means as set forth on the Schedules.

(zzz) **Schedules** means the Schedules of Assets and Liabilities filed by the Debtor in accordance with Bankruptcy Code section 521 and Federal Bankruptcy Rule 1007, as the same may be amended from time to time prior to the Effective Date in accordance with Federal Bankruptcy Rule 1009.

(aaaa) **Secured Tax Claims** means all Claims against the Debtor that are secured by a Lien on, or security interest in, real property of the Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the creditor's interest in the Debtor's interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

(bbbb) **Subordinated Claims** means all claims subordinated by order of the Bankruptcy Court or by Final Judgment at any time prior to the entry of a Final Decree.

(cccc) **Taxes** means all income, alternative minimum, net worth or gross receipts, capital, value added, franchise, profits, excise, sales, use, employment, withholding, property, payroll or other taxes, assessments, or governmental charges, together with any interest, penalties, additions to tax, fines, and similar amounts relating thereto, imposed or collected by any federal, state, local or foreign governmental authority on or from the Debtor.

(dddd) **U. S. Trustee** means the Office of the United States Trustee.

(eeee) **Unimpaired** means any Claim that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

(ffff) **Unsecured Claim** means any Claim against the Debtor, excluding Administrative Expense Claims, Professional Claims, Priority Tax Claims and Priority Claims.

### 1.3 **Rules of Interpretation.**

In the event of an inconsistency, (a) the provisions of the Plan, shall control over the contents of the Disclosure Statement, and (b) the provisions of the Confirmation Order shall control over the contents of the Plan.

(i) For the purposes of the Plan:

(1) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; provided, however, that any change to such form, terms or conditions that is material to a party to such document shall not be modified without such party's consent unless such document expressly provides otherwise;

(2) any reference in the Plan to an existing document, exhibit or schedule Filed or to be Filed means such document, exhibit or Plan schedule, as it may have been or may be amended, modified or supplemented as of the Effective Date;

(3) unless otherwise specified, all references in the Plan to "Sections," "Articles," "Exhibits" and "Plan Schedules" are references to Sections, Articles, Exhibits and Plan Schedules of or to the Plan;

(4) unless otherwise specified, the words "herein," "hereof," "hereto," "thereunder" and others of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(5) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be part of or to affect interpretations of the Plan; and

(6) the word "including" means "including without limitation."

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

(iii) All exhibits to the Plan are incorporated into the Plan and shall be deemed to be included in the Plan, regardless of when they are Filed.

(iv) Subject to the provisions of any contract, certificate, bylaws, instrument, release or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

1.4 **Computation of Time.** In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Federal Bankruptcy Rule 9006(a) shall apply.

## **ARTICLE II TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES**

2.1 **Administrative Expense Claims.** Each Holder of an Allowed Administrative Expense Claim shall receive on account of the Allowed Administrative Expense Claim and in

full satisfaction, settlement and release of and in exchange for such Allowed Administrative Expense Claim, Cash equal to the unpaid portion of such Allowed Administrative Expense Claim, as soon as practicable upon the earlier to occur of the Effective Date or ten (10) Business Days after the entry of a Final Order allowing such Administrative Expense Claim; *provided, however,* that Administrative Expense Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Case shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreement or course of dealing relating thereto. Administrative Expense Claims must be filed on or before the Administrative Expense Claims Bar Date<sup>2</sup>. Administrative Expense Claims are Unimpaired

2.2 **Statutory Fees.** Notwithstanding any other provisions of the Plan to the contrary, the Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days of the entry of the order confirming the Plan, for pre-confirmation periods and simultaneously file all the Monthly Operating Reports for the relevant periods, indicating the cash disbursements for the relevant period. The Debtor shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), based upon all post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Plan Administrator, until the earlier of the closing of this case by the issuance of a Final Decree by the Bankruptcy Court, or upon the entry of an Order by the Bankruptcy Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code, and the Plan Administrator shall provide to the United States Trustee upon the payment of each post-confirmation payment, and concurrently filed with the Court, Post-Confirmation Quarterly Operating reports indicating all the cash disbursements for the relevant period.

2.3 **Professional Claims.** On or prior to the deadline set by the Bankruptcy Court for Professionals to file final fee applications, 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 Confirmation Hearing. The Plan Administrator shall pay the Allowed Claims of each Professional from Cash on hand in accordance with the Orders of the Bankruptcy Court or as otherwise agreed to by the Professional holding such Allowed Claim.

2.4 **Priority Tax Claims.** With respect to each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall be entitled to receive on account of such Allowed Priority Tax Claim, in full satisfaction, settlement and release of and in exchange for such Allowed Priority Tax Claim, payment in full in Cash on the Effective Date or as soon thereafter as is practicable in recognition of the Bar Date for Governmental Unit Claims and applicable claims resolution process set forth herein. All Priority Tax Claims must be filed by the Bar Date for Governmental Unit Claims. Priority Tax Claims are Unimpaired

2.5 **Secured Tax Claims.** With respect to each Allowed Secured Tax Claim, each Holder of an Allowed Secured Tax Claim shall be entitled to receive on account of such Allowed Secured Tax Claim, payment in full in Cash on the Effective Date or as soon thereafter as is practicable or as agreed to by the parties.

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<sup>2</sup> The Debtor shall file a Motion seeking to establish the Administrative Expense Claim Bar Date.

**ARTICLE III**  
**CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

3.1 **General.** Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the Classes of Claims and Interests in the Debtor. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class. A Claim or Interest is also placed in a particular Class for purposes of receiving a distribution under the Plan, but only to the extent such Claim or Interest is an Allowed Claim or Interest and has not been paid, released, or otherwise settled prior to the Effective Date. Except as otherwise expressly set forth in this Plan, a Claim or Interest which is not an Allowed Claim or Allowed Interest shall not receive any payments, rights or distributions under this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims of the kinds specified in section 507(a)(2) and Priority Tax Claims of the kinds specified in section 507(a)(8) of the Bankruptcy Code have not been classified and are treated as set forth in Article 3 above.

3.2 **Classification.** The following summary is for the convenience of all interested parties and is superseded for all purposes by the classification, description and treatment of Claims and Interests in Articles 4 and 5 of the Plan.

3.3 **Class 1: Allowed Other Priority Claims.** Class 1 consists of Allowed Priority Claims.

(a) **Treatment:** Except to the extent that a holder of an Allowed Other Priority Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable classification and treatment, each holder of an Allowed Other Priority Claim shall receive the full unpaid amount of such Allowed Other Priority Claim in Cash, on the later of (i) the Effective Date or as soon as practicable thereafter, (ii) the date such Allowed Other Priority Claim becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed Other Priority Claim is payable under applicable non-bankruptcy law; provided, however, that the Debtor shall not pay any premium, interest or penalty in connection with such Allowed Other Priority Claim.

(b) **Voting:** Class 1 is Unimpaired, and, therefore, the holders of Other Priority Claims in Class 1 are not entitled to vote to accept or reject the Plan.

3.4 **Class 2: Allowed Secured Claims.** Class 2 consists of the Allowed Secured Claim of Cardinal Health 200, LLC.

(a) **Treatment:** Except to the extent that the holder of the Allowed Class 2 Secured Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable classification and treatment, the holder of the Allowed Secured Claim shall receive the full unpaid amount of such Allowed Secured Claim in Cash, on the later of (i) the Effective Date or as soon as practicable thereafter, (ii) the first Business Day after the date that is ten (10) Business Days after the date such Claim becomes an Allowed Secured Claim; and (iii) the date or dates agreed to by the Debtor and the holder of the Allowed Secured Claim.

(b) **Voting:** Class 2 is Unimpaired, and, therefore, the holder of the Allowed Secured Claim in Class 2 is not entitled to vote to accept or reject the Plan.

3.5 **Class 3: Allowed General Unsecured Claims.** Class 3 consists of Allowed General Unsecured and Deficiency Claims.

(a) **Treatment:** Except to the extent that a holder of an Allowed General Unsecured Claim has been paid by the Debtor prior to the Effective Date or agrees to a less favorable classification and treatment, each holder of an Allowed General Unsecured Claim shall receive a Pro Rata Distribution from the Liquidating Trust, pursuant to the terms of the Liquidating Trust Agreement.

(b) **Voting:** Class 3 is Impaired, and, therefore, the holders of General Unsecured Claims in Class 3 are entitled to vote to accept or reject the Plan.

3.6 **Class 4: Interests.** Class 4 consists of all Interests.

(a) **Treatment:** Holders of Interests will receive no distributions on account of such Holder's Interest. On the Effective Date, all Interests in the Debtor will be canceled. Class 4 is presumed to have rejected the Plan.

(b) **Voting:** Class 4 is Impaired, and, therefore, the holders of Interests in Class 4 are deemed to have rejected the Plan and are not entitled to vote on the Plan.

#### **ARTICLE IV IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN**

4.1 **Unimpaired Classes of Claims and Interests:** Administrative Expense Claims, Statutory Fees, Professional Claims, Priority Tax Claims, and Secured Tax Claims are not entitled to vote. Class 1 and Class 2 Claims are Unimpaired and, therefore, the holders of Claims in Classes 1 and 2 are not entitled to vote to accept or reject the Plan.

4.2 **Impaired Classes of Claims and Interests:** Class 3 and Class 4 Claims are Impaired by the Plan. Class 3 is entitled to vote.

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

5.1 **Establishment of Liquidating Trust.** On the Effective Date, the Liquidating Trustee shall sign the Liquidating Trust Agreement and, in its capacity as Liquidating Trustee, accept all Liquidating Trust Assets on behalf of the Trust Beneficiaries thereof, and be authorized to obtain, seek the turnover of, liquidate, and collect all of the Liquidating Trust Assets not in its possession. The Liquidating Trust will then be deemed created and effective

without any further action by the Bankruptcy Court or any Person as of the Effective Date. The Liquidating Trust shall be established for the purposes of (i) liquidating any non-Cash Liquidating Trust Assets; (ii) prosecuting, settling or otherwise resolving the Litigation Claims and Causes of Action; (iii) maximizing recovery of the Liquidating Trust Assets for the benefit of the Trust Beneficiaries thereof; and (iv) distributing the proceeds of the Liquidating Trust Assets to the Trust Beneficiaries in accordance with this Plan and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except only in the event and to the extent necessary for, and consistent with, the liquidating purpose of the Liquidating Trust.

5.2 **Liquidating Trust Advisory Committee.** On the Effective Date, three members of the Creditors' Committee selected by the Committee Chairman who are willing to serve shall immediately, and without further need for further documentation or Bankruptcy Court approval, be deemed to act as the Liquidating Trust Advisory Committee. All fees and expenses incurred by the Liquidating Trust Advisory Committee and its professionals following the Effective Date shall be paid from the Liquidating Trust Assets. The Liquidating Trust Advisory Committee may authorize its own dissolution by filing with the Bankruptcy Court an appropriate notice that its responsibilities hereunder have concluded. Unless earlier dissolved, the Liquidating Trust Advisory Committee shall be dissolved as of the date the Chapter 11 Case is closed.

5.3 **Appointment of the Liquidating Trustee.** The Liquidating Trustee shall be Marshall Glade. Following appointment, the Liquidating Trustee shall act in accordance with the Liquidating Trust Agreement and the Plan, and in such capacity shall have the same powers as the board of directors and officers of the Debtor, subject to the direction of the Liquidating Trust Advisory Committee and the provisions hereof (and all bylaws, articles of incorporation and related corporate documents are deemed amended by this Plan to permit and authorize the same). The Liquidating Trustee may be removed at any time by the Liquidating Trust Advisory Committee, with or without cause, upon at least ten (10) days' prior written notice to the United States Trustee and the Liquidating Trustee. In the event of resignation or removal, death or incapacity of the Liquidating Trustee, the Liquidating Trust Advisory Committee shall designate another Person or Entity to serve as Liquidating Trustee and thereupon the successor Liquidating Trustee, without any further act or need for an order of the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties and obligations of the predecessor; provided, however, that the Liquidating Trustee shall be deemed removed on the date the Chapter 11 Case is closed, and no successor thereto shall be designated. The Liquidating Trustee shall be entitled to compensation payable from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

5.4 **Trust Beneficiaries of Liquidating Trust.** The holders of General Unsecured Claims against the Debtor entitled to Distributions shall be the Trust Beneficiaries of the Liquidating Trust. Such Trust Beneficiaries shall be bound by the Liquidating Trust Agreement. The interests of the Trust Beneficiaries in the Liquidating Trust shall be uncertificated and nontransferable except upon death of the interest holder or by operation of law



### 5.5 **Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust.**

Pursuant to Bankruptcy Code section 1141(b), the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Liens, Claims and Interests, except as otherwise specifically provided in this Plan or in the Confirmation Order; provided, however, that the Liquidating Trustee may abandon or otherwise not accept any non-Cash Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any non-Cash Liquidating Trust Assets that the Liquidating Trustee so abandons or otherwise does not accept shall not be property of the Liquidating Trust. The Liquidating Trust Assets primarily consist of claims against third parties. These claims include, but are not limited to, preference, fraudulent transfer and other avoidance claims pursuant to chapter 5 of the Bankruptcy Code and state law counterparts. These claims will be preserved and transferred to the Liquidating Trust.

5.6 **Liquidating Trust Expenses.** Subject to the provisions of the Liquidating Trust Agreement, all costs, expenses and obligations incurred by the Liquidating Trustee in administering this Plan, the Liquidating Trust, or in any manner connected, incidental or related thereto, in effecting distributions from, as applicable, the Liquidating Trust shall be a charge against the Liquidating Trust Assets remaining from time to time in the hands of the Liquidating Trustee. Such expenses shall be paid in accordance with the Liquidating Trust Agreement.

### 5.7 **Role of the Liquidating Trustee.**

1. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust and the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3). The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to: (a) receive, manage, invest, supervise, and protect the Liquidating Trust Assets; (b) pay taxes or other obligations incurred by the Liquidating Trust; (c) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to advise and assist in the administration, prosecution and distribution of Liquidating Trust Assets; (d) calculate and implement Distributions of Liquidating Trust Assets; (e) investigate, prosecute, compromise, and settle, in accordance with the specific terms of the Liquidating Trust Agreement, Causes of Action vested in the Liquidating Trust; (f) resolve issues involving Claims in accordance with this Plan; (g) undertake all administrative functions of the Plan Debtor's Chapter 11 Case, including the payment of fees payable to the United States Trustee and the ultimate closing of the Debtor's Chapter 11 Case. The Liquidating Trust shall be the successor to the Debtor and its Estate.

2. On the Effective Date, the Liquidating Trust shall: (a) take possession of all Books and Records of the Debtor and its Estate; and (b) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement, that retention of same is no longer necessary or required.

3. On the Effective Date, and without further order of the Bankruptcy Court, the Creditor Causes of Action owned by Assigning Creditors, shall be assigned to or otherwise transferred to the Liquidating Trustee for the purpose of commencing, prosecuting, settling,

releasing and/or liquidating the Creditor Causes of Action for the benefit of the Liquidating Trust Beneficiaries. All such Creditor Causes of Action of Assigning Creditors shall be treated as Litigation Claims. To the extent that the Liquidating Trustee obtains any benefit or collects any consideration arising out of a Creditor Cause of Action assigned by an Assigning Creditor, the Liquidating Trustee shall request Court approval, upon notice and a hearing, to increase the allowed amount of such Assigning Creditor's Allowed Class 3 Claim based on such obtained benefit and/or collected consideration by an appropriate amount of up to fifty percent (50%) of the Net Proceeds attributable to such Creditor Cause of Action. Notwithstanding anything to the contrary in the Plan, it shall be a condition to any effective transfer of a Creditor Cause of Action by a Holder of an Unsecured Claim, and therefore a condition to benefitting from this section, that such Holder (a) evidence its ownership of such Creditor Cause of Action to the Liquidating Trustee and (b) execute an assignment agreement.

4. The Liquidating Trust may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by Bankruptcy Code section 345 or in other prudent investments, provided, however, that such investments are permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

5. The Liquidating Trust shall have the right to object to Claims not otherwise Allowed in connection with post-Effective Date Claims allowance process.

6. In no event later than thirty (30) Business Days after the end of the first full month following the Effective Date and on a quarterly basis thereafter until all Cash in the Liquidating Trust has been distributed in accordance with this Plan, the Liquidating Trustee shall file with the Bankruptcy Court a report setting forth the amounts, recipients and dates of all Distributions made by the Liquidating Trustee under this Plan through each applicable reporting period.

7. The Liquidating Trustee shall file tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Plan. The Liquidating Trust also shall annually (for tax years in which Distributions from the Liquidating Trust are made) send to each beneficiary a separate statement setting forth the beneficiary's share of items of income, gain, loss, deduction or credit and all such holders shall report such items on their federal income tax returns; provided, however, that no such statement need be sent to any Class that is not expected to receive any Distribution from the Liquidating Trust. The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to the Liquidating Trust's Trust Beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust. As soon as possible after the Effective Date, the Liquidating Trust shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes. The Liquidating Trust may request an expedited determination of taxes of the Debtor or of the Liquidating Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtor and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust. The Liquidating Trust shall be responsible for filing all federal, state, and

local tax returns for the Debtor and the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. In connection therewith, (i) prior to the Effective Date, the Debtor shall prepare and file in a timely fashion by any applicable deadlines any and all applicable federal, state and/or local tax returns for the Debtor that are due before the Effective Date, and (ii) on and after the Effective Date, the Liquidating Trustee shall prepare and file in a timely fashion by any applicable deadlines any and all applicable federal, state and/or local tax returns for the Debtor that are due on or after the Effective Date.

8. On and after the Effective Date, the Liquidating Trust shall be responsible for payments of all Allowed tax obligations of the Debtor, and any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets.

5.8 **Preservation of Right to Conduct Investigations.** The preservation for the Liquidating Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Liquidating Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor or the Creditors' Committee prior to the Effective Date shall vest with the Liquidating Trust and shall continue until dissolution of the Liquidating Trust.

5.9 **Prosecution and Resolution of Causes of Action.**

1. From and after the Effective Date, prosecution and settlement of all Causes of Action transferred to the Liquidating Trust shall be the sole responsibility of the Liquidating Trust pursuant to this Plan and the Confirmation Order. From and after the Effective Date, the Liquidating Trust shall have exclusive rights, powers, and interests of the Debtor's Estate to pursue, settle or abandon such Causes of Action as the sole representative of the Debtor's Estate pursuant to Bankruptcy Code section 1123(b)(3). Proceeds recovered from all Causes of Action will be deposited into the Liquidating Trust and will be distributed by the Liquidating Trustee to the Trust Beneficiaries in accordance with the provisions of the Plan and Liquidating Trust Agreement. All Causes of Action that are not expressly released or waived under this Plan are reserved and preserved and vest in the Liquidating Trust in accordance with this Plan. No Person may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtor or Liquidating Trustee will not pursue any and all available Causes of Action against such Person. The Liquidating Trustee expressly reserves all Causes of Action, except for any Causes of Action against any Person that are expressly released or waived under this Plan, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of confirmation or consummation of this Plan. No claims or Causes of Action against the Released Parties shall be transferred to the Liquidating Trust, the Liquidating Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be waived, released and discharged pursuant to the Plan.

2. Settlement by the Liquidating Trust of any Cause of Action transferred to the Liquidating Trust shall require: (i) approval only of the Liquidating Trustee if the amount claimed by the Liquidating Trust against a defendant is less than one hundred thousand dollars (\$100,000); and (ii) approval of the Liquidating Trustee and the Bankruptcy Court, upon notice and a hearing, if the amount claimed by the Liquidating Trust against a defendant is unliquidated or equals to or exceeds one hundred thousand dollars (\$100,000).

**5.10 Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets.** For federal income tax purposes, it is intended that the Liquidating Trust be classified as a liquidating trust under section 301.7701-4 of the Treasury regulations and that such trust be owned by its Trust Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Trust Beneficiaries be treated as if they had received a distribution from the Debtor's Estate of an undivided interest in each of the Liquidating Trust Assets (to the extent of the value of their respective share in the applicable assets) and then contributed such interests to the Liquidating Trust, and the Liquidating Trust's Trust Beneficiaries will be treated as the grantors and owners thereof.

**5.11 Limitation of Liability.** No recourse will ever be had, directly or indirectly, against the Liquidating Trustee, its members, officers, directors, employees, professionals, representatives, agents, successors or assigns, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trust under this Plan or by reason of the creation of any indebtedness by the Liquidating Trust or the Liquidating Trustee under this Plan. All such liabilities under this Plan will be enforceable only against, and will be satisfied only out of, the Liquidating Trust Assets. The Liquidating Trustee and its agents shall not be deemed to be the agent for any holder of a Claim in connection with Distributions made under this Plan. The Liquidating Trust and the Liquidating Trustee and their respective officers, directors, employees, professionals, representatives, agents, successors or assigns will not be liable for any act they may do, or omit to do hereunder in good faith and in the exercise of their sound judgment; provided, however, that this section will not apply to any gross negligence or willful misconduct by the Liquidating Trust and the Liquidating Trustee or their respective officers, directors, employees, professionals, representatives, agents, successors or assigns.

**5.12 Term of Liquidating Trust.** The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (i) all Disputed Claims have been resolved, (ii) all of the Liquidating Trust Assets have been liquidated, (iii) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement have been fulfilled, (iv) all Distributions required to be made by the Liquidating Trust under this Plan and the Liquidating Trust Agreement have been made, and (v) the Debtor's Chapter 11 Case has been closed; provided, however, that in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension not to exceed one (1) year is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

5.13 **Retention of Professionals by Liquidating Trust.** The Liquidating Trustee may retain and compensate attorneys and other professionals to assist in his duties on such terms (including on a contingency or hourly basis) as it deems reasonable and appropriate without Bankruptcy Court approval, including but not limited to any of the Professionals

5.14 **Bond/Insurance.** As a condition to serving as Liquidating Trustee, the Liquidating Trustee, and any successor trustee, shall post a bond in favor of the Liquidating Trust in an amount that is equal to the greater of (i) \$100,000 or (ii) the amount of Cash held by the Liquidating Trust on the Effective Date (or the date on which a successor trustee accepts his/her appointment by the Liquidating Trust). The Liquidating Trustee, and any successor trustee, also shall have an ongoing duty to increase the amount of the bond to cover the amount of the Cash in the Liquidating Trust. The bond shall be in substantially the same form as is required by the United States Trustee for trustees in the Northern District of Florida. For the avoidance of doubt, the Liquidating Trust shall be responsible for all costs associated with the posting of the foregoing bond, including the premium associated with such bond. In addition, the Liquidating Trustee is hereby authorized, out of funds available from the Liquidating Trust, to obtain all reasonably necessary insurance coverage for himself and the Liquidating Trust, its agents, representatives, employees or independent contractors whether as a named insured on the Trustee's policies or otherwise, including, but not limited to, coverage with respect to (a) appropriate directors and officers/trustee liability insurance, (b) any property that is or may in the future become the property of the Liquidating Trust and (c) the liabilities, duties, and obligations of the Liquidating Trustee.

5.15 **Conflicts Between the Liquidating Trust Agreement and the Plan.** In the event of any inconsistencies or conflict between the Liquidating Trust Agreement and this Plan, the terms and provisions of this Plan shall control.

5.16 **Excess Funds.** In the event there is Liquidating Trust Distributable Cash remaining after all required Distributions under the Plan and the Liquidating Trust Agreement have been made, such Cash, (i) if unclaimed funds, will be paid over to the Bankruptcy Court or (ii) if undistributable funds will be donated, in the reasonable discretion of the Liquidating Trustee, to a not for profit organization.

5.17 **Cancellation of Existing Securities and Agreements.** Except for purposes of evidencing a right to Distributions under the Plan or as otherwise provided hereunder, on the Effective Date, all agreements and other documents evidencing Claims or rights of any holder of a Claim or Equity Interest against any of the Debtor, including, but not limited to, all indentures, notes, bonds and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtor but not as against any other Person.

5.18 **Operations of the Debtor Between the Confirmation Date and the Effective Date.** The Debtor shall continue to operate as Debtor in Possession during the period from the Confirmation Date through and until the Effective Date, and as a liquidating estate on and after the Effective Date. The retention and employment of the Professionals retained by the Debtor shall terminate as of the Effective Date, provided, however, that the Debtor shall be deemed to exist, and their Professionals shall be retained, after such date only with respect to (a)

applications (if any) filed pursuant to sections 330 and 331 of the Bankruptcy Code, and to the extent necessary (b) motions seeking the enforcement of the provisions of the Plan or the Confirmation Order. Upon the Effective Date, the Debtor's board of directors shall be relieved of its duties and the Debtor shall be dissolved.

5.19 **Automatic Stay.** The automatic stay provided for under section 362 of the Bankruptcy Code shall remain in effect in the Chapter 11 case until the Effective Date.

5.20 **The Creditors' Committee.** Upon the Effective Date, the Creditors' Committee shall dissolve, and their members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Case. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date, provided, however, that the Creditors' Committee shall exist, and their Professionals shall be retained, after such date with respect to applications (if any) filed pursuant to sections 330 and 331 of the Bankruptcy Code and motions seeking the enforcement of the provisions of the Plan or the Confirmation Order.

5.21 **Books and Records.** As part of the appointment of the Liquidating Trustee, to the extent not already transferred on the Effective Date, the Debtor shall transfer dominion and control over all of its Books and Records to the Liquidating Trustee in whatever form, manner or media those books and records existed immediately prior to the transfer thereof to the Liquidating Trustee. The Liquidating Trustee may abandon all such Books and Records on or after ninety (90) days from the Effective Date, provided, however, that the Liquidating Trustee shall not dispose or abandon any Books and Records that pertain to General Unsecured Claims without further order of the Bankruptcy Court. Pursuant to section 554 of the Bankruptcy Code, this Article V shall constitute a motion and notice, so that no further notice or Bankruptcy Court filings are required to effectuate the aforementioned abandonment of the Books and Records of the Debtor.

## ARTICLE VI PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS

6.1 **Voting of Claims.** Each holder of an Allowed Claim in an Impaired Class of Claims that is entitled to vote on the Plan shall be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court. For purposes of calculating the number of Allowed Claims in a Class of Claims that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Allowed Claims in such Class held by one Entity or any Affiliate thereof shall be aggregated and treated as one Allowed Claim in such Class. For purposes of any Claim in any Impaired Class that is Disputed as to its amount only, the holder of such claim shall be entitled to vote on the Plan as if such holder held an Allowed Claim in an amount equal to the undisputed portion of such Claim.

6.2 **Disbursing Agent.** All Distributions under the Plan by the Liquidating Trustee shall be made by the Liquidating Trustee as Disbursing Agent or such other entity designated by

the Liquidating Trustee as Disbursing Agent. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent it with respect to its responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan. The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (x) liability for actions taken in accordance with the Plan or in reliance upon information provided to them in accordance with the Plan or (y) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan. Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Liquidating Trustee acting as the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash from the Liquidating Trust Assets in the ordinary course of business.

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

6.4 **Delivery of Distributions.** Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder or (b) the last known address of such holder if no proof of Claim is filed or if the Liquidating Trustee have not been notified in writing of a change of address.

6.5 **Undeliverable and Unclaimed Distributions.** In the event that any Distribution to any holder of an Allowed Claim made by the Disbursing Agent is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no Distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder; provided, however, that all Distributions to holders of Allowed Claims made by the Disbursing Agent that are unclaimed for a period of ninety (90) days after the date of the first attempted Distribution shall have its, his or her Claim for such undeliverable Distribution deemed satisfied and will be forever barred from asserting any such Claim against the Liquidating Trust or its property. Any Distributions which are undeliverable or have not been negotiated within the time period set forth above shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Liquidating Trust. The Disbursing Agent shall have no further obligation to make any

Distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such Distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future Distributions on account of such Claim by contacting the Disbursing Agent at some point prior to the final Distribution.

6.6 **Manner of Cash Payments Under the Plan.** Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Liquidating Trustee.

6.7 **Compliance with Tax Requirements.** The Disbursing Agent may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or Distribution on account of Claims. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to such holders of the Claims. The Disbursing Agent shall be authorized to collect such tax information from the holders of Claims (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan. In order to receive Distributions under the Plan, all holders of Claims will need to identify themselves to the Disbursing Agent and provide all tax information the Disbursing Agent deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each holder). The Disbursing Agent may refuse to make a Distribution to any holder of a Claim that fails to furnish such information within the time period specified by the Disbursing Agent and such Distribution shall be deemed an unclaimed Distribution under the Plan, and, provided further that, if the Disbursing Agent fails to withhold in respect of amounts received or distributable with respect to any such holder and such Disbursing Agent is later held liable for the amount of such withholding, such holder shall reimburse the Disbursing Agent for such liability. Notwithstanding any other provision of the Plan, (a) each holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, and (b) no Distributions shall be required to be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such tax obligations or has, to the Disbursing Agent's satisfaction, established an exemption therefrom.

6.8 **No Payments of Fractional Dollars.** Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

6.9 **Interest on Claims.** Except as specifically provided for in this Plan or the Confirmation Order or required by the Bankruptcy Code, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest on any Claim accruing on or after the Petition Date. Interest shall not accrue on any General Unsecured Claim that is a Disputed Claim in respect of the period from the Effective Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or similar charges.



6.10 **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary contained in the Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of such Claim.

6.11 **Setoff and Recoupment.** The Liquidating Trustee may setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims or defenses of any nature whatsoever that the Debtor or the Estate may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate or the Liquidating Trustee of any right of setoff or recoupment that any of them may have against the holder of any Claim. Any such setoffs or recoupments may be challenged in Bankruptcy Court. Notwithstanding any provision in the Plan to the contrary, nothing herein shall bar any creditor from asserting its setoff or recoupment rights to the extent permitted under section 553 or any other provision of the Bankruptcy Code; provided, however, that such setoff or recoupment rights are timely asserted; provided further that all rights of the Debtor, its estate and the Liquidating Trustee with respect thereto are reserved.

6.12 **De Minimis Distributions; Charitable Donation.** Notwithstanding anything to the contrary therein, the Liquidating Trustee shall not be required to make a Distribution to any Creditor if the dollar amount of the Distribution is less than \$10 or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. On or about the time that the final Distribution is made, the Liquidating Trustee may make a donation of undistributable funds, in the reasonable discretion of the Liquidating Trustee if, in the reasonable judgment of the Liquidating Trustee, the cost of calculating and making the final Distribution of the undistributable funds remaining is excessive in relation to the benefits to the or holders of Claims who would otherwise be entitled to such Distributions.

6.13 **United States Trustee Fees.** All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code prior to the Effective Date shall be paid by the Debtor. On and after the Effective Date, the Liquidating Trustee shall pay any and all such fees payable by the Debtor, when due and payable, and shall file with the Bankruptcy Court quarterly reports for the Debtor, in a form reasonably acceptable to the U.S. Trustee. The Debtor shall remain obligated to pay quarterly fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed pursuant to the terms of this Plan, dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

6.14 **Withholding from Distributions.** Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions pursuant to the Plan. The Disbursing Agent may withhold from amounts distributable pursuant to the Plan to any Person or Entity any and all amounts, determined in the reasonable discretion of the Disbursing Agent, required to be withheld by any law, regulation, rule, ruling, directive, or other governmental requirement.

6.15 **No Distributions on Late-Filed Claims.** Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a proof of Claim was required to be filed and was first filed after the applicable bar date in the Chapter 11 Case, including, without limitation, the General Bar Date and any bar date established in the Plan or in the Confirmation

Order, shall automatically be deemed a late-filed Claim that is disallowed in the Chapter 11 Case, without the need for (a) any further action by the Liquidating Trustee or (b) an order of the Bankruptcy Court. Nothing in this paragraph is intended to expand or modify the applicable bar dates or any orders of the Bankruptcy Court relating thereto.

## **ARTICLE VII**

### **DISPUTED CLAIMS**

7.1 **Disputed Claims Reserve.** After the Effective Date, the Disputed Claims Reserve shall be managed by the Liquidating Trustee for the treatment of Disputed Claims. On each Distribution date after the Effective Date in which the Liquidating Trustee makes Distributions to holders of Allowed Claims, the Liquidating Trustee shall retain on account of Disputed Claims an amount the Liquidating Trustee estimates is necessary to fund the Pro Rata share of such Distributions to holders of Disputed Claims if such Claims were Allowed, with any Disputed Claims that are unliquidated or contingent being reserved in an amount reasonably determined by the Liquidating Trustee. Cash retained on account of such Disputed Claims shall be retained in the Disputed Claims Reserve for the benefit of the holders of Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan. If any Disputed Claims are disallowed or Allowed in an amount that is lower than the aggregate assets retained on account of such Disputed Claim, then the Liquidating Trustee shall within fifteen (15) days after such disallowance or allowance return the assets that exceed the Allowed amount of such Claim to the Liquidating Trust

7.2 **Resolution of Disputed Claims.** The Liquidating Trustee shall have the right to make and file objections to Claims in the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

7.3 **Objection Deadline.** All objections to Disputed Claims shall be filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002.

7.4 **Estimation of Claims.** At any time, the Liquidating Trustee may request that the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Liquidating Trustee or the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the Claim, the Liquidating Trustee may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

7.5 **No Distributions Pending Allowance.** Notwithstanding any other provision in the Plan, if any portion of a Claim is disputed, no payment or Distribution provided under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim. To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. Upon allowance, a holder of the Allowed Disputed Claim shall receive any Distributions that would have been made up to the date of allowance to such holder under the Plan had the Disputed Claim been allowed on the Effective Date.

7.6 **Resolution of Claims.** On and after the Effective Date, the Liquidating Trustee shall have the authority to compromise, settle, otherwise resolve or withdraw any objections to Claims, and to compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court.

## ARTICLE VIII

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 **Assumption or Rejection of Executory Contracts and Unexpired Leases.** Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, upon the Effective Date, all executory contracts and unexpired leases that exist between the Debtor and any Person or Entity shall be deemed rejected by the Debtor, except for any executory contract or unexpired leases (i) that has been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date.

8.2 **Claims Based on Rejection of Executory Contracts and Unexpired Leases.** Claims created by the rejection of executory contracts and unexpired leases pursuant to this Plan, must be filed with the Bankruptcy Court and served on the Liquidating Trustee no later than thirty (30) days after service of notice of the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, the Estate, the Liquidating Trustee, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in this Plan. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of this Plan.

8.3 **Indemnification and Reimbursement.** Subject to the occurrence of the Effective Date, all claims against the Debtor for indemnification, defense, reimbursement, or limitation of liability of current or former directors, officers, or employees of the Debtor against any Claims, costs, liabilities or causes of action as provided in the Debtor's articles of organization, certificates of incorporation, bylaws, other organizational documents, or applicable law, shall, to the extent such indemnification, defense, reimbursement, or limitation is owed in connection with one or more events or omissions occurring before the Petition Date must be asserted within one year of the Effective Date. Nothing contained herein shall affect the rights of

directors, officers or employees under any insurance policy or coverage with respect to such Claims, costs, liabilities or Causes of Action or limit the rights of the Debtor, the Liquidating Trustee or the Debtor's Estate to object to, seek to subordinate or otherwise contest or challenge Claims or rights asserted by any current or former officer, director or employee of the Debtor.

## ARTICLE IX

### CONDITIONS PRECEDENT TO EFFECTIVENESS OF PLAN

9.1 **Conditions Precedent.** The following are conditions precedent to the Effective Date that must be satisfied or waived:

(a) The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtor.

(b) There shall be no stay or injunction in effect with respect to the Confirmation Order, which such Confirmation Order shall contain approval of the releases provided for herein.

(c) The appointment of the Liquidating Trustee shall have been confirmed by order of the Bankruptcy Court.

(d) The Plan Documents shall be in a form reasonably acceptable to the Plan Proponents, and have been duly executed and delivered; provided, however, that no party to any such agreements and instruments may unreasonably withhold its execution and delivery of such **documents** to prevent this condition precedent from occurring.

9.2 **Waiver.** Notwithstanding the foregoing conditions in Article \_\_\_, the Plan Proponents reserve, in their sole discretion, the right to waive the occurrence of any condition precedent or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date or Confirmation Date (as applicable) shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

## ARTICLE X

### 10.1 **Preservation of Causes of Action.**

#### 1. **Vesting of Causes of Action**

(a) Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor and the Estate may hold against any Entity shall remain with the Debtor and the Estate on and after the Effective Date.

(b) Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Liquidating Trustee shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Causes of Action that were held by the Debtor and the Estate, in its sole discretion and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case.

## **2. Preservation of All Causes of Action Not Expressly Settled or Released.**

(a) Unless a Cause of Action against a holder or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order) of the Bankruptcy Court, the Debtor and its Estate expressly reserves such Cause of Action for later adjudication or administration by the Liquidating Trustee (including, without limitation, Causes of Action not specifically identified or described in the Plan or elsewhere or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances which may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan or Confirmation Order, except where such Causes of Action have been released in the Plan or any other Final Order (including the Confirmation Order). In addition, the Debtor and its Estate expressly reserves the right of the Liquidating Trustee to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

(b) Subject to the immediately preceding paragraph, any Entity to whom the Debtor has incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from the Debtor should assume that any such obligation, transfer, or transaction may be reviewed by the Liquidating Trustee subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Entity has filed a proof of Claim against the Debtor in the Chapter 11 Case; (ii) the Debtor has objected to any such Entity's proof of Claim; (iii) any such Entity's Claim was included in the Schedules; (iv) the Debtor has objected to any such Entity's scheduled Claim; or (v) any such Entity's scheduled Claim has been identified by the Debtor as disputed, contingent or unliquidated.

**10.2 Injunction.** From and after the Effective Date, all Entities are permanently enjoined from commencing or continuing in any manner against the Debtor, its Estate, the

Liquidating Trustee, the Creditors' Committee, and their successors and assigns, and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any Claim or Equity Interest, demand, liability, obligation, debt, right, Cause of Action, interest or remedy released or satisfied or to be released or satisfied pursuant to the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, from and after the Effective Date, all Entities shall be precluded from asserting against the Debtor, the Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, solely to the extent that (a) such Claims or Equity Interests have been released or satisfied pursuant to this Plan or the Confirmation Order or (b) such Claims, Equity Interests, actions or assertions of Liens relate to property that will be distributed pursuant to this Plan or the Confirmation Order.

The rights afforded in the Plan and the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Interests against the Debtor or any of its assets or properties solely to the extent that (a) such Claims or Equity Interests have been released or satisfied pursuant to this Plan or the Confirmation Order or (b) such Claims, Equity Interests, actions or assertions of Liens relate to property that will be distributed pursuant to this Plan or the Confirmation Order. On the Effective Date, all such Claims against, and Equity Interests in, the Debtor shall be satisfied and released in full.

Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest satisfied and released pursuant to the Plan or Confirmation Order, from:

- (a) commencing or continuing in any manner any action or other proceeding of any kind against any Debtor, any Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties;
- (b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, its Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties;
- (c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, its Estate, the Liquidating Trustee, the Creditors' Committee, and their successors and assigns and their assets and properties; and
- (d) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim or Equity Interest or Cause of Action released or settled hereunder.

10.3 **Releases of Liens.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the

Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against property of the Estate distributed under the Plan shall be fully released and discharged and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interest shall revert to the Debtor.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order, the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case after all Entities, including, without limitation, the Liquidating Trustee, with respect to all matters related to the Chapter 11 Case, the Debtor and the Plan as is legally permissible, including jurisdiction to, among other things:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim against the Debtor, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of all Claims;

(b) hear and determine any and all Litigation Claims and Causes of Action against any Person and rights of the Debtor that arose before or after the Petition Date, including, but not limited to, the rights and powers of a trustee and debtor-in-possession, against any Person whatsoever, including, but not limited to, all avoidance powers granted to the Debtor under the Bankruptcy Code and all causes of action and remedies granted pursuant to sections 502, 506, 510, 541, 542, 543, 544, 545, 547 through 551 and 553 of the Bankruptcy Code;

(c) grant, deny or otherwise resolve any and all applications of Professionals or Persons related in the Chapter 11 Case by the Debtor or the Creditors' Committee for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

(d) resolve any matters relating to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, without limitation, the determination of whether such contract is executory for the purposes of section 365 of the Bankruptcy Code, and hear, determine and, if necessary, liquidate any Claims arising therefrom;

(e) ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan, including by resolving any disputes regarding the Debtor's entitlement to recover assets held by third parties;

(f) decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Liquidating Trustee after the Effective Date;

(g) enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures

and other agreements or documents adopted in connection with this Plan or the Disclosure Statement;

(h) resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

(i) enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

(j) resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement;

(k) Hear and determine matters concerning state, local or federal taxes in accordance with sections 346, 505 or 1146 of the Bankruptcy Code;;

(l) Permit the Debtor, to the extent authorized pursuant to section 1127 of the Bankruptcy Code, to modify the Plan or any agreement or document created in connection with the Plan, or remedy any defect or omission or reconcile any inconsistency in the Plan or any agreement or document created in connection with the Plan;

(m) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(n) Determine any other matters that may arise in connection with or relating to the Plan or any agreement or the Confirmation Order or any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(o) Enter any orders in aid of prior orders of the Bankruptcy Court;

(p) Enter a final decree closing the Case; and

(q) Enforce the terms and provisions of the Sale Order and the Asset Purchase Agreement in all respects and to decide any disputes concerning the Sale Order and the Asset Purchase Agreement, or the rights and duties of the parties thereunder or any issues relating to the Asset Purchase Agreement or the Sale Order including, but not limited to, the interpretation of the terms, conditions and provisions thereof, the status, nature and extent of the Purchased Assets and any Assigned Contracts and all issues and disputes arising in connection with the relief authorized therein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, Encumbrances, and Interests.

## **ARTICLE XII**

### **ACCEPTANCE OR REJECTION OF THE PLAN**



12.1 **Persons Entitled to Vote.** Classes 1 and 2 are Unimpaired and are therefore deemed to have accepted the Plan and are not entitled to vote. Classes 3 and 4 are Impaired and are entitled to vote on the Plan. Votes from Holders of Claims in Class 3 will be solicited. Class 4 Interests will be cancelled pursuant to the Plan, and Holders of such Interests are deemed pursuant to section 1126(g) of the Bankruptcy Code to have rejected the Plan. Votes from Holders of Class 4 Interests will not be solicited.

12.2 **Acceptance by Impaired Classes.** An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

### **ARTICLE XIII** **MISCELLANEOUS PROVISIONS**

13.1 **Modification of the Plan.** Subject to the restrictions on Plan modifications set forth in section 1127 of the Bankruptcy Code, the Plan Proponents reserve the right to alter, amend or modify the Plan before its substantial consummation.

13.2 **Revocation of the Plan.** The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation does not occur or if the Plan does not become effective, then the Plan shall be null and void, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; (b) constitute an admission of any fact or legal conclusion by the Debtor; or (c) prejudice in any manner the rights of the Debtor in any further proceedings.

13.3 **No Admissions.** If Confirmation or the Effective Date does not occur, nothing contained in the Plan or Disclosure Statement shall be deemed as an admission by the Debtor with respect to any matter set forth herein or therein including, without limitation, liability on any Claim or the propriety of any Claims classification.

13.4 **Severability of Plan Provisions.** If prior to Confirmation any term or provision of the Plan that does not govern the treatment of Claims or Interests is held by the Bankruptcy Court to be invalid, void or unenforceable, at the request of the Debtor the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, Impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall 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.

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

13.6 **Preservation of Rights of Setoffs.** The Debtor, through the Plan Administrator, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtor may have against the Holder of such Claims; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claim that the Debtor may have against such Holder,

13.7 **Defenses with Respect to Unimpaired Claims.** Except as otherwise provided in this Plan, nothing shall affect the rights and legal and equitable defenses of the Debtor with respect to any Unimpaired Claim, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

13.8 **No Injunctive Relief.** No Holder of a Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

13.9 **Saturday, Sunday or Legal Holiday.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

13.10 **Entire Agreement.** This Plan sets forth the entire agreement and undertaking relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtor's Estate shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein.

13.11 **Remedy of Defects.** After the Effective Date, the Plan Proponents may, with approval of the Court, and so long as it does not materially and adversely affect the interests of Creditors, remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order in such manner as may be necessary to carry out the purposes and effect of the Plan.

13.12 **Withdrawal of the Plan.** The Proponents reserve the right, at any time prior to the Substantial Consummation of the Plan, to revoke or withdraw the Plan. If the Plan is revoked or withdrawn or if Confirmation does not occur, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

13.13 **Final Order.** Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by the Debtor upon written notice to the Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

13.14 **Governing Law.** EXCEPT TO THE EXTENT THAT (i) THE CODE OR RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, OR (ii) THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, INDENTURE OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN PROVIDE THAT THE LAW OF A DIFFERENT JURISDICTION SHALL GOVERN, THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THE PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THE PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO CONFLICTS-OF-LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF FLORIDA OR THE UNITED STATES OF AMERICA.

13.15 **Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Counsel for the Debtor

Berger Singerman LLP  
313 North Monroe Street, Suite 301  
Tallahassee, FL 32301  
Attn: Brian G. Rich, Esq.  
[brich@bergersingerman.com](mailto:brich@bergersingerman.com)

Counsel for the Committee

Broad and Cassel LLP  
100 S.E. 3<sup>rd</sup> Avenue, Suite 2700  
Fort Lauderdale, FL 33394  
Telephone: (954) 764-7060  
Attn.: Frank P. Terzo, Esq. and Michael J. Niles, Esq.  
Email: [fterzo@broadandcassel.com](mailto:fterzo@broadandcassel.com) and [mniles@broadandcassel.com](mailto:mniles@broadandcassel.com)

13.16 **Waiver.** The Plan Proponent reserves its right, in its sole discretion, to waive any provision of the Plan to the extent such provision is for the sole benefit of the Plan Proponent.

13.17 **Section 1146(a).** Pursuant to section 1146(a) of the Code, the making or delivery of an instrument of transfer under a plan confirmed in a chapter 11 bankruptcy case, may not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee.

Refinancing or a sale of property is an essential part of this Plan. Therefore, pursuant to federal law under 11 U.S.C. § 1146(a), documents or instruments of transfer pertaining to a refinancing or sale of the property that will inevitably require recording will be protected from otherwise applicable Florida law regarding the payment for documentary tax stamps.

13.18 **Notice of Intent to Request Cramdown.** In the event that a sufficient number of holders of any impaired Class of Claims do not accept the Plan, or it is otherwise necessary, the Plan Proponents hereby give notice that it will request, and does hereby request, confirmation of the Plan pursuant to 11 U.S.C. § 1129(b), commonly referred to as the “cramdown” provision of the Code. The Proponents reserve the right to modify or vary the treatment of the Claims as to comply with 11 U.S.C. § 1129(b), if and to the extent necessary.

### **CONFIRMATION REQUEST**

The Proponents hereby requests confirmation of the Plan pursuant to Code section 1129(a) or, in the event that the Plan is not accepted by each of those Classes of Claims entitled to vote, or is otherwise necessary, section 1129(b) of the Code.

DATED: December 29, 2017

CAMPBELLTON-GRACEVILLE HOSPITAL  
CORPORATION

By: /s/ Marshall Glade  
Marshall Glade  
Its: Chief Restructuring Officer

BERGER SINGERMANN LLP  
*Attorneys for Debtor*  
313 N. Monroe Street, Suite 301  
Tallahassee, FL 32301  
Telephone: (850) 561-3010  
Facsimile: (850) 561-3013

By: /s/ Brian G. Rich  
Brian G. Rich  
Florida Bar No. 038229  
*brich@bergersingerman.com*

**BROAD AND CASSEL LLP**

Attorneys for Committee

Frank P. Terzo, Esq.

Michael J. Niles, Esq.

100 S.E. 3<sup>rd</sup> Avenue, Suite 2700

Fort Lauderdale, FL 33394

Telephone: (954) 764-7060

By: /s/ Frank P. Terzo

Frank P. Terzo

Florida Bar No. 906263

Email: [fterzo@broadandcassel.com](mailto:fterzo@broadandcassel.com)

Michael J. Niles

Florida Bar No. 107203

Email: [mniles@broadandcassel.com](mailto:mniles@broadandcassel.com)

**EXHIBIT B**  
**Causes of Action**

## **POTENTIAL CAUSES OF ACTION AND PRESERVATION OF SUCH CAUSES OF ACTION**

### **A. Potential Bankruptcy Causes of Action**

Debtor's Avoidance Actions and Litigation Claims, if any, will be pursued by Debtor prior to the Effective Date and by the Liquidating Trustee after the Effective Date. Proceeds of the Avoidance Actions will be used to make Distributions under the Plan, including to holders of Allowed Claims. Debtor's Avoidance of Actions and Litigation Claims, if any, are each preserved herein and pursuant to the Plan.

Included in the Avoidance Actions that Debtor may have under state and other federal laws and pursuant to Section 541 of the Bankruptcy Code are causes of action that allow a debtor to recover transfers it has made prior to its bankruptcy filing. The most common such causes of action are those to recover preferences and fraudulent transfers.

#### ***i. Preference Actions***

Under sections 547 and 550 of the Bankruptcy Code, a debtor may seek to avoid and recover certain payments made by the debtor to or for the benefit of a creditor, within the ninety days prior to the petition date, in respect of an antecedent debt if such transfer was made when the debtor was insolvent. Transfers made to a creditor that was an "insider" of the debtor are subject to these provisions if the payment was made within one year of a debtor's filing of a petition under Chapter 11. Under section 547, certain defenses, in addition to the solvency of the debtor at the time of the transfer, are available to a creditor from which a preference recovery is sought. Among other defenses, a debtor may not recover a payment to the extent such creditor subsequently gave new value to the debtor for which the creditor was not paid pursuant to a payment that is not otherwise avoidable (the "New Value Defense"). A debtor may not recover a payment to the extent such payment was part of a substantially contemporaneous exchange between the debtor and the creditor (the "Substantially Contemporaneous Exchange Defense"). Further, a debtor may not recover a payment if such payment was made in the ordinary course of business of both the debtor and the creditor (the "Ordinary Course Defense"). The debtor has the initial burden of proof in demonstrating the existence of all the elements of a preference, although there is a rebuttable presumption that the debtor was insolvent during the ninety days prior to the commencement of its bankruptcy case. The creditor has the initial burden of proof as to the foregoing defenses.

The Debtor's Schedules included a listing of payments made in the 90 days immediately preceding the Petition Date and a listing of all payments to insiders made in the one year prior to the Petition Date. Because the Debtor has yet to conduct an analysis of the potential for recovery of all of these payments, the Plan Proponents cannot estimate the amount of any potential recovery from litigation surrounding such payments, if any. The Debtor and/or the Liquidating Trustee will be reviewing such transfers and determine whether and which transfers will be pursued in future litigation.

THE SCHEDULE OF POTENTIAL PREFERENCE PAYMENTS ATTACHED TO THIS DISCLOSURE STATEMENT IS NON-EXHAUSTIVE AND MEANT TO BE

ILLUSTRATIVE AND SHALL NOT PRECLUDE THE DEBTOR, THE ESTATE, THE LIQUIDATING TRUSTEE OR OTHER AUTHORIZED PERSON OR ENTITY FROM PURSUING OTHER AND ADDITIONAL AVOIDANCE ACTIONS.

***ii. Fraudulent Conveyances and Transfers***

Under sections 548 and 550 of the Bankruptcy Code and under state law made applicable in bankruptcy cases by section 544(b) of the Bankruptcy Code, a debtor in possession or a trustee in bankruptcy, if a trustee is appointed or elected, may recover a transfer of property if the transfer was made while the debtor was insolvent, was unable to pay its debts as they mature, or has unreasonably small capital if, or to the extent, the debtor received less than reasonably equivalent consideration or fair value for such property and may recover a transfer made by the debtor with actual intent to hinder, delay or defraud its creditors. Such rights of the debtor or trustee preclude any creditor as to whom a transfer was also fraudulent from pursuing a similar action unless the trustee declines to bring such action or to administer such claim. Section 548 of the Bankruptcy Code applies to transfers made during the two years prior to the Petition Date. Various State laws may provide a considerably longer period of up to six years within which such action may be brought.

***iii. Disallowance of Claims***

Under section 502(d) of the Bankruptcy Code, any Claim asserted by a Creditor shall be disallowed in its entirety if such Creditor has received a transfer, such as a preference or fraudulent transfer, that is voidable under the Bankruptcy Code and has failed to repay such transfer.

***iv. Specific Claims***

The Debtor have conducted an initial investigation and sent demand letters to the entities attached hereto for the recovery of alleged fraudulent transfers under Sections 547, 548 and 544 of the Bankruptcy Code and applicable state law. The Debtor and/or the Liquidating Trustee will conduct this investigation and, if warranted, preference and fraudulent conveyance claims will be asserted.

THE SCHEDULE OF POTENTIAL FRAUDULENT TRANSFERS ATTACHED TO THIS DISCLOSURE STATEMENT IS NON-EXHAUSTIVE AND MEANT TO BE ILLUSTRATIVE AND SHALL NOT PRECLUDE THE DEBTOR, THE ESTATE, THE LIQUIDATING TRUSTEE OR OTHER AUTHORIZED PERSON OR ENTITY FROM PURSUING OTHER AND ADDITIONAL AVOIDANCE ACTIONS.

The Debtor and the Committee are continuing to analyze additional claims against multiple entities for, *inter alia*, Avoidance Actions, fraud, aiding and abetting, breach of contract, tort claims, Civil Rico, potential government forfeiture rights and claims, qui tam actions. The targets of these claims may include the named recipients of the alleged fraudulent transfer actions, Jorge Perez (including nay of his affiliates and/or corporate entities), any preserved claims against PCH under the PCH Settlement Agreement, Lifebright Laboratories and its related affiliates and entities, Reliance Laboratories and its affiliates and related entities.



The Debtor and the Liquidating Trustee intend to continue such investigation into the above Avoidance Actions and Litigation Claims, and any other causes of action that may exist.

**B. Preservation of Claims and Causes of Action.**

The Plan provides, in part, that the Avoidance Actions and Litigation Claims “are hereby preserved and retained for enforcement solely and exclusively and in the discretion of the Liquidating Trustee and are vested in the Liquidating Trustee on the Effective Date, who shall be designated as the representative of the Debtor’s Estate pursuant to 11 U.S.C. § 1123(b)(3)(B).” The Liquidating Trustee shall, therefore, have the right to prepare, file, pursue, prosecute and settle the Avoidance Actions, whether or not such Avoidance Actions have been asserted or commenced as of the Effective Date, as a representative of the estate pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code appointed for such purpose for the benefit of holders of Allowed Claims.

To the extent that certain Avoidance Actions are filed by the Debtor and are not resolved prior to the Effective Date, such Avoidance Actions will be transferred to and vest in the under the control of the Liquidating Trustee pursuant to the terms of the Plan.

In addition to the above, there may be claims and causes of action which currently exist or may subsequently arise that are not set forth specifically herein because the facts upon which such claims and causes of action rest are not fully or currently known by the Debtor. The failure to list any such claims or causes of action is not intended to limit the rights of the Debtor and the Liquidating Trustee to pursue their respective claims and causes of action at such time as the facts giving rise thereto become fully known.

Unless any of the above described claims and causes of action are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or by Final Order of the Bankruptcy Court, all such claims and causes of action are expressly reserved and preserved for later adjudication and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims and causes of action upon or after confirmation or consummation of the Plan.

Furthermore, notwithstanding any provision or interpretation to the contrary, nothing in the Plan or the Confirmation Order, including the entry thereof, shall be deemed to constitute a release, waiver, impediment, relinquishment or bar, in whole or in part, of or to any recovery rights or any other claim, right or cause of action possessed by the Debtor or the Debtor’s Estate prior to the Effective Date.

**FRAUDULENT TRANSFER DEMAND LETTER TARGETS**

| <b>Name of Target</b>                       | <b>Date Demand Letter Sent by First Class Mail and Certified Mail</b> | <b>Amount of Demand</b> |
|---|---|-------------------------|
| Advanced Clinical Laboratory Solutions Inc. | 9/27/2017   | \$253,475.00            |
| Aspen Hills Diagnostics LLC                 | 9/27/2017   | \$696,385.10            |
| Assurance Scientific Laboratories, LLC      | 9/27/2017   | \$299,897.36            |
| Auspicious Laboratory Inc.                  | 9/27/2017   | \$64,375.00             |
| Axis Diagnostics, Inc.                      | 9/27/2017   | \$715,034.66            |
| B3 Diagnostics Lab, LLC                     | 9/27/2017   | \$1,511,100.00          |
| Central Clinical Labs                       | 9/27/2017   | \$1,259,110.58          |
| Certus Laboratories                         | 9/27/2017   | \$485,000.60            |
| CGH Holdings Company, Inc                   | 9/27/2017   | \$7,277,018.70          |
| Clinical Laboratory Consultants             | 9/27/2017   | \$777,520.50            |
| Companion DX Reference Lab, LLC             | 9/27/2017   | \$399,950.00            |
| Diagnostic Lab Direct, LLC                  |   | \$1,842,238.09          |

|   |           |                 |
|---|-----------|-----------------|
| Eclipse Toxicology, LTD.  | 9/27/2017 | \$1,543,712.92  |
| Empower HIS, LLC  |           | \$3,375,065.16  |
| Expertus Laboratory, Inc. / Jason Ryan Investments                          | 9/27/2017 | \$500,000.00    |
| Hill Country Toxicology, Ltd.   | 9/27/2017 | \$26,016.26     |
| Imperium Health Resources LLC   | 9/27/2017 | \$387,800.00    |
| LabPro Inc  | 9/27/2017 | \$457,228.54    |
| LifeBrite Management Inc  | 9/27/2017 | \$21,166,427.29 |
| Lighthouse Medical, LLC   | 9/27/2017 | \$2,341,785.00  |
| Mission Toxicology, LLC   | 9/27/2017 | \$325,993.13    |
| ON3 Healthcare A.D., LLC  | 9/27/2017 | \$440,159.08    |
| Our Family Genes LLC  | 9/27/2017 | \$173,600.85    |
| Qualitox Laboratories LLC   | 9/27/2017 | \$1,602,875.00  |
| RAJ Enterprises of Central Florida LLC dba Pinnacle Laboratory Services LLC | 9/27/2017 | \$2,886,742.15  |
| Reliance Laboratory Testing Inc.  | 9/27/2017 | \$67,560,932.45 |

|                                  |           |              |
|----------------------------------|-----------|--------------|
| SeroDynamics LLC                 | 9/27/2017 | \$549,840.00 |
| Southwest Laboratories, LLC      | 9/27/2017 | \$618,496.17 |
| Strategic Ancillary Services LLC | 9/27/2017 | \$530,927.63 |
| Sun Clinical Laboratory          | 9/27/2017 | \$40,050.92  |
|                                  |           |              |

**EXHIBIT C**

**Licenses**

CERTIFICATE #: 6155

LICENSE #:           

# State of Florida

## AGENCY FOR HEALTH CARE ADMINISTRATION

### DIVISION OF HEALTH QUALITY ASSURANCE

## Hospital

Licensed

This is to confirm that Campbellton-Graceville Hospital Corporation has complied with the rules and regulations adopted by the State of Florida, Agency for Health Care Administration, and authorized in Chapter 395, Part I, Florida Statutes, and is authorized to operate the following hospital premises: Campbellton-Graceville Hospital

Class 1 Hospital Rural  
Number of Licensed Beds:  
Acute Care: 25

CAMPBELLTON-  
GRACEVILLE HOSPITAL  
5429 COLLEGE DR  
GRACEVILLE, FL 32440

TOTAL CAPACITY: 25

Dedicated Emergency Department Emergency Services: Cardiology, Emergency Medicine, Endocrinology, Gynecology, Internal Medicine, Radiology

EFFECTIVE DATE: 10/18/2015

EXPIRATION DATE: 10/17/2017



*[Signature]*  
Deputy Secretary, Division of Health Quality Assurance





This certificate makes known that

**COLA**

Lab Accreditation Through Education

*Has Certified That*

Campbellton-Graceville Hospital

COLA ID #: [REDACTED]

*Has met all criteria for*

**Laboratory Accreditation**

10/7/2015

*This certificate expires two years from this date*

*[Signature]*

*Chief Executive Officer*

ISO00C-24-00

*[Signature]*

*Chief Executive Officer*



View current license information at: [Floridahealthfinder.gov](http://Floridahealthfinder.gov)

LICENSE #:   
CERTIFICATE #: 105681

# State of Florida

AGENCY FOR HEALTH CARE ADMINISTRATION  
DIVISION OF HEALTH QUALITY ASSURANCE

## CLINICAL LABORATORY

Licensed

This is to confirm that CAMPBELLTON-GRACEVILLE HOSPITAL CORPORATION has complied with Chapter 483, Part I, Florida Statutes, and with Chapter 59A-7, Florida Administrative Code, and is authorized to operate the following laboratory in the specialties or subspecialties of:

ABO Rh, Ab Det(Trans), Compatibility Testing, Endocrinology, General Immunology, Hematology, Mycology, Parasitology, Routine Chemistry, Toxicology, Urinalysis

CAMPBELLTON GRACEVILLE HOSPITAL CLINICAL LAB

5429 College Dr

Graceville, FL 32440-1857

EFFECTIVE DATE: 10/18/2015

EXPIRATION DATE: 10/17/2017



  
Deputy Secretary, Division of Health Quality Assurance



THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

CAMPBELLTON GRACEVILLE HOSP  
5429 COLLEGE DRIVE  
GRACEVILLE, FL 32440-0000

| DEA REGISTRATION NUMBER | THIS REGISTRATION EXPIRES | BUSINESS ACTIVITY | SCHEDULES          |
|-------------------------|---------------------------|-------------------|--------------------|
| ██████████              | 08-31-2019                | HOSPITAL/CLINIC   | 2,2N,<br>3,3N,4,5, |
| FEE PAID                | \$731                     | ISSUE DATE        | 07-22-2016         |

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE  
UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION  
WASHINGTON D.C. 20537

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE  
UNITED STATES DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION  
WASHINGTON D.C. 20537

|  |                           |                   |                    |
|--|---------------------------|-------------------|--------------------|
| CAMPBELLTON GRACEVILLE HOSP<br>5429 COLLEGE DRIVE<br>GRACEVILLE, FL 32440-0000 |                           |                   |                    |
| DEA REGISTRATION NUMBER  | THIS REGISTRATION EXPIRES | BUSINESS ACTIVITY | SCHEDULES          |
| ██████████   | 08-31-2019                | HOSPITAL/CLINIC   | 2,2N,<br>3,3N,4,5, |
| FEE PAID   | \$731                     | ISSUE DATE        | 07-22-2016         |



CAMPBELLTON GRACEVILLE HOSP  
5429 COLLEGE DRIVE  
GRACEVILLE, FL 32440-0000



Form DEA-223 (05/04)

**CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE**  
 UNITED STATES DEPARTMENT OF JUSTICE  
 DRUG ENFORCEMENT ADMINISTRATION  
 WASHINGTON, D.C. 20537

DEA REGISTRATION NUMBER: [REDACTED]  
 THIS REGISTRATION EXPIRES: 08-31-2019  
 FEE PAID: \$731

SCHEDULES: 2,2N,3  
 BUSINESS ACTIVITY: HOSPITAL/CLINIC  
 DATE ISSUED: 07-22-2016

CAMPBELLTON GRACEVILLE HOSP  
 5429 COLLEGE DRIVE  
 GRACEVILLE, FL 32440

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, BUSINESS ACTIVITY, OR VALID AFTER THE EXPIRATION DATE.

Sections 304 and 1006 (21 U.S.C. 824 and 956) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance if the registrant fails to comply with the requirements of the Act.

U.S. Department of Justice  
 Drug Enforcement Administration

**CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE**  
 UNITED STATES DEPARTMENT OF JUSTICE  
 DRUG ENFORCEMENT ADMINISTRATION  
 WASHINGTON, D.C. 20537

DEA REGISTRATION NUMBER: [REDACTED]  
 THIS REGISTRATION EXPIRES: 08-31-2019  
 FEE PAID: \$731

SCHEDULES: 2,2N,3  
 BUSINESS ACTIVITY: HOSPITAL/CLINIC  
 DATE ISSUED: 07-22-2016

CAMPBELLTON GRACEVILLE HOSP  
 5429 COLLEGE DRIVE  
 GRACEVILLE, FL 32440

THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IS NOT VALID AFTER THE EXPIRATION DATE.

Sections 304 and 1006 (21 U.S.C. 824 and 956) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

U.S. Department of Justice  
 Drug Enforcement Administration



**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STORAGE TANK REGISTRATION PLACARD  
2015-2016**

STCM ACCOUNT: 3267

FACILITY ID: 8629790

FACILITY: CAMPBELLTON-GRACEVILLE HOSPITAL  
5429 COLLEGE DR  
GRACEVILLE FL 32440 1857 JACKSON COUNTY

FACILITY TYPE: Fuel user/Non-retail

PLACARD NO: 467584

PLACARD ISSUED: 06/30/2015

PLACARD EXPIRES: 06/30/2016

TANK SYSTEMS REGISTERED: 1

ACCOUNT OWNER: CAMPBELLTON GRACEVILLE HOSPITAL  
5429 COLLEGE DR ATTN: JEFF CARNLEY  
GRACEVILLE FL 32440

HASH: TWODLELQMOE#WM

The Storage Tank Registration placard must be posted at the facility.  
It must be placed out of the weather and in plain view of inspectors entering the facility.

Under Section 376.3077, Florida Statutes, it is unlawful to deposit motor fuel into a storage tank system that requires registration unless proof of valid registration is displayed at the facility.

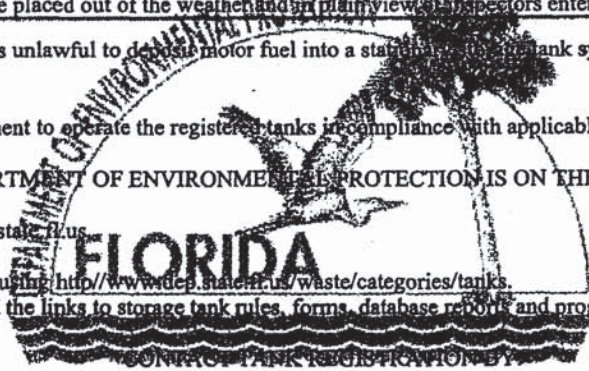
Acceptance of this placard constitutes agreement to operate the registered tanks in compliance with applicable Statutes and Department Rules.

DEPARTMENT OF ENVIRONMENTAL PROTECTION IS ON THE INTERNET

Web address for DEP is <http://www.dep.state.fl.us>

You can access the Storage Tank Website by using <http://www.dep.state.fl.us/waste/categories/tanks>.

Look under the HIGHLIGHTS section to find the links to storage tank rules, forms, database reports and program information.



EMAIL - [TankRegistration@dep.state.fl.us](mailto:TankRegistration@dep.state.fl.us)  
PHONE - (850) 245-8839

No. 176

**CITY LICENSE**

2016 ——— 2017

\$50.00

**CITY OF GRACEVILLE JACKSON COUNTY, FLORIDA**

**IN CONSIDERATION** of the sum of **FIFTY DOLLARS AND NO CENTS**

paid to the Tax Collector of Graceville, Jackson County Florida \_\_\_\_\_

**CAMPBELLTON-GRACEVILLE HOSPITAL**

is hereby licensed to engage in and manage the business or occupation of

**HOSPITAL**

for a period commencing **OCTOBER** **1** **2016** and ending

**SEPTEMBER** **30** **2017** to be carried on within said city

Issued **16-Sep** **2016**

**MICHELLE C. WATKINS**

City Clerk