

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11 Case

HHH CHOICES HEALTH PLAN, LLC,

Case No. 15-11158 (MEW)

Case No. 15-13264

Case No. 16-10028

Debtor.

(Jointly Administered)

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**DISCLOSURE STATEMENT, PURSUANT TO SECTION 1125 OF THE  
BANKRUPTCY CODE, FOR PLAN OF LIQUIDATION UNDER CHAPTER 11  
OF THE BANKRUPTCY CODE FOR HHH CHOICES HEALTH PLAN, LLC**

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~~{THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE  
PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A  
DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY  
COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR  
APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.}~~

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Dated: ~~{August 15,}~~ September 28, 2017  
New York, New York

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## I. INTRODUCTION AND SUMMARY

### A. Overview

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the Chapter 11 case for HHH Choices Health Plan, LLC (the “**Debtor**”) submits this Disclosure Statement (the “**Disclosure Statement**”) pursuant to Section 1125(b) of Title 11, United States Code, 11 U.S.C. §§ 101 et seq. (the “**Bankruptcy Code**”) and Rule 3017 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), in connection with its Plan of Liquidation Under Chapter 11 of the Bankruptcy Code for HHH Choices Health Plan, LLC, dated {~~August 15;~~ September 28, 2017 (the “**Plan**”). This Disclosure Statement is intended to provide the Debtor’s creditors with adequate information to enable holders of Claims against the Debtor that are Impaired under (and entitled to vote on) the Plan to make an informed judgment in exercising their right to vote for acceptance or rejection of the Plan. A copy of the Plan is annexed hereto as Exhibit A. Please read this Disclosure Statement {~~the Plan~~} and the Plan {~~Supplement, if any,~~} carefully and follow the instructions set forth below on how to vote on the Plan. All capitalized terms used but not defined in this Disclosure Statement shall have the respective meanings ascribed to them in the Plan, unless otherwise noted.

The Plan provides a means by which the proceeds of the liquidation of the Debtor’s assets will be distributed under Chapter 11 of the Bankruptcy Code, and sets forth the treatment of all Claims against and Interests in the Debtor. As described in more detail below, approximately seven months prior to the commencement of the Debtor’s Chapter 11 case, the Debtor consummated the sale of substantially all of its assets. The Plan implements the distribution of the remaining proceeds of the sale (and any other available proceeds and cash) to holders of Allowed Claims, and provides for the liquidation of any remaining assets and a process for recovery of any causes of action belonging to the Debtor and its estate.

**THE COMMITTEE STRONGLY URGES ACCEPTANCE OF THE PLAN, AND URGES ALL CREDITORS ENTITLED TO VOTE THEREON TO VOTE TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO THAT THEY ARE RECEIVED BY 5:00 P.M. (PREVAILING EASTERN TIME) ON {~~\_\_\_\_\_~~} OCTOBER 20, 2017.**

Each holder of a Claim against the Debtor entitled to vote on the Plan should read this Disclosure Statement, the Plan {~~the Plan Supplement, if any,~~} and the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain, among other things, important information concerning the classification of Claims against and Interests in the Debtor for voting purposes and the tabulation of votes. No solicitation of votes to accept the Plan may be made except pursuant to Section 1125 of the Bankruptcy Code.

**B. Explanation of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its finances and operations for the benefit of itself, its creditors and equity interest holders. Alternatively, a debtor can utilize the provisions of Chapter 11 to liquidate in an orderly way and provide equal treatment of similarly situated creditors and equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that a Chapter 11 debtor may continue to operate its business and remain in possession of its property as a debtor-in-possession. The Debtor's Chapter 11 case was commenced by the filing of an involuntary petition on May 4, 2015 (the "**Petition Date**") by petitioning creditors The Royal Care, Inc., Amazing Home Care Services, LLC, and InterGen Health LLC. On June 1, 2015, the Debtor filed a Notice of Consent to Order for Relief [Docket No. 6] consenting to the entry of an order for relief under Chapter 11 of the Bankruptcy Code. Thereafter, an Order for Relief was signed by the Court on June 16, 2015 and entered on the docket on June 22, 2015 [Docket No. 16]. The Debtor's Chapter 11 Case is being presided over by the Honorable Michael E. Wiles, United States Bankruptcy Judge for the Southern District of New York. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues in the management and possession of its property as a debtor-in-possession. No trustee or examiner has been appointed in the Debtor's Chapter 11 case.

Confirmation and consummation of a plan of reorganization or liquidation are the principal objectives of a Chapter 11 case. In this Chapter 11 Case, the Plan contemplates a liquidation of the Debtor and is therefore referred to as a "plan of liquidation." The primary objective of the Plan is to maximize the value of the recoveries to all holders of Allowed Claims ~~and Allowed Interests~~ and to distribute any property of the Estate that is or becomes available for distribution generally in accordance with the priorities established by the Bankruptcy Code. In general, confirmation of a plan by the bankruptcy court makes the plan binding upon a debtor, any person acquiring property under the plan and any creditor or equity interest holder of a debtor whether or not they vote to accept the plan. Before soliciting acceptances of a proposed plan, however, Section 1125 of the Bankruptcy Code requires that a disclosure statement be prepared containing adequate information of a kind, and in sufficient detail, to enable a creditor to make an informed judgment in voting to accept or reject the plan. The Committee is submitting this Disclosure Statement to satisfy the requirements of Section 1125 of the Bankruptcy Code.

**C. Summary of Classification and Treatment Under the Plan**

In general, and as more fully described herein, the Plan (i) divides Claims and Interests into four (4) unclassified categories and five (5) classes, (ii) sets forth the treatment afforded to each category and class, and (iii) provides the means by which the proceeds of the Debtor's assets will be distributed. The following table sets forth a summary of the treatment of each class

of Claims and Interests under the Plan (a more detailed description of the Plan is set forth in Section IV of this Disclosure Statement entitled “*Overview of The Plan*”).<sup>1</sup>

<u>Class number</u>	<u>Type of Claim or Interest Class</u>	<u>Treatment of Allowed Claims and Interests</u>
(none)	Administrative Claims	Each holder of an Allowed Administrative Claim, in full and final satisfaction, release and settlement of such Allowed Administrative Claim, shall receive Cash from the Remaining Cash in an amount equal to such Allowed Administrative Claim on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes Allowed or otherwise payable, unless such holder shall agree to a different and less favorable treatment of such Claim.
(none)	Professional Fee Claims	Each holder of an Allowed Professional Fee Claim shall be paid in Cash from the Remaining Cash in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order, unless such holder shall agree to a different and less favorable treatment of such Claim.
(none)	Priority Tax Claims	Unless the holder thereof shall agree to a different and less favorable treatment, each holder of an Allowed Priority Tax Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive payment in Cash from the Remaining Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes Allowed. Any Claim or demand for penalty relating to any Priority Tax Claim (other than a penalty of the type

<sup>1</sup> This summary contains only a brief simplified description of the classification and treatment of Claims and Interests under the Plan. It does not describe every provision of the Plan. Accordingly, reference should be made to the entire Disclosure Statement (including exhibits) and the Plan for a complete description of the classification and treatment of Claims and Interests.

		specified in Section 507(a)(8)(G) of the Bankruptcy Code) shall be Disallowed, and the holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Estate or any of its respective property or Assets.
(none)	U.S. Trustee Fees	U.S. Trustee Fees incurred by the Estate prior to the Effective Date shall be paid from the Remaining Cash on the Effective Date in accordance with the applicable schedule for payment of such fees. Until the Case is closed by entry of a final decree of the Court, the Plan Administrator shall pay all additional U.S. Trustee Fees incurred in accordance with the applicable schedule for the payment of such fees.
1	Secured Claims	Each holder of an Allowed Secured Claim, in full and final satisfaction, release and settlement of such Claim, shall receive one of the following alternative treatments, at the election of the Plan Administrator: (a) payment in full in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date the Claim becomes due and payable by its terms; (b) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (c) the treatment described in Section 1124(2) of the Bankruptcy Code; or (d) all collateral securing such Claim, without representation or warranty by or recourse against the Debtor. To the extent that the value of the collateral securing an Allowed Secured Claim is less than the amount of such Allowed Secured Claim, the undersecured portion of such Claim shall be treated for all purposes under the Plan as an Allowed Unsecured Claim in Class 3 and shall be classified as such. Class 1 is an Unimpaired Class and is deemed to have accepted the Plan.



2	Other Priority Claims	<p>Each holder of an Allowed Other Priority Claim, in full and final satisfaction, release and settlement of such Claim, shall be paid in full in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes Allowed, unless such holder shall agree to a different and less favorable treatment of such Claim (including, without limitation, any different treatment that may be provided for in the documentation governing such Claim or in a prior agreement with such holder). Class 2 is an Unimpaired Class and is deemed to have accepted the Plan.</p>
3	Unsecured Claims	<p>The holders of Allowed Unsecured Claims <del>{, in full and final satisfaction, release and settlement of such Allowed Claims,}</del> shall from time to time receive Pro Rata distributions of Cash from the Net Proceeds until they receive 100% of the Allowed amounts of their Allowed Claims without interest. Class 3 is an Impaired Class that is entitled to vote on the Plan. The Committee estimates that the recovery for holders of Allowed Unsecured Claims will be 27.2% to 36.5%.</p>
4	Subordinated Claim	<p>The holder of the Allowed Subordinated Claim <del>{, in full and final satisfaction, release and settlement of such Allowed Claim,}</del> shall receive a distribution of Cash from the Net Proceeds remaining, if any, after payment in full of all Allowed Unsecured Claims until such holder receives 100% of the Allowed amount of its Allowed Claim without interest. Class 4 is an Impaired Class that is entitled to vote on the Plan. The Committee estimates that the holder of the Allowed Subordinated Claim will not receive a distribution under the Plan on account of its Claim.</p>
5	Interests	<p>On the Effective Date, all Interests shall be cancelled and extinguished. Holders of Interests shall not receive or retain any</p>

	property on account of such Interests. Class 5 is an Impaired Class that is deemed to reject the Plan.
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**THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE BANKRUPTCY COURT, DATED SEPTEMBER 28, 2017, AS CONTAINING INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, TO ENABLE HOLDERS OF CLAIMS TO MAKE AN INFORMED JUDGMENT IN VOTING TO ACCEPT OR REJECT THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN. WHILE THE COMMITTEE BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE PLAN, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE PLAN. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS IN THE PLAN, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS{~~AND INTERESTS~~} SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN, AND THE EXHIBITS TO THIS DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.**

**THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN UNLESS SO SPECIFIED. WHILE THE COMMITTEE HAS MADE EVERY EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES REASONABLY CAN BE EXPECTED TO AFFECT MATERIALLY THE VOTE ON THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT THAT CERTAIN EVENTS, SUCH AS THOSE MATTERS DISCUSSED IN SECTION VII BELOW ENTITLED "RISK FACTORS" DO OCCUR.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAW OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS AGAINST, THE DEBTOR, SHOULD EVALUATE THIS DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

**WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER PENDING OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT AND THE INFORMATION CONTAINED HEREIN SHALL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS STATEMENTS MADE IN SETTLEMENT NEGOTIATIONS.**

**D. Voting and Confirmation Procedures**

As set forth above, accompanying this Disclosure Statement are copies of, among other things, the following documents:

- (i) the Plan, which is annexed hereto as Exhibit A; and
- (ii) the Disclosure Statement Approval Order (without exhibits), which is annexed hereto as Exhibit B, approving (a) this Disclosure Statement as containing adequate information pursuant to Section 1125 of the Bankruptcy Code, (b) procedures for the solicitation and tabulation of votes to accept or reject the Plan, (c) the fixing and notice of (1) the time for submitting acceptances or rejections to the Plan, (2) the hearing to consider confirmation of the Plan, (3) the time for filing objections to confirmation of the Plan and (4) other deadlines and notice procedures.

The form of Ballot, and the related materials delivered together herewith, are being furnished, for purposes of soliciting votes on the Plan, to the holders of Claims in Class 3 and Class 4, which are the only Impaired Classes of Claims that are entitled to vote on the Plan. The Disclosure Statement is also available at no cost upon request to holders of Claims in Classes 1 and 2 (which Classes are Unimpaired and therefore deemed to accept the Plan), Class 5 (which Class is Impaired and deemed to have rejected the Plan), and other entities, solely for informational purposes.

(1) Who May Vote

Pursuant to the provisions of the Bankruptcy Code, impaired classes of claims or interests are entitled to vote to accept or reject a plan of reorganization. A class which is not “impaired” is deemed to have accepted a plan and is not entitled to vote. A class is “impaired” under the Bankruptcy Code unless the legal, equitable, and contractual rights of the holders of claims or interests in such class are not modified or altered. As set forth above, Class 1 (Secured Claims) and Class 2 (Other Priority Claims) Claims are Unimpaired and deemed to accept the Plan; Class 3 (Unsecured Claims) and Class 4 (Subordinated Claim) are Impaired and thus entitled to vote on the Plan. Class 5 (Interests) is Impaired and deemed to reject the Plan.

(2) Voting of Claims. Each holder of an Allowed Claim in an Impaired Class which receives or retains property under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered Ballot as provided in such order as is entered by the Court establishing certain procedures with respect to the voting to accept or reject the Plan.

(3) Voting Procedures

All votes to accept or reject the Plan must be cast by using the form of Ballot. No votes other than ones using such Ballot will be counted except to the extent the Court orders otherwise. The Court has fixed 5:00 p.m., prevailing Eastern Time, on {                    } **September 26, 2017** (the “**Voting Record Date**”) as the time and date for the determination of holders of record of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. After carefully reviewing the Plan and this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan on the appropriate Ballot and return such Ballot in the enclosed envelope to:

**IF BY FIRST CLASS MAIL, OVERNIGHT MAIL OR HAND DELIVERY:**

Farrell Fritz, P.C.  
400 RXR Plaza  
Uniondale, NY 11556  
Attention: Darren A. Pascarella, Esq.

**BALLOTS MUST BE RECEIVED ON OR BEFORE 5:00 P.M. (PREVAILING EASTERN TIME) ON {                    } **OCTOBER 20, 2017 (THE “VOTING DEADLINE”). THE FOLLOWING BALLOTS SHALL NOT BE COUNTED OR CONSIDERED FOR ANY PURPOSE IN DETERMINING WHETHER THE PLAN HAS BEEN ACCEPTED OR REJECTED: (A) ANY BALLOT THAT IS PROPERLY COMPLETED, EXECUTED AND TIMELY RETURNED TO THE VOTING AGENT, BUT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR THAT INDICATES BOTH AN ACCEPTANCE AND REJECTION OF THE PLAN, (B) ANY BALLOT ACTUALLY RECEIVED BY THE VOTING AGENT AFTER THE VOTING DEADLINE, UNLESS THE COMMITTEE SHALL HAVE GRANTED IN WRITING AN EXTENSION OF THE VOTING DEADLINE WITH RESPECT TO SUCH BALLOT, (C) ANY BALLOT THAT IS ILLEGIBLE OR CONTAINS INSUFFICIENT INFORMATION TO PERMIT THE IDENTIFICATION OF THE CLAIMANT, (D) ANY BALLOT CAST BY A PERSON OR ENTITY THAT DOES NOT HOLD A CLAIM IN A CLASS THAT IS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN, (E) ANY BALLOT CAST FOR A CLAIM SCHEDULED AS UNLIQUIDATED, CONTINGENT OR DISPUTED FOR WHICH NO PROOF OF CLAIM WAS TIMELY FILED, (F) ANY UNSIGNED OR NON-ORIGINALLY SIGNED BALLOT, (G) ANY BALLOT SENT DIRECTLY TO THE DEBTOR, ITS AGENTS OR THE DEBTOR’S FINANCIAL OR LEGAL ADVISORS OR TO ANY PARTY OTHER THAN THE VOTING AGENT, (H) ANY BALLOT CAST FOR A CLAIM THAT HAS BEEN DISALLOWED (FOR VOTING PURPOSES OR OTHERWISE), (I) ANY BALLOT WHICH IS SUPERSEDED BY A LATER FILED BALLOT, AND (J) ANY BALLOT TRANSMITTED TO THE VOTING AGENT BY FACSIMILE OR OTHER ELECTRONIC MEANS.****

If you have any questions regarding the procedures for voting on the Plan, please contact the Voting Agent, Farrell Fritz, P.C., at the above address, or the following telephone number: (516) 227-0797.

(4) Nonconsensual Confirmation. Class 3 and Class 4 are the only Impaired Classes entitled to vote to accept or reject the Plan. If Class 3 votes to accept the Plan, the Plan Proponent intends to seek confirmation of the Plan under Section 1129(b) of the Bankruptcy Code. Subject to Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Proponent reserves the right to modify the Plan to the extent necessary to obtain entry of the Confirmation Order, provided such modifications are consistent with Section 10.1 of the Plan.

## **II. THE DEBTOR'S STRUCTURE, BUSINESS, EVENTS LEADING TO CHAPTER 11 CASE AND SALE OF ASSETS<sup>2</sup>**

The Debtor is a New York registered limited liability company that was formed on or about August 1, 2006. Its sole member is HHCS, Inc., a New York registered not-for-profit corporation. The Debtor was engaged in operating a managed long-term care program ("**MLTCP**"). MLTCPs are managed care systems designed to streamline the delivery of long-term health services to chronically ill or disabled clients who desire to remain in their homes or communities as opposed to residing in assisted or skilled nursing facilities. The New York State Department of Health ("**DOH**") and New York State Department of Financial Services ("**DFS**") have regulatory jurisdiction over MLTCP's. The former controls, among other things, the licensure process, and the latter monitors compliance with financial requirements, including the maintenance of reserve funds held by DFS. In many respects, an MLTCP's financial model is similar to that of a health maintenance organization. Revenues are capitated and patient care plans are designed by the MLTCP.

Almost all of the Debtor's operating revenues were generated from the New York State Medicaid Program based upon an annual capitation rate (i.e., fixed dollar annual amount per client multiplied by the number of clients) rather than a fee for service model. A very minor portion of the Debtor's revenue was derived from investment income. Conversely, the Debtor's most significant operating expenses related to the healthcare claims expense generated by its chronically ill and disabled clients, which in the aggregate accounted for an average of 80% to 90% of operating revenue.

In 2011, the Debtor initiated the process for applying for approval to operate a Fully Integrated Dual Advantage Plan ("**FIDA**"), through which patients who have both Medicare and Medicaid would receive all their covered services from one plan; as well as a Managed Medicare Special Needs program and a Medicare Advance Prescription Drug Plan ("**MAP**"). The MAP was approved in 2012, to begin enrollments in February 2013.

Due to the delayed enrollment implementation schedule, low enrollment, increased competition and lower than expected reimbursement rates, the Debtor's board of directors resolved in November 2013 to terminate the MAP and withdraw its FIDA application.

For the calendar year ending 2011, the Debtor's net operating income was approximately \$178,000. In 2012, the net operating income increased to approximately \$1,561,000. However, for calendar year ending 2013, the operating results turned substantially negative resulting in an

<sup>2</sup> The foregoing description is taken from the Declaration of Mary Frances Barrett, Chief Executive Officer of HHH Choices Health Plan, LLC Pursuant to Local Rule 1007-2 of the Local Rules of Bankruptcy Procedure, dated July 16, 2015 [Docket No. 25] (the "**Barrett Declaration**").

approximate \$3,527,000 operating loss. That loss was exacerbated by the implementation costs of the MAP and FIDA programs, which had a negative impact of approximately \$5,540,000. Additionally, during the summer of 2013, DOH advised MLTCP's that they could no longer accept Medicaid Managed Care patients, resulting in a decrease in the census of the Debtor's business. Consequently, the Debtor's board of directors, at the end of 2013, resolved to sell the Debtor's business operations, given the prospects for continued substantial losses. Further, the Debtor's business was adversely impacted by Wage Parity<sup>3</sup> requirements. Due to Wage Parity, the renegotiation of union contracts for home health aides in the spring of 2014 resulted in a substantial increase in the hourly compensation for home health aides.

During late 2013, the Board engaged the Marwood Group to expose the Debtor to the market and search for potential buyers. The Marwood Group did produce proposals from prospective buyers.

Effective April 30, 2014, the Debtor entered into an asset purchase agreement with Senior Health Partners Inc., a subsidiary of Health First Inc., whereby the Debtor sold the MLTCP for the sum of \$15,000,000. Subject to obtaining the requisite approvals from the DOH, the closing generated cash payments in the amount of approximately \$13,250,000, and an additional \$1,750,000 that was held in escrow pursuant to the asset purchase agreement. With regard to the escrow amount, \$448,539 was released to the Debtor on or about February 4, 2015, and an additional \$11,027.31 was released on or about April 21, 2015. \$40,433.47 was credited to the purchaser due to an enrollment adjustment. The balance of \$1,250,000 was scheduled for release as follows: (i) \$625,000 on September 30, 2015; and (ii) \$625,000 on March 31, 2015.<sup>4</sup>

### **III. COMMENCEMENT OF, AND SIGNIFICANT EVENTS DURING, THE DEBTOR'S CHAPTER 11 CASE AND CAPITAL STRUCTURE**

#### **A. Commencement of Chapter 11 Case**

On the Petition Date, The Royal Care, Inc., Amazing Home Care Services, LLC and InterGen Health LLC filed an involuntary petition against the Debtor. On June 1, 2015, the Debtor filed a Notice of Consent to Order for Relief [Docket No. 6] consenting to the entry of an order for relief under Chapter 11 of the Bankruptcy Code. On June 16, 2015, the Court signed an Order for Relief, which was entered on the docket on June 22, 2015 [Docket No. 16].

The following is a brief description of some of the major events that have occurred in the Chapter 11 Case.

#### **B. Retention of Debtor's Professionals**

In connection with the Case, the Debtor obtained orders of the Court authorizing them to retain the following professionals to assist the Debtor with conducting the Case:

<sup>3</sup> The term "Wage Parity" is used but not defined in the Barrett Declaration.

<sup>4</sup> While the Barrett Declaration states that \$625,000 was scheduled for release on September 30, 2015, only \$375,000 was released to the Debtor in October 2015, leaving a balance at that time to be released to the Debtor of \$875,000. The Committee has been advised that the remaining \$875,000 has been received by the Debtor.

a. the law firm of Harter Secrest & Emery LLP, initially retained as the Debtor's counsel [Docket No. 37], was subsequently transitioned to the Debtor's special legal counsel effective January 23, 2017 [Docket No. 481];

b. the law firm of Lippes Mathias Wexler Friedman LLP, retained as the Debtor's counsel effective January 23, 2017 [Docket No. 481]; and

c. Getzler Henrich & Associates LLC, retained as the Debtor's financial advisor [Docket No. 40];

### **C. Appointment of the Committee and Its Professionals**

The Bankruptcy Code provides for the formation of an official committee of unsecured creditors to represent the interests of unsecured creditors. On November 16, 2015, the Office of the United States Trustee appointed the Committee. The creditors serving on the Committee are as follows:

Rain Home Attendant Agency

Amazing Home Care Services, LLC

Rockaway Home Attendant Services<sup>5</sup>

CABS Home Attendants Service, Inc.

1199SEIU Health Care Employees Pension Fund

The Committee employed Alston & Bird LLP as its bankruptcy counsel [Docket No. 73] and CBIZ Accounting, Tax & Advisory of New York, LLC and CBIZ, Inc. as its financial advisors [Docket No. 141]. Effective December 1, 2016, the Committee employed Farrell Fritz P.C. as its bankruptcy counsel [Docket No. 471] after the lead attorney for the Committee withdrew from Alston & Bird LLP and joined Farrell Fritz P.C.

### **D. Motion for Turnover of Estate Assets**

On November 17, 2015, the Debtor filed a motion seeking the turnover of estate assets pursuant to Section 542 of the Bankruptcy Code [Docket No. 43]. The motion sought the release of restricted reserve escrow accounts (the "**DFS Escrow Accounts**") containing a total of \$4,274,361.96 as of May 31, 2015. On December 16, 2015, the Court entered a Stipulation and Order Compelling Turnover of Estate Assets Pursuant to 11 U.S.C. §542 [Docket No. 51], pursuant to which DFS released the DFS Escrow Accounts to the Debtor.

### **E. Motion for Joint Administration**

On January 8, 2016, the Debtor (and two related debtors) filed a motion authorizing joint administration of the Debtor's Chapter 11 case with the Chapter 11 cases of related debtors

<sup>5</sup> The Notice of Appointment of the Committee [Docket No. 42] lists Enosa Aibangbee but fails to list the company she is with, Rockaway Home Attendant Services, which is the unsecured creditor serving on the Committee.

Hebrew Hospital Senior Housing, Inc. and Hebrew Hospital Home of Westchester, Inc. [Docket No. 55]. On January 14, 2016, an order was entered on the motion providing for the consolidation of the three cases for procedural purposes only and providing for the three cases to be jointly administered by the Court [Docket No. 61].

**F. The Debtor's Schedules of Assets and Liabilities**

On July 13, 2015, the Debtor filed its schedules of assets and liabilities [Docket No. 21]. The Summary of Schedules page lists total assets of the Debtor in the amount of \$6,321,075.57 and total liabilities of the Debtor in the amount of \$31,881,506.32.

**G. The Debtor's Capital Structure**

The Debtor's schedules of liabilities [Docket No. 21] reflect no secured claims.

**H. The Settlement of the Claims of 1199SEIU United Healthcare Workers East and the 1199SEIU Pension and Benefit Funds**

The creditors with the largest Claims against the Debtor are 1199SEIU United Healthcare Workers East ("**1199**") and eight 1199SEIU pension and benefit funds (the "**1199 Funds**").

The 1199SEIU Healthcare Employees Pension Fund ("**1199 Pension Fund**"), one of the 1199 Funds and a multi-employer pension plan, filed a proof of claim against the Debtor in the amount of \$32,799,263.00, representing the alleged withdrawal liability of the Debtor under the Multiemployer Pension Plan Amendments Act of 1980 for the complete withdrawal of the Debtor, Hebrew Hospital Senior Housing, Inc. ("**HSSH**") and Hebrew Hospital Home of Westchester, Inc. ("**HHHW**") (collectively, the "**Debtors**"), and related non-debtor entities from the 1199 Pension Fund. The 1199 Pension Fund alleged that the liability of the Debtors and related non-debtor entities was joint and several because all were members of the same controlled group. The Committee disagreed with the amount of the withdrawal liability claim based on several legal and factual arguments, but agreed that the Debtors and related non-debtor entities were members of the same controlled group. As part of a settlement agreement entered into by the Committee, the committees in the HSSH and HHHW cases, the Debtors, the 1199 Funds, including the 1199 Pension Fund and 1199, approved by the Bankruptcy Court on August 9, 2017 (the "**Settlement**"), the 1199 Pension Fund will have (i) an Allowed Unsecured Claim against the Debtors for withdrawal liability in the amount of \$5,759,751.00 and (ii) an Allowed Claim against the Debtors for withdrawal liability that is subordinated to all Allowed Unsecured Claims against the Debtors in the amount of \$5,759,751.00.

1199 filed proofs of claim for unpaid pre-petition wages and benefits owed to employees of the Debtors and related non-debtor entities who were members of 1199, and the 1199 Funds filed proofs of claim for unpaid, required pre-petition contributions of the Debtors and one related non-debtor entity, and interest on those amounts. On the basis of the single employer doctrine which may be applied under standards established by federal labor common law, 1199 and the 1199 Funds asserted that the Debtors and one related non-debtor entity together constituted a single employer. As a result, alleged 1199 and the 1199 Funds, each of the Debtors



is jointly and severally liable for these unpaid wages and fund contributions. The Debtors and the creditors' committees of the Debtors denied the application of the single employer doctrine. As part of the Settlement, 1199 will have Allowed Unsecured Claims of \$603,865.94 against the Debtors for the unpaid wages of 1199 employees of the Debtors and the related non-debtor entity, and the 1199 Funds will have Allowed Unsecured Claims of \$5,696,134.06 against the Debtors for unpaid contributions and interest.

The total Allowed non-subordinated, Unsecured Claims of 1199 and the 1199 Funds under the terms of the Settlement are \$12,059,571.00. Under the Settlement, these Claims will be allocated against the Debtors as follows:

1. HHHW will pay the Allowed Unsecured Claims of 1199 and the 1199 Funds with the assets of the HHHW estate that remain after HHHW pays 100 percent of the allowed administrative, priority and general unsecured claims of HHHW's other creditors.
2. 50 percent of the 1199 and 1199 Funds' Claims that are not paid by HHHW will be allowed against HSSH and paid pari passu (equally and without preference) with the allowed general unsecured claims of the other creditors of HSSH.
3. 50 percent of the 1199 and 1199 Funds' Claims that are not paid by HHHW will be Allowed against the Debtor and paid pari passu with the Allowed Unsecured Claims of the other creditors of the Debtor.

Under the terms of the Settlement, (i) each of the Debtors waives and releases any claim, right of contribution or indemnification it has or may have against the other Debtors arising from or related to the Settlement payments to be made to 1199 and the 1199 Funds and (ii) 1199 and the 1199 Funds release the Debtors, their officers and directors and the creditors' committees of the Debtors from all claims except as provided in the Settlement.

#### **IV. OVERVIEW OF THE PLAN**

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

The following is a summary intended as a brief overview of the Plan and is qualified in its entirety by reference to the full text of the Plan, a copy of which is annexed hereto as Exhibit A. Holders of Claims and Interests are respectfully referred to the relevant provisions of the Bankruptcy Code and are encouraged to review the Plan and this Disclosure Statement with their counsel.

In general, a Chapter 11 liquidating plan of reorganization must (i) divide claims and interests into separate categories and classes, (ii) specify the treatment that each category and class is to receive under such plan, and (iii) contain other provisions necessary to implement the liquidation of a debtor. A Chapter 11 plan may specify that the legal, equitable, and contractual rights of the holders of claims or interests in certain classes are to remain unchanged by the liquidation effectuated by the plan. Such classes are referred to as "unimpaired" and, because of such favorable treatment, are deemed to vote to accept the plan. Accordingly, it is not necessary to solicit votes from holders of claims or interests in such "unimpaired" classes. Pursuant to

Section 1124(1) of the Bankruptcy Code, a class of claims or interests is “impaired,” and entitled to vote on a plan, unless the plan “leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest.” 11 U.S.C. §1124(1).

**B. Classification of Claims and Interests**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization shall classify the claims and interests of a debtor’s creditors and interest holders into classes containing claims or interests that are substantially similar to other claims or interest in such class. Thus, the Plan divides the holders of Claims and Interests into four unclassified categories and five Classes, and sets forth the treatment offered to each Class.<sup>6</sup>

For the holder of a Claim to participate in a plan of reorganization and receive the treatment offered to the class in which it is classified, its Claim must be “Allowed.” Under the Plan, “Allowed,” with reference to any Claim, means: (i) a Claim against the Debtor that is Allowed under the Plan and, therefore, is not subject to disallowance, defense, reduction, avoidance, setoff, recoupment, or subordination of any kind, and (ii) any Claim against the Debtor to the extent: (a) such Claim is scheduled by the Debtor pursuant to the Bankruptcy Code and Bankruptcy Rules in a liquidated amount and not listed as contingent, unliquidated, zero, undetermined or disputed, or (b) a proof of such Claim was timely filed, or deemed timely filed, with the Court pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Plan, and/or applicable Final Order; and, in either case, has not been previously satisfied and (x) is not objected to within the period fixed by the Bankruptcy Code, the Bankruptcy Rules, the Plan, and/or applicable Final Orders of the Court, (y) has been settled pursuant to Section 8.2 of the Plan, or (z) has otherwise been Allowed. An “Allowed Claim” shall be net of any valid setoff or recoupment amount based on a valid setoff or recoupment right. Except as otherwise expressly provided in the Plan, the term “Allowed Claim” shall not, for the purposes of computation of distributions under the Plan, include any amounts not allowable under the Bankruptcy Code or applicable law.

<sup>6</sup> While the Committee believes that its classification of all Claims and Interests is in compliance with the provisions of Section 1122 of the Bankruptcy Code, it is possible that a holder of a Claim or Interest may challenge the Debtor’s classification scheme and the Court may find that a different classification is required for the Plan to be confirmed. In such event, it is the present intent of the Committee, to the extent permitted by the Court, to modify the Plan to provide for whatever reasonable classification might be required by the Court for Confirmation, and to use the acceptances received by the Committee from any holder of a Claim or Interest pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such holder of a Claim or Interest is ultimately deemed to be a member.

**C. Treatment of Claims and Interests Under the Plan**

The Plan segregates the various Claims against, and Interests in, the Debtor into the following categories: Administrative Claims, Priority Tax Claims, Professional Fee Claims and U.S. Trustee Fees; and the following Classes: Class 1 Secured Claims, Class 2 Other Priority Claims, Class 3 Unsecured Claims, Class 4 Subordinated Claim and Class 5 Interests.

Under the Plan, Claims in Classes 1 and 2 are Unimpaired, Claims in Classes 3 and 4 are Impaired, and Interests in Class 5 are Impaired. The treatment accorded to the Impaired Classes of Claims and Interests under the Plan represents the best treatment that can be provided to such Classes pursuant to the priority provisions of the Bankruptcy Code. Set forth below is a summary of the Plan's treatment of the various categories and Classes of Claims and Interests. This summary is qualified in its entirety by the full text of the Plan. In the event of an inconsistency between the Plan and the description contained herein, the terms of the Plan shall govern.

**UNCLASSIFIED CATEGORIES OF CLAIMS**

Under the provisions of the Bankruptcy Code, Administrative Claims, Priority Tax Claims, Professional Fee Claims and U.S. Trustee Fees are not properly classified. They must be paid in full as a condition of confirmation.

a. Administrative Claims

*Administrative Claims Bar Date.* Requests for payment of Administrative Claims must be filed no later than forty-five (45) days after occurrence of the Effective Date.  **Holders of Administrative Claims who do not file such requests by such time shall be forever barred from asserting such Claims, and such Claims shall be forever barred from assertion, against the Debtor and/or its property.**

*Estimation of Administrative Claims.* The Plan Administrator reserves the right, for purposes of allowance and distribution, to seek to estimate any unliquidated Administrative Claim, if the fixing or liquidation of such Administrative Claim would unduly delay the administration of and distributions under the Plan.

Treatment. Each holder of an Allowed Administrative Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive Cash from the Remaining Cash in an amount equal to such Allowed Administrative Claim on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes Allowed, or otherwise payable, unless such holder shall agree to a different and less favorable treatment of such Claim. After the Effective Date, the Plan Administrator may, in the ordinary course of business, satisfy any liabilities, expenses and other Claims incurred by the Plan Administrator in the ordinary course of business and without further order of the Court. The Committee estimates that Allowed Administrative Claims will total approximately \$85,000 to \$100,000.

b. Priority Tax Claims

*Treatment.* Unless the holder thereof shall agree to a different and less favorable treatment, each holder of an Allowed Priority Tax Claim, in full and final satisfaction, release and settlement of such Allowed Claim, shall receive payment in Cash from the Remaining Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes Allowed. Any Claim or demand for penalty relating to any Priority Tax Claim (other than a penalty of the type specified in Section 507(a)(8)(G) of the Bankruptcy Code) shall be Disallowed, and the holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such penalty from the Estate or any of their respective property or Assets. The Committee estimates that Allowed Priority Tax Claims will total approximately \$0.00.

c. Professional Fee Claims

*Professional Fee Claims Bar Date.* All final applications for payment of Professional Fee Claims for the period through and including the Effective Date shall be filed with the Court on or before the Professional Fee Claims Bar Date, or such later date as may be agreed to by the Plan Administrator. **Any Professional Fee Claim that is not asserted in accordance with Section 2.4(a) of the Plan shall be forever barred from assertion against the Debtor and/or its property.**

*Treatment.* Each holder of an Allowed Professional Fee Claim shall be paid in Cash from the Remaining Cash in an amount equal to such Allowed Professional Fee Claim on or as soon as reasonably practicable after the first Business Day following the date upon which such Claim becomes Allowed by Final Order, unless such holder shall agree to a different and less favorable treatment of such Claim. The Committee estimates that Allowed Professional Fee Claims will total approximately \$250,000 to \$350,000, net of retainers.

*Post Effective Date Services.* The fees and expenses of professionals retained by the Plan Administrator and the Post Effective Date Committee on and after the Effective Date shall be paid by the Plan Administrator upon his receipt and approval of invoice(s) therefor without the need for further Court authorization or entry of a Final Order, but subject to the approval of the Post Effective Date Committee, which approval shall not be unreasonably withheld. If the Plan Administrator, a professional and/or the Post Effective Date Committee cannot agree on the amount of post Effective Date fees and expenses to be paid to such professional, such amount shall be determined by the Court.

d. U.S. Trustee Fees

U.S. Trustee Fees incurred by the Estate prior to the Effective Date shall be paid from the Remaining Cash on the Effective Date in accordance with the applicable schedule for payment of such fees. Until the Case is closed by entry of a final

decree of the Court, the Plan Administrator shall pay all additional U.S. Trustee Fees incurred in accordance with the applicable schedule for the payment of such fees.

### **UNIMPAIRED CLASSES OF CLAIMS**

A Chapter 11 plan may specify that the legal, equitable, and contractual rights of the holders of claims or interests in certain classes are to remain unchanged by the plan. Such classes are referred to as “unimpaired” and, because of such favorable treatment, are deemed to vote to accept the plan. Accordingly, it is not necessary to solicit votes from holders of claims or interests in such “unimpaired” classes. Under the Plan, Class 1 Secured Claims and Class 2 Other Priority Claims are Unimpaired and, therefore, are deemed to have accepted the Plan.

e. Class 1 – Secured Claims.

Composition. Class 1 consists of Allowed Secured Claims. For convenience of identification, the Plan describes Allowed Secured Claims in Class 1 as a single Class. Class 1 consists of separate subclasses, each based on the underlying property securing such Allowed Secured Claim, and each subclass is treated under the Plan as a distinct Class for treatment and distribution purposes and for all other purposes under the Bankruptcy Code. The Committee estimates that Allowed Secured Claims will total approximately \$0.00.

Treatment. Each holder of an Allowed Secured Claim shall receive, in full and final satisfaction, release and settlement of such Claim, one of the following alternative treatments, at the election of the Plan Administrator: (a) payment in full in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date the Claim becomes due and payable by its terms; (b) the legal, equitable and contractual rights to which such Claim entitles the holder, unaltered by the Plan; (c) the treatment described in Section 1124(2) of the Bankruptcy Code; or (d) all collateral securing such Claim, without representation or warranty by or recourse against the Debtor. To the extent that the value of the collateral securing an Allowed Secured Claim is less than the amount of such Allowed Secured Claim, the undersecured portion of such Claim shall be treated for all purposes under the Plan as an Allowed Unsecured Claim and shall be classified as such. Class 1 is an Unimpaired Class and is deemed to have accepted the Plan.

f. Class 2 – Other Priority Claims.

Composition. Class 2 consists of Allowed Other Priority Claims. The Committee estimates that Allowed Other Priority Claims will total approximately \$13,000 to \$288,000.

Treatment. Each holder of an Allowed Other Priority Claim, in full and complete satisfaction, release and settlement of such Claim, shall be paid in full in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes Allowed, unless such holder shall agree to

a different and less favorable treatment of such Claim (including, without limitation, any different treatment that may be provided for in the documentation governing such Claim or in a prior agreement with such holder).

Bar Date for Claims asserted Pursuant to Section 502(f) of the Bankruptcy Code. Any Claim against the Debtor asserted pursuant to Section 502(f) of the Bankruptcy Code must be filed no later than forty-five (45) days after the Effective Date. **Claims against the Debtor asserted pursuant to Section 502(f) of the Bankruptcy Code that are not filed by such time shall be forever barred from assertion against the Debtor and/or its property.**

### **IMPAIRED CLASSES**

Pursuant to Section 1124 of the Bankruptcy Code, a class of claims or interests is impaired unless the legal, equitable, and contractual rights of the holders of claims or interests in such class are not modified or altered by a plan. Holders of allowed claims and interests in impaired classes that receive or retain property under a plan of reorganization are entitled to vote on such plan. Under the Plan, Class 3 and Class 4 are Impaired and are entitled to vote on the Plan. Under the Plan, Class 5 is Impaired and is deemed to reject the Plan because holders of Interests are not receiving or retaining any property.

g. Class 3 – Unsecured Claims.

Composition. Class 3 consists of Allowed Unsecured Claims. The Committee estimates that Allowed Unsecured Claims will total approximately \$12,675,000 to \$15,100,000. The Committee estimates that holders of Allowed Unsecured Claims will receive a recovery in the range of 27.2% to 36.5%. Attached hereto as Exhibit C is an estimated recovery analysis prepared by the Committee's financial advisor.

Treatment. The holders of Allowed Unsecured Claims ~~{, in full and final satisfaction, release and settlement of such Allowed Claims,}~~ shall from time to time receive Pro Rata distributions of Cash from the Net Proceeds until they receive 100% of the Allowed amounts of their Allowed Claims without interest.

h. Class 4 – Subordinated Claim.

Composition. Class 4 consists of the Allowed Subordinated Claim. 1199SEIU Health Care Employees Pension Fund is the only holder of a Claim in Class 4, which Claim was Allowed pursuant to the terms of the Settlement in the amount of \$5,759,751.00. The Committee estimates that the holder of the Allowed Subordinated Claim will not receive a distribution under the Plan on account of its Claim.

Treatment. The holder of the Allowed Subordinated Claim ~~{, in full and final satisfaction, release and settlement of such Allowed Claim,}~~ shall receive a distribution of Cash from the Net Proceeds remaining, if any, after payment in full

of all Allowed Unsecured Claims until such holder receives 100% of the Allowed amount of its Allowed Claim without interest.

i. Class 5 – Interests.

Composition. Class 5 consists of Interests.

Treatment. On the Effective Date, all Interests shall be cancelled and extinguished. Holders of Interests shall not receive or retain any property on account of such Interests.

**D. Implementation of the Plan and Plan Administrator**

(1) Implementation of the Plan. The Plan will be implemented by the Plan Administrator in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order. Charles M. Berk is the proposed Plan Administrator. Mr. Berk is a Managing Director of CBIZ Accounting, Tax and Advisory of New York, LLC.

(2) Appointment of the Plan Administrator. On the Effective Date, the monetization of the Debtor's remaining Assets and Causes of Actions and distributions to creditors shall become the general responsibility of the Plan Administrator. The Confirmation Order shall provide for the appointment of the Plan Administrator. The compensation for the Plan Administrator shall be \$715 per hour. The Plan Administrator shall be deemed the Estate's representative in accordance with Section 1123 of the Bankruptcy Code and shall have all powers, authority and responsibilities specified under Sections 704 and 1106 of the Bankruptcy Code. The Plan Administrator shall be required to obtain and maintain a bond in an amount equal to one hundred and ten percent (110%) of Remaining Cash. As Remaining Cash is reduced through distributions and payments by the Plan Administrator and/or additional Cash comes into the Estate, the Plan Administrator shall, at the appropriate time, adjust the amount of the bond to an amount equal to at least 110% of the amount of Cash in the Estate.

(3) Duties of the Plan Administrator. The Plan Administrator will act for the Debtor in a fiduciary capacity as applicable to a board of directors, subject to the provisions of the Plan. On the Effective Date, the Plan Administrator shall succeed to all of the rights of the Debtor with respect to the Assets necessary to protect, conserve, abandon and liquidate all Assets as quickly as reasonably practicable, including, without limitation, control over (including the right to waive) all attorney-client privileges, work-product privileges, accountant-client privileges and any other evidentiary privileges relating to the Assets that, prior to the Effective Date, belonged to the Debtor pursuant to applicable law. The powers and duties of the Plan Administrator shall include, without further order of the Court, except where expressly stated otherwise, the right:

- (i) to invest Cash in accordance with section 345 of the Bankruptcy Code, and withdraw and make distributions of Cash to holders of Allowed Claims and pay taxes and other obligations owed by the Debtor or incurred by the Plan Administrator in connection with the wind-down of the Estate in accordance with the Plan;

- (ii) to receive, manage, invest, supervise, and protect the Assets, including paying taxes or other obligations incurred in connection with the Assets;
- (iii) subject to the approval of the Post Effective Date Committee (which approval shall not be unreasonably withheld), to engage attorneys, consultants, agents, employees and all professional persons, to assist the Plan Administrator with respect to the Plan Administrator's responsibilities;
- (iv) subject to the approval of the Post Effective Date Committee (which approval shall not be unreasonably withheld), or further order of the Court, to pay the fees and expenses for the attorneys, consultants, agents, employees and professional persons engaged by the Plan Administrator and the Post Effective Date Committee and to pay all other expenses for winding down the affairs of the Debtor in accordance with the terms of the Plan,
- (v) to execute and deliver all documents, and take all actions, necessary to consummate the Plan and wind-down the Debtor's business;
- (vi) subject to the approval of the Post Effective Date Committee (which approval shall not be unreasonably withheld), to dispose of, and deliver title to others of, all the remaining Assets;
- (vii) to coordinate the collection of outstanding accounts receivable;
- (viii) to coordinate the storage and maintenance of the Debtor's books and records;
- (ix) to oversee compliance with the Debtor's accounting, finance, regulatory and reporting obligations;
- (x) to prepare United States Trustee quarterly reports;
- (xi) to oversee the filing of final tax returns, audits and corporate dissolution documents if required;
- (xii) to perform any additional corporate actions as necessary to carry out the wind-down and liquidation of the Debtor;
- (xiii) to communicate regularly with and respond to inquiries from the Post Effective Date Committee, including providing to the Post Effective Date information on all receipts and disbursements on a quarterly basis;
- (xiv) subject to Section 8.1 of the Plan, to object to Claims against the Debtor;
- (xv) subject to Section 8.2(b) of the Plan, to compromise and settle Claims against the Debtor;



- (xvi) to act on behalf of the Debtor in all adversary proceedings and contested matters (including, without limitation, any Causes of Action), then pending or that can be commenced in the Court and in all actions and proceedings pending or commenced elsewhere, and to settle, retain, enforce or dispute any adversary proceedings or contested matters (including, without limitation, any Causes of Action) and otherwise pursue actions involving Assets of the Debtor that could arise or be asserted at any time under the Bankruptcy Code or otherwise, unless otherwise specifically waived or relinquished in the Plan; provided, however, that settlements by the Plan Administrator of Causes of Action shall be subject to the approval of the Post Effective Date Committee, which approval shall not be unreasonably withheld, or further order of the Court;
- (xvii) to implement and/or enforce all provisions of the Plan;
- (xviii) to implement and/or enforce all agreements entered into prior to the Effective Date; and
- (xix) such other powers as may be vested in or assumed by the Plan Administrator pursuant to the Plan or Court order or as may be necessary and proper to carry out the provisions of the Plan.

**E. Post Effective Date Committee**

a. On the Effective Date, the Committee shall continue as the Post Effective Date Committee. The Post Effective Date Committee shall be comprised of the members of the Committee, unless any particular member thereof opts not to be a member thereof. If a member of the Post Effective Date Committee resigns or is removed, a replacement who holds an Unsecured Claim against the Debtor may be appointed by the remaining members of the Post Effective Date Committee. The duties and powers of the Post Effective Date Committee shall terminate upon the closing of the Case. The Post Effective Date Committee's role shall be to consult with the Plan Administrator, and to perform the functions set forth in the Plan.

b. The Post Effective Date Committee shall have the power and authority to utilize the services of counsel and a financial advisor as and if necessary to perform the duties of the Post Effective Date Committee and to authorize and direct such Persons to act on behalf of the Post Effective Date Committee in connection with any matter requiring its attention or action. The Plan Administrator shall pay the reasonable and necessary fees and expenses of the Post Effective Date Committee's counsel and financial advisor without the need for Court approval.

c. Except for the reimbursement of reasonable, actual costs and expenses incurred in connection with their duties as members of the Post Effective Date Committee, the members of the Post Effective Date Committee shall serve without compensation. Reasonable expenses incurred by members of the Post Effective Date Committee may be paid by the Plan Administrator without need for Court approval.

d. The Plan Administrator shall report all material matters to the Post Effective Date Committee.

**F. Distributions**

(1) Plan Distributions. The Plan Administrator shall make distributions to holders of Allowed Claims in accordance with Articles II and IV of the Plan on or as soon as reasonably practicable after the Effective Date. From time to time, in consultation with the Post Effective Date Committee, the Plan Administrator shall make Pro Rata distributions to holders of Allowed Class 3 Claims in accordance with Article IV of the Plan. Notwithstanding the foregoing, the Plan Administrator may retain such amounts (i) as are reasonably necessary to meet contingent liabilities (including Disputed Claims) and to maintain the value of the Assets of the Estate during liquidation, (ii) to pay reasonable administrative expenses (including the costs and expenses of the Plan Administrator and the Post Effective Date Committee and the fees, costs and expenses of all professionals retained by the Plan Administrator and the Post Effective Date Committee, and any taxes imposed in respect of the Assets), (iii) to satisfy other liabilities to which the Assets are otherwise subject, in accordance with the Plan, and (iv) to establish any necessary reserve. All distributions to the holders of Allowed Claims shall be made in accordance with the Plan.

The Plan Administrator shall withhold from amounts distributable to any Person any and all amounts determined in the Plan Administrator's reasonable sole discretion to be required by any law, regulation, rule, ruling, directive or other governmental requirement. Holders of Allowed Claims shall, as a condition to receiving distributions, provide such information and take such steps as the Plan Administrator may reasonably require to ensure compliance with withholding and reporting requirements and to enable the Plan Administrator to obtain certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

(2) Cash Distributions. The Plan Administrator shall not be required to make interim or final Cash distributions in an amount less than \$5.00. Any funds so withheld and not distributed on an interim basis shall be held in reserve and distributed in subsequent distributions to the extent the aggregate distribution exceeds \$10,000. Should a final distribution to any holder of an Allowed Claim not equal or exceed \$5.00, that sum shall be distributed to other holders of Allowed Claims in accordance with the Plan.

(3) Delivery of Plan Distributions. All distributions under the Plan on account of any Allowed Claims shall be made at the address of the holder of such Allowed Claim as set forth in a filed Proof of Claim or on the register on which the Plan Administrator records the name and address of such holders or at such other address as such holder shall have specified for payment purposes in a written notice to the Plan Administrator at least fifteen (15) days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the Plan Administrator shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Plan Administrator has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such undeliverable or unclaimed distributions shall become Unclaimed Property at the expiration of one hundred twenty (120)

days from the date such distribution was originally made. The Plan Administrator shall reallocate the undeliverable and unclaimed distributions for the benefit of all other holders of Allowed Claims in accordance with the Plan.

(4) Distributions to Holders as of the Confirmation Date. As of the close of business on the Confirmation Date, the claims register shall be closed, and there shall be no further changes in the record holders of any Claims. Neither the Debtor nor the Plan Administrator, as applicable, shall have any obligation to recognize any transfer of any Claims or Interests occurring after the close of business on the Confirmation Date, and shall instead be entitled to recognize and deal for all purposes under the Plan (except as to voting to accept or reject the Plan pursuant to Section 6.1 of the Plan) with only those holders of record as of the close of business on the Confirmation Date.

(5) Windup. After (a) the Plan has been fully administered, (b) all Disputed Claims have been resolved, (c) all Causes of Action have been resolved, and (d) all Assets have been reduced to Cash or abandoned, the Plan Administrator shall effect a final distribution of all Cash remaining (after reserving sufficient Cash to pay all unpaid expenses of administration of the Plan and all expenses reasonably expected to be incurred in connection with the final distribution) to holders of Allowed Claims in accordance with the Plan.

(6) Disposition of Unclaimed Funds. On or about the time that the final distribution is made, the Plan Administrator may make a charitable donation with undistributed funds if, in the reasonable judgment of the Plan Administrator, the cost of calculating and making the final distribution of the remaining funds exceeds the benefits to the holders of Allowed Claims who would otherwise be entitled to such distributions and such charitable donation is provided to a non-for-profit, non-religious organization that is not related to the Debtor or the Plan Administrator.

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

(1) Assumption or Rejection of Executory Contracts. Effective on and as of the Confirmation Date, all Executory Contracts are specifically deemed rejected, except for any Executory Contract (a) that has been specifically assumed or assumed and assigned by the Debtor on or before the Confirmation Date with the approval of the Court, or (b) in respect of which a motion for assumption or assumption and assignment has been filed with the Court on or before the Confirmation Date ~~}; or (c) that is specifically designated as a contract to be assumed on a schedule to the Plan, which schedule, if any, shall be filed as part of the Plan Supplement};~~ provided, however, that to the extent any insurance policy of the Debtor, or any insurance policy that names or otherwise covers the Debtor as an insured, is deemed or determined to be an Executory Contract, any such insurance policy is deemed assumed by the Debtor effective on and as of the Confirmation Date.

(2) Approval of Assumption or Rejection of Executory Contracts. Entry of the Confirmation Order by the Clerk of the Court, but subject to the condition that the Effective Date occur, shall constitute (a) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts assumed or assumed and assigned pursuant to Section 7.1 of the Plan, and (b) the approval,

pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts rejected pursuant to Section 7.1 of the Plan.

(3) Bar Date for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan. Claims against the Debtor arising out of the rejection of Executory Contracts pursuant to the Plan must be filed with the Court no later than forty-five (45) days after the Effective Date. Any such Claims not filed within such time shall be forever barred from assertion against the Debtor and/or its property.

(4) Compensation and Benefit Programs. To the extent not previously terminated, all employment and severance agreements and policies, and all employee compensation and benefit plans, policies and programs of the Debtor applicable generally to their respective current employees or officers as in effect on the Confirmation Date, including, without limitation, all savings plans, retirement plans, health care plans, disability plans, severance benefit plans, incentive plans and life, accidental death and dismemberment insurance plans, shall be terminated as of the Confirmation Date.¶

¶

## **H. Provisions for Resolving and Treating Claims**

I. Prosecution of Disputed Claims. Except as otherwise provided in the Plan, the Plan Administrator shall have the right to object to all Claims against the Debtor on any basis, including those Claims against the Debtor that are not listed in the Schedules, that are listed therein as disputed, contingent, and/or unliquidated, that are listed therein at a lesser amount than asserted by the respective Creditor, or that are listed therein for a different category of claim than asserted by the respective Creditor. Subject to further extension by the Court for cause with or without notice, the Plan Administrator may object to the allowance of Claims against the Debtor up to one hundred eighty (180) days after the Effective Date; provided, however, that an objection to a Claim against the Debtor based on Section 502(d) of the Bankruptcy Code may be made at any time in any adversary proceeding against the holder of any relevant Claim. The filing of a motion to extend the deadline to object to any Claims against the Debtor shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such motion to extend the deadline to object to Claims against the Debtor is denied by the Court, such deadline shall be the later of the current deadline (as previously extended, if applicable) or 30 days after the Court's entry of an order denying the motion to extend such deadline. From and after the Effective Date, the Plan Administrator shall succeed to all of the rights, defenses, offsets, and counterclaims of the Debtor and the Committee in respect of all Claims against the Debtor, and in that capacity shall have the power to prosecute, defend, compromise, settle, and otherwise deal with all such objections, subject to the terms of the Plan.

(1) Settlement of Disputed Claims. Pursuant to Bankruptcy Rule 9019(b), subject to Section 8.2(b) of the Plan, the Plan Administrator may settle any Disputed Claim (or aggregate of Claims if held by a single Creditor), respectively, without notice, a Court hearing or Court

approval. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

The Plan Administrator is required to give notice to the Post Effective Date Committee of (i) a settlement of any Disputed Class 3 Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Class 3 Claim(s) being Allowed in an amount in excess of \$200,000, or (ii) a settlement of any Disputed Administrative/Priority Claims or Disputed Secured Claim (or aggregate of Claims if held by a single Creditor) that results in the disputed portion of such Disputed Claim(s) being Allowed in an amount in excess of \$25,000. The Post Effective Date Committee shall have ten (10) days after service of such notice to object to such settlement. Any such objection shall be in writing and sent to the Plan Administrator. If no written objection is received by the Plan Administrator prior to the expiration of such ten (10) day period, the Plan Administrator and the settling party shall be authorized to enter into the proposed settlement without a hearing or Court approval. If a written objection is timely received, the Plan Administrator, the settling party and the objecting party shall use good-faith efforts to resolve the objection. If the objection is resolved, the Plan Administrator and the settling party may enter into the proposed settlement (as and to the extent modified by the resolution of the objection) without further notice or Court approval, provided that the Claim of the settling party against the Estate shall not be greater under the proposed settlement than that disclosed in the notice. Alternatively, the Plan Administrator may seek Court approval of the proposed settlement upon expedited notice and a hearing.

(2) No Distributions Pending Allowance. Notwithstanding any provision in the Plan to the contrary, no partial payments and no partial distributions shall be made by the Plan Administrator with respect to any portion of any Claim against the Debtor if such Claim or any portion thereof is a Disputed Claim. In the event and to the extent that a Claim against the Debtor becomes an Allowed Claim after the Effective Date, the holder of such Allowed Claim shall receive all payments and distributions to which such holder is then entitled under the Plan.

**J. Conditions to Confirmation and Effectiveness of the Plan**

(1) Conditions to Confirmation. The following conditions are conditions precedent to Confirmation of the Plan unless waived by the Plan Proponent pursuant to Section 9.3 of the Plan: (i) the Confirmation Order must be in a form and substance reasonably acceptable to the Plan Proponent, and (ii) the Confirmation Order shall:

a. authorize the appointment of all parties appointed under or in accordance with the Plan, including, without limitation, the Plan Administrator, and direct such parties to perform their obligations under such documents;

b. approve in all respects the transactions, agreements, and documents to be effected pursuant to the Plan;

c. authorize the Plan Administrator and Post Effective Date Committee to assume the rights and responsibilities fixed in the Plan;

d. approve the exculpation and injunctions granted and created by the Plan;

e. order, find, and decree that the Plan complies with all applicable provisions of the Bankruptcy Code, including that the Plan was proposed in good faith; and

f. except as otherwise specifically provided in the Plan, order that nothing in the Plan operates as a discharge, release, exculpation, or waiver of, or establishes any defense or limitation of damages to, any Claim or Cause of Action belonging to the Estate.

(2) Conditions to Effective Date. The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived pursuant to Section 9.3 of the Plan:

a. the Confirmation Date shall have occurred and the Confirmation Order, in a form consistent with the requirements of Section 9.1 of the Plan, shall have become a Final Order;

b. the Plan Administrator shall have been appointed;

c. all actions, documents and agreements necessary to implement the provisions of the Plan shall be reasonably satisfactory to the Plan Proponent, and such actions, documents, and agreements shall have been effected or executed and delivered; and

d. all other actions required by the Plan to occur on or before the Effective Date shall have occurred.

**K. Modification, Revocation or Withdrawal of the Plan**

(1) Modification of Plan. The Plan Proponent may alter, amend or modify the Plan pursuant to Section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After such time and prior to substantial consummation of the Plan, the Plan Proponent may, so long as the treatment of holders of Claims against the Debtor under the Plan is not adversely affected, institute proceedings in Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002 or as the Court shall otherwise order.

(2) Revocation or Withdrawal of Plan. The Plan Proponent reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date. If the Plan Proponent revokes or withdraws the Plan prior to the Effective Date, then the Plan shall be deemed null and void, and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims 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.

**L. Injunctions, Exculpation, Indemnification, Release of Collateral and Preservation of Insurance**

**M. Injunction.** Except as otherwise expressly provided in the Plan including, without limitation, the treatment of Claims against and Interests in the Debtor, the entry of the Confirmation Order shall, provided that the Effective Date shall have occurred, operate to enjoin permanently all Persons that have held, currently hold or may hold a Claim against or Interest in the Debtor, from taking any of the following actions against the Debtor, the Plan Administrator, the Committee or members thereof, the Post-Effective Date Committee or members thereof, present and former directors, officers, trustees, agents, attorneys, advisors, members or employees of the Debtor, or any of their respective successors, heirs or assigns, or any of their respective assets or properties, on account of any Claim against or Interest in the Debtor: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind with respect to a Claim against or Interest in the Debtor; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim against or Interest in the Debtor; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim against or Interest in the Debtor; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any Debt, liability or obligation due to the Debtor or its property or Assets with respect to a Claim against or Interest in the Debtor; and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of the Plan; provided, however, nothing in this injunction shall preclude the holder of a Claim against the Debtor from pursuing any applicable insurance after the Case is closed, from seeking discovery in actions against third parties or from pursuing third-party insurance that does not cover Claims against the Debtor.

a. **Exculpation.** None of (i) Alston & Bird LLP and Farrell Fritz P.C., in their capacity as counsel to the Committee; (ii) CBIZ Accounting, Tax & Advisory of New York, LLC and CBIZ, Inc., in its capacity as financial advisor to the Committee; (iii) the Committee; (iv) the members of the Committee and their representatives, in their capacities as such; (v) Harter Secrest & Emery LLP and Lippes Mathias Wexler Friedman LLP, in their capacity as counsel to the Debtor; (vi) Getzler Henrich & Associates LLC in its capacity as financial advisor to the Debtor; (vii) the Plan Administrator; (viii) the Plan Administrator's attorneys, financial advisors, agents and representatives, in their capacities as such; (ix) the Post Effective Date Committee; (x) the members of the Post Effective Date Committee and their representatives, in their capacities as such; or (xi) the Post Effective Date Committee's attorneys and financial advisors, in their capacities as such, shall have or incur any liability for any act or omission after the Petition Date in connection with, related to, or arising out of, the Case, the formulation, preparation, dissemination, implementation, confirmation, or approval of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any contract, instrument, release, or other agreement or document provided for or

**contemplated in connection with the consummation of the transactions set forth in the Plan; provided, however, that nothing in Section 12.2 of the Plan shall affect the liability of any Person that would result from any such act or omission to the extent that act or omission is determined by a Final Order of the Court to have constituted willful misconduct or gross negligence; and in all respects, such Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and shall be fully protected from liability in acting or refraining to act in accordance with such advice.**

b. Indemnification. The Plan Administrator and the members of the Post Effective Date Committee shall be indemnified and receive reimbursement against and from all loss, liability, expense (including counsel fees) or damage which the Plan Administrator or the members of the Post Effective Date Committee may incur or sustain in the exercise and performance of any of their respective powers and duties under the Plan, to the full extent permitted by law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result solely from the Plan Administrator's or the Post Effective Date Committee member's willful misconduct, fraud, intentional misconduct or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid by the Plan Administrator out of the Cash held by the Plan Administrator under the Plan. The Plan Administrator shall not be personally liable for this indemnification obligation or the payment of any expense of administering the Plan or any other liability incurred in connection with the Plan, and no person shall look to the Plan Administrator personally for the payment of any such expense or liability. This indemnification shall survive the death, resignation or removal, as may be applicable, of the Plan Administrator and/or the members of the Post Effective Date Committee, and shall inure to the benefit of the Plan Administrator and the Post Effective Date Committee's members and their respective successors, heirs and assigns, as applicable.

c. Preservation of Insurance. The provisions of the Plan are not intended to and shall not diminish or impair in any manner the enforceability and/or coverage of any insurance policies (and any agreements, documents, or instruments relating thereto) that may cover Claims against the Debtor, any directors, trustees or officers of the Debtor, or any other Person, other than as expressly as set forth in the Plan.

d. Cause of Action Injunction. On and after the Effective Date, all Persons other than the Plan Administrator will be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of, or respecting any, Claim, Debt, right or Cause of Action that the Plan Administrator retains authority to pursue in accordance with the Plan.

## **V. ACCEPTANCE AND CONFIRMATION OF THE PLAN**

The following is a brief summary of the provisions of the Bankruptcy Code respecting acceptance and confirmation of a plan of reorganization. Holders of Claims and Interests are



encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys and tax advisors.

**A. Acceptance of the Plan**

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the allowed claims of that class that have actually voted or are deemed to have voted to accept or reject a plan.

**B. Confirmation**

(1) Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the bankruptcy court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing respecting the Plan has been provided to all known holders of Claims against the Debtor or their representatives, along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules and the Local Rules of the Court, must set forth the name of the objectant, the nature and amount of Claims or Interests held or asserted by the objectant against the Debtor's Estate or property, and the basis for the objection and the specific grounds in support thereof. Such objection must be filed with the Court, with a copy forwarded directly to the Chambers of the Honorable Michael E. Wiles, United States Bankruptcy Court, together with proof of service thereof, and served upon (a) counsel to the Committee, Farrell Fritz, P.C., 622 Third Avenue, 37<sup>th</sup> Floor, New York, New York 10017 (Attn: Martin G. Bunin and Darren A. Pascarella); (b) counsel to the Debtor, Lippes Mathias Wexler Friedman LLP, 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202 (Attn: John A. Mueller and Raymond Fink); and (c) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014 (Attn: Greg M. Zipes), so as to be received no later than the date and time designated in the notice of the Confirmation Hearing.

(2) Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Committee will request that the Court determine that the Plan satisfies the requirements of Section 1129 of the Bankruptcy Code. If so, the Court shall enter an order confirming the Plan. The applicable requirements of Section 1129 of the Bankruptcy Code are as follows:

1. The Plan must comply with the applicable provisions of the Bankruptcy Code;
2. The Plan Proponent (the Committee) must have complied with the applicable provisions of the Bankruptcy Code;

3. The Plan has been proposed in good faith and not by any means forbidden by law;
4. Any payment made or to be made by the Debtor under the Plan for services or for costs and expenses in, or in connection with, the Case, or in connection with the Plan and incident to the Case, has been disclosed to the Court, and any such payment made before Confirmation of the Plan is reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment is subject to the approval of the Court as reasonable;
5. The Plan Proponent has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the Debtor under the Plan. Moreover, the appointment to, or continuance in, such office of such individual, is consistent with the interests of holders of Claims and Interests and with public policy, and the Plan Proponent has disclosed the identity of any insider that the reorganized Debtor will employ or retain, and the nature of any compensation for such insider;
6. Best Interests of Creditors Test. With respect to each Class of Impaired Claims or Interests, either each holder of a Claim or Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code. In a Chapter 7 liquidation, creditors and interest holders of a debtor are paid from available assets generally in the following order, with no lower class receiving any payments until all amounts due to senior classes have either been paid in full or payment in full is provided for: (i) first to secured creditors (to the extent of the value of their collateral), (ii) next to administrative and priority creditors, (iii) next to unsecured creditors, (iv) next to debt expressly subordinated by its terms or by order of the Court and (v) last to holders of interests. The starting point in determining whether the Plan meets the “best interests” test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor’s remaining assets in the context of a Chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including a Chapter 7 trustee’s fees, and the fees and expenses of professionals retained by a Chapter 7 trustee. The potential Chapter 7 liquidation distribution in respect of each Class must be further reduced by the costs imposed as a result of the delay that would be caused by conversion of the Chapter 11 Case to a case under Chapter 7. For the reasons set forth above, the Committee submits that holders of Class 3 Claims will receive under the Plan a recovery greater in value to the recovery such holders would receive pursuant to a liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. Holders of Class 4 Claims and Class 5 Interests are receiving the same recovery as they would receive in a Chapter 7 liquidation (which is no recovery).
7. Each Class of Claims or Interests has either accepted the Plan or is not impaired under the Plan;
8. At least one impaired class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class;
9. Feasibility. Section 1129(a)(11) of the Bankruptcy Code provides that a Chapter 11 plan may be confirmed only if the Court finds that such plan is feasible. A feasible plan is

one which will not lead to a need for further reorganization or liquidation of the debtor. Since the Plan provides for the liquidation of the Debtor, the Court will find that the Plan is feasible if it determines that the Debtor will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet its post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Case. The Committee believes that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code.

(3) Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan, even if such plan has not been accepted by all impaired classes entitled to vote on such plan, provided that such plan has been accepted by at least one impaired class. Class 5 (Interests) is an Impaired Class that is deemed to reject the Plan. Class 3 (Unsecured Claims) and Class 4 (Subordinated Claim) are the only Impaired Classes entitled to vote on the Plan. If Class 3 accepts the Plan, the Committee intends to seek the application of the statutory requirements set forth in Section 1129(b) of the Bankruptcy Code for Confirmation of the Plan despite the lack of acceptance by all Impaired Classes.

Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of an impaired class to accept a plan of reorganization, the plan shall be confirmed, on request of the proponent of the plan, in a procedure commonly known as “cram-down,” so long as the plan does not “discriminate unfairly” and is “fair and equitable” with respect to each class of claims or interests that is impaired under and has not accepted the plan.

The condition that a plan be “fair and equitable” with respect to a non-accepting class of secured claims includes the requirements that (a) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan, and (b) each holder of a secured claim in the class receive deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property subject to the liens.

The condition that a plan be “fair and equitable” with respect to a non-accepting class of unsecured claims includes the requirement that either (a) such class receive or retain under the plan property of a value as of the effective date of the plan equal to the allowed amount of such claim, or (b) if the class does not receive such amount, no class junior to the non-accepting class will receive a distribution under the plan or retain any property.

The condition that a plan be “fair and equitable” with respect to a non-accepting class of interests includes the requirements that either (a) the plan provides that each holder of an interest in such class receive or retain under the plan, on account of such interest, property of a value, as of the effective date of the plan, equal to the greater of (i) the allowed amount of any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled, or (iii) the value of such interest, or (b) if the class does not receive such amount, no class of interests junior to the non-accepting class will receive a distribution under

the plan or retain any property. Since no class of interests junior to Class 5, which is deemed to have rejected the Plan, will receive a distribution or retain any property on account of such Interests, the Plan satisfies the requirements of Section 1129(b) of the Bankruptcy Code with respect to such class.

## **VI. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain of the material U.S. federal income tax consequences expected to result from the implementation of the Plan. The following summary does not address the U.S. federal income tax consequences to holders whose claims are entitled to payment in full in Cash under the Plan (e.g., holders of Allowed Administrative Claims, Priority Tax Claims and Professional Fee Claims). This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “**IRC**”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (“**IRS**”). There can be no assurance that the IRS will not take a contrary view, and no ruling from the IRS has been or will be sought. Legislative, judicial or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to, among others, the Debtor and the holders of Claims.

The following summary is for general information only. The U.S. federal income tax consequences of the Plan are complex and subject to significant uncertainties. This summary does not address foreign, state or local tax consequences of the Plan, nor does it purport to address all of the U.S. federal income tax consequences of the Plan. This summary also does not purport to address the U.S. federal income tax consequences of the Plan to taxpayers subject to special treatment under the U.S. federal income tax laws, such as broker-dealers, tax exempt entities, financial institutions, insurance companies, S corporations, small business investment companies, mutual funds, regulated investment companies, foreign corporations, and non-resident alien individuals.

**EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE POTENTIAL U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN TO SUCH HOLDER BASED ON ITS PARTICULAR CIRCUMSTANCES.**

**IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS in Circular 230, you are hereby informed that (i) any tax advice contained in this Disclosure Statement is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the IRC and (ii) the advice is written to support the promotion or marketing of the transactions or matters addressed in the Disclosure Statement.**

### **A. U.S. Federal Income Tax Consequences to the Debtor**

The Committee does not anticipate that confirmation of the Plan will result in the Debtor being assessed or owing any Federal Income Tax. Confirmation will not trigger a taxable event.

**B. U.S. Federal Income Tax Consequences to Holders of Class 3 Claims**

(1) Gain or Loss Recognized. Except with respect to a Claim (or portion thereof) for accrued but unpaid interest (discussed below) or certain personal injury claims (discussed below), for U.S. federal income tax purposes, each holder of an Allowed Claim arising under, related to or in connection with the Class 3 Unsecured Claims generally should recognize gain or loss as a result of receiving a Distribution pursuant to the Plan equal to the difference between (i) the amount of Cash received by such holder and (ii) the adjusted tax basis of such holder's Allowed Claim. The amount and timing of such gain or loss may be affected by the resolution of Disputed Claims. The character of any gain or loss as long-term or short-term capital gain or loss or ordinary income or loss will depend on a number of factors, including: (i) the nature and origin of the Claim (e.g., Claims arising in the ordinary course of a trade or business or made for investment purposes); (ii) the tax status of the holder of the Claim; (iii) whether the Claim is a capital asset in the hands of the holder; (iv) whether the Claim has been held by the holder for more than one year; (v) the extent to which the holder previously claimed a loss or a bad debt deduction with respect to the Claim; and (vi) the extent to which the holder acquired the Claim at a discount. For a discussion of the tax consequences associated with a Claim for accrued but unpaid interest, if any, see Section B.2. –“Receipt of Interest” below.

Distributions, if any, received by a holder of a personal injury claim that are attributable to, and compensation for, such holder's personal injuries or sickness, within the meaning of section 104 of the IRC, generally should be nontaxable.

(2) Receipt of Interest

The Plan does not address the allocation of the aggregate consideration to be distributed to holders between principal and interest. Treasury Regulations can be read to support a contention that all consideration distributed to a holder should be treated as interest income to the extent of accrued interest, and there can be no assurance that the IRS will respect the allocation of consideration under the Plan.

In general, to the extent that any amount of consideration received by a holder is treated as received in satisfaction of unpaid interest that accrued during such holder's holding period, such amount will be taxable to the holder as interest income (if not previously included in the holder's gross income and not otherwise exempt from U.S. federal income tax). Conversely, a holder may be allowed a bad debt deduction to the extent any accrued interest was previously included in its gross income but subsequently not paid in full. However, the IRS may take the position that any such loss must be characterized based on the character of the underlying obligation, such that the loss will be a capital loss if the underlying obligation is a capital asset.

**C. Withholding and Reporting**

After the Effective Date, the Plan Administrator will withhold all amounts required by law to be withheld from payments to holders of Allowed Claims. For example, under U.S. federal income tax law, interest, dividends and other reportable payments may, under certain circumstances, be subject to backup withholding at the then applicable rate (currently 28%). Backup withholding generally applies only if the holder (i) fails to furnish its social security

number or other taxpayer identification number (“**TIN**”); (ii) furnishes an incorrect TIN; (iii) fails properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in overpayment of tax. Certain persons are exempt from backup withholding, including corporations and financial institutions.

Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. The types of transactions that require disclosure are very broad; however, there are numerous exceptions which may be applicable to a holder.

*The foregoing summary has been provided for informational purposes only. All holders of Claims are urged to consult their tax advisors concerning the U.S. federal, state, local and foreign tax consequences applicable under the Plan.*

## **VII. RISK FACTORS**

**HOLDERS OF ALL CLASSES OF CLAIMS AND INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.**

### **A. Certain Bankruptcy Related Considerations**

#### **(1) Risk of Non-Confirmation of the Plan**

Although the Committee believes that the Plan will satisfy all requirements necessary for Confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. There can also be no assurance that modifications of the Plan will not be required for Confirmation, that any negotiations regarding such modifications would not adversely affect the holders of the Allowed Claims or that any such modifications would not necessitate the re-solicitation of votes.

#### **(2) Nonconsensual Confirmation**

In the event any impaired class of claims or interests does not accept a plan of reorganization, a bankruptcy court may nevertheless confirm such plan of reorganization at the proponent’s request if at least one impaired class has accepted the plan of reorganization (with such acceptance being determined without including the acceptance of any “insider” in such class) and, as to each impaired class which has not accepted the plan of reorganization, the bankruptcy court determines that the plan of reorganization “does not discriminate unfairly” and is “fair and equitable” with respect to non-accepting impaired classes. Since Class 5 (Interests) is deemed to reject the Plan, the Committee will seek nonconsensual Confirmation of the Plan in

accordance with Section 1129(b) of the Bankruptcy Code in the event Class 3 (Unsecured Claims) accepts the Plan.

(3) Risk that Conditions to Effectiveness Will Not Be Satisfied

Article IX of the Plan contains certain conditions precedent to the effectiveness of the Plan. There can be no assurances that the conditions contained in Article IX of the Plan will be satisfied.

(4) Claims Objection/Reconciliation Process

The Committee's estimate of the potential recovery to holders of Class 3 Claims depends on the outcome of the claims reconciliation and objection process. All Claims asserted against the Debtor are subject to the Plan Administrator's review and right to object thereto. Therefore, the Committee's estimate could change and such change could be material. Thus, there is no guarantee that the actual recovery to holders of Class 3 Claims will approximate the Committee's estimate. All information provided in this Disclosure Statement (including Exhibit C) regarding Allowed Claims is provided on an estimated basis and reflects the Committee's estimates of Allowed Claims. Actual Allowed Claims may vary significantly from the Committee's estimates.

**VIII. RESERVATION OF CAUSES OF ACTION OF THE DEBTOR**

**A.** The Plan Administrator may pursue all reserved rights of action, including, without limitation, Causes of Action of the Debtor. Any distributions provided for in the Plan and the allowance of any Claim for the purpose of voting on the Plan are and shall be without prejudice to the rights of the Plan Administrator to pursue and prosecute any reserved rights of action. Except as otherwise set forth in the Plan, all Causes of Action of the Debtor shall survive confirmation of the Plan and the commencement and prosecution of Causes of Action of the Debtor shall not be barred or limited by res judicata or any estoppel, whether judicial, equitable or otherwise. In reviewing the Plan and this Disclosure Statement, Creditors and other parties should consider that Causes of Action of the Debtor exist or may exist against them and, except as otherwise set forth in the Plan, the Plan preserves all Causes of Action of the Debtor and authorizes the Plan Administrator to prosecute them.

**B.** Unless expressly released pursuant to the Plan or a Final Order of the Court, the failure to identify a Person in this Plan shall not constitute a release of any Causes of Action against such Person.

**C.** The Causes of Action retained by the Debtor that can be pursued and prosecuted by the Plan Administrator include, without limitation:

(1) Adversary proceeding no. 17-01070 (MEW) commenced on June 15, 2017 against CEMUSA USA, Inc. and entitled "HHH Choices Health Plan, LLC v. CEMUSA USA, Inc."

(2) Any Causes of Action of the Debtor related to any of the pre-petition lawsuits with respect to which the Debtor was a party and any pre-petition leases and

contracts to which the Debtor was a party. To the extent any person was not identified on, or any transfer, lawsuit, contract or lease was inadvertently omitted from the Schedules, such omission shall not constitute a waiver of any Causes of Action of the Debtor related to such omitted person, transfer, lawsuit, contract or lease, and the Debtor expressly retains and preserves all such Causes of Action. Moreover, for the avoidance of doubt, recovery related to any Causes of Action of the Debtor shall not be limited to any amounts set forth in the Schedules.

(3) Causes of Action of the Debtor retained by the Debtor by a Final Order of the Court as set forth in the Confirmation Order.

(4) Causes of Action of the Debtor to recover money or property from customers, vendors and/or employees whether based on contract or tort, including without limitation all rights pursuant to section 502(d) of the Bankruptcy Code to assert and prosecute any Causes of Action of the Debtor against creditors solely for the purpose of establishing that a creditor's claim against the Debtor must be disallowed for failure to repay an avoidable transfer.

(5) Causes of Action of the Debtor to recover accounts receivable or other receivables or rights to payment created or arising in the ordinary course of the Debtor's business.

(6) Causes of Action of the Debtor against vendors, suppliers of goods or services, or other parties for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guaranties, indemnities or setoffs.

(7) Causes of Action of the Debtor against utilities, vendors, suppliers of goods or services, or other parties for wrongful termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations.

(8) Causes of Action against utilities, vendors, suppliers of goods or services, or other parties for failure to fully perform or to condition performance on additional requirements under contracts with the Debtor before the assumption or rejection of the subject contracts.

(9) Causes of Action of the Debtor for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, lessor, utility, supplier, vendor, insurer, surety, lender, bondholder, lessor or other party.

(10) Causes of Action of the Debtor against any current or former director, officer, trustee, employee or agent of the Debtor arising out of employment related matters, including but not limited to Causes of Action of the Debtor relating to the MAP and FIDA programs, the operation of the Debtor's business, employment contracts, wage and benefit overpayments, travel, expense reimbursements or employee fraud or wrongdoing.

(11) Causes of Action of the Debtor against, among others, the Debtor's sole member, HHCS, Inc., and other related Debtor or non-Debtor entities including but not



limited to Hebrew Hospital Senior Housing, Inc., Hebrew Hospital Home of Westchester, Inc. and HHH Home Care, Inc.

(12) Causes of Action of the Debtor against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters.

(13) Causes of Action of the Debtor which are counterclaims and/or defenses relating to any action brought against the Debtor or the Plan Administrator.

(14) Causes of Action of the Debtor related to or in connection with pre-petition lawsuits with respect to which the Debtor was a party, whether or not identified in the Schedules.

(15) Causes of Action of the Debtor against local, state and federal taxing authorities for refunds of overpayments or other payments.

(16) Contract, tort or equitable Causes of Action of the Debtor that may exist or subsequently arise, whether or not identified on the Schedules.

(17) Equitable subordination Causes of Action of the Debtor arising under section 510 of the Bankruptcy Code or other applicable law.

(18) Causes of Action of the Debtor arising under section 362 of the Bankruptcy Code.

**D.** The Debtor reserves the right of the Plan Administrator to perform a thorough post-confirmation investigation of Causes of Action of the Debtor and to pursue any such additional Causes of Action of the Debtor that may be identified regardless of whether such Causes of Action of the Debtor were specifically identified or known as of the Confirmation Date.

## **IX. ALTERNATIVES TO THE PLAN AND CONSEQUENCES OF REJECTION**

Among the possible consequences if the Plan is rejected or if the Court refuses to confirm the Plan are the following: (1) an alternative plan could be proposed or confirmed; or (2) the Chapter 11 Case could be converted to a liquidation case under Chapter 7 of the Bankruptcy Code.

### **A. Alternative Plans**

As previously mentioned, with respect to an alternative plan, the Committee and its professional advisors believe that the Plan enables the holders of Claims against the Debtor to realize the maximum recovery under the circumstances. The Committee believes the Plan is the best plan that can be proposed and serves the best interests of holders of Allowed Claims and other parties-in-interest.

### **B. Chapter 7 Liquidation**

As discussed above with respect to each Class of Impaired Claims, either each holder of a Claim of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code. The Committee believes that significant costs would be incurred by the Debtor as a result of the delay that would be caused by conversion of the Chapter 11 Case to a case under Chapter 7 resulting in a reduced distribution to holders of Allowed Class 3 Claims.

## **X. RECOMMENDATION AND CONCLUSION**

The Committee and its professional advisors believe that the Plan will provide for a more favorable distribution to holders of Allowed Class 3 Claims than would otherwise result if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Any alternative other than Confirmation of the Plan could result in delays and increased administrative expenses resulting in potentially smaller distributions to the holders of Allowed Class 3 Claims. Accordingly, the Committee recommends confirmation of the Plan and urges all holders of Class 3 Claims to vote to accept the Plan, and to evidence such acceptance by returning their Ballot so that they will be received by no later than the Voting Deadline.

Date: ~~{August 15,}~~ September 28, 2017  
New York, New York

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS  
APPOINTED IN THE CHAPTER 11  
CASE FOR HHH CHOICES HEALTH  
PLAN, LLC**

By: s/ Ryan J. Barbur  
Ryan J. Barbur, Esq.  
Counsel for 1199SEIU Health Care  
Employees Pension Fund, Chair of the  
Official Committee of Unsecured Creditors  
Appointed in the Chapter 11 Case for HHH  
Choices Health Plan, LLC

FARRELL FRITZ, P.C.  
*Counsel for the Official Committee of  
Unsecured Creditors Appointed in the  
Chapter 11 Case for HHH Choices  
Health Plan, LLC*

By: s/ Martin G. Bunin

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