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15 **UNITED STATES BANKRUPTCY COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 In re:  
18 SAN DIEGO HOSPICE & PALLIATIVE CARE  
CORPORATION,  
19 Debtor and Debtor in Possession.

Case No.: 13-01179-MM11  
Chapter 11

**FIRST AMENDED DISCLOSURE  
STATEMENT REGARDING THE FIRST  
AMENDED LIQUIDATING PLAN FOR  
SAN DIEGO HOSPICE & PALLIATIVE  
CARE CORPORATION (JUNE 24, 2013)  
JOINTLY PROPOSED BY THE DEBTOR  
AND THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

Disclosure Statement Hearing

Date: June 26, 2013  
Time: 2:00 p.m.

Confirmation Hearing:

Date: TBD  
Time: TBD  
Place: United States Bankruptcy Court  
325 West F Street  
Department 1, Room 218  
San Diego, CA 92101  
Judge: Hon. Margaret Mann

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## I.

**INTRODUCTION**

San Diego Hospice & Palliative Care Corporation, the above-captioned debtor and debtor in possession (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee” and together with the Debtor, the “Proponents”) submit this Disclosure Statement (the “Disclosure Statement”) in connection with the solicitation of acceptances and rejections with respect to the *First Amended Liquidating Plan for San Diego Hospice & Palliative Care Corporation (Dated June 24, 2013) Jointly Proposed by the Debtor and the Official Committee of Unsecured Creditors* (the “Plan”) under chapter 11 of the title 11 of the United States Code, 11 U.S.C. §§ 101-1530, as amended (the “Bankruptcy Code”). A copy of the Plan is attached hereto as **Exhibit 1**. Capitalized terms used and not otherwise defined herein will have the same meanings ascribed to them in Article II of the Plan.

The purpose of this Disclosure Statement is to set forth information (a) regarding the history of the Debtor, its business, and the chapter 11 case, (b) concerning the Plan and alternatives to the Plan, (c) advising the holders of Claims of their rights under the Plan, (d) assisting the Creditors who are entitled to vote on the Plan in making an informed judgment regarding whether they should vote to accept or reject the Plan, and (e) assisting the Bankruptcy Court in determining whether the Plan complies with the provisions of chapter 11 of the Bankruptcy Code, and should be confirmed.

By Order dated \_\_\_\_\_, 2013 (the “Disclosure Statement Order”), the Bankruptcy Court, after notice and a hearing, approved this Disclosure Statement as containing “adequate information” to permit affected Creditors to make an informed judgment in exercising their rights to vote to accept or reject the Plan, and authorized its use in connection with the solicitation of votes with respect to the Plan. **THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT MEAN THAT THE BANKRUPTCY COURT RECOMMENDS EITHER ACCEPTANCE OR REJECTION OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Creditors should not rely on any information relating to the Debtor other than that

1 contained in this Disclosure Statement, the Plan, and all exhibits hereto and thereto, or such other  
2 materials as may be approved by the Bankruptcy Court.

3 The Plan that is described in this Disclosure Statement is a liquidating plan. The Plan divides  
4 Creditors into Classes based on their legal rights, interests and agreements, and provides for the  
5 satisfaction of Claims from the Debtor's Assets. The Plan's objective is to transfer all Assets of the  
6 Debtor, including, but not limited to, its Cash and its Causes of Action, to the Liquidating Trust.  
7 The Liquidating Trust, through the Liquidating Trustee, will liquidate the remaining non-Cash  
8 Assets, including the prosecution of any Causes of Action held by the Liquidating Trust that the  
9 Liquidating Trustee elects to pursue, and distribute the proceeds thereof to Holders of Allowed  
10 Claims in satisfaction of the Debtor's obligations. In the unlikely event that: (i) all Allowed Claims  
11 (including Allowed Subordinated Claims), are paid in full, along with any and all accrued  
12 Postpetition interest; (ii) all Liquidating Trust Expenses are paid in full; and (iii) all amounts payable  
13 pursuant to sections 726(a)(1) through 726(a)(5), inclusive, are paid in full, any remaining amounts  
14 shall be donated to a charity as directed by the Attorney General of the State of California.

15 Only Holders of Claims Allowed under section 502 of the Bankruptcy Code, or temporarily  
16 allowed for voting purposes under Rule 3018 of the Bankruptcy Rules,<sup>1</sup> whose Claims are in those  
17 Classes of Claims that are Impaired under the Plan are entitled to vote to accept or reject the Plan.  
18 Classes 1, 3 and 4 are Impaired by the Plan. Pursuant to section 1124 of the Bankruptcy Code, a  
19 Class is Impaired if the legal, equitable, or contractual rights of the Claims in the Class are altered.

20 THE DEBTOR AND THE COMMITTEE, AS PROPONENTS OF THE PLAN,  
21 RECOMMEND THAT THE HOLDERS OF CLAIMS IN CLASSES 1, 3 AND 4 VOTE TO  
22 ACCEPT THE PLAN.

23 VOTING ON THE PLAN, BY EACH HOLDER OF A CLAIM ENTITLED TO VOTE, IS  
24 IMPORTANT. EACH SUCH CREDITOR SHOULD READ THIS DISCLOSURE STATEMENT  
25 WITH ITS EXHIBITS, INCLUDING THE PLAN, IN ITS ENTIRETY. AFTER CAREFULLY  
26 REVIEWING THESE DOCUMENTS, PLEASE FOLLOW THE DIRECTIONS FOR VOTING  
27 CONTAINED LATER HEREIN AND ON THE BALLOT, AND RETURN THE BALLOT IN  
28

<sup>1</sup> All references to "Bankruptcy Rules" herein are to provisions of the Federal Rules of Bankruptcy Procedure.

1 THE ENVELOPE PROVIDED. TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED BY  
2 \_\_\_\_\_, 2013, AT 5:00 P.M. (PACIFIC) (THE “VOTING DEADLINE”) AT PROCOPIO,  
3 CORY, HARGREAVES & SAVITCH LLP 525 B STREET, SUITE 2200, SAN DIEGO,  
4 CALIFORNIA 92101, ATTN: JEFFREY ISAACS AS IS SHOWN ON THE PRE-ADDRESSED  
5 ENVELOPE ENCLOSED WITH YOUR BALLOT.

6 Votes cannot be transmitted orally, by facsimile, or by e-mail. Accordingly, you are urged to  
7 return your signed and completed Ballot promptly. Ballots not received by the Voting Deadline and  
8 unsigned Ballots will not be counted. Any executed Ballots that are timely received, but which do  
9 not indicate either an acceptance or rejection of the Plan, will be deemed to constitute an acceptance  
10 of the Plan.

## 11 II.

### 12 DISCLAIMER

13 This Disclosure Statement contains information that may bear upon your decision to accept  
14 or reject the Plan. Please read this document with care. The purpose of this Disclosure Statement is  
15 to provide “adequate information” of a kind, and in sufficient detail, as far as is reasonably  
16 practicable in light of the nature and history of the Debtor and the condition of the Debtor’s books  
17 and records, that would enable a hypothetical reasonable investor, typical of Holders of Claims of  
18 the relevant Class, to make an informed judgment concerning the Plan as required by section 1125(a)  
19 of the Bankruptcy Code. Unless otherwise indicated, the date of all of the financial information  
20 provided in this disclosure statement is as of May 1, 2013.

21 For the convenience of Creditors, this Disclosure Statement summarizes the terms of the  
22 Plan, but the Plan itself qualifies any summary. If any inconsistency exists between the Plan and the  
23 Disclosure Statement, the terms of the Plan are controlling.

24 No representations concerning the Debtor, its financial condition, or any aspect of the Plan  
25 are authorized by the Proponents, other than as set forth in this Disclosure Statement. Any  
26 representations or inducements made to secure your acceptance or rejection of the Plan, which are  
27 other than as contained in, or included with, this Disclosure Statement, should not be relied upon by  
28 you in arriving at your decision.



1 The financial information contained herein is unaudited. The Proponents are unable to  
2 warrant or represent that the information contained herein is without inaccuracies. Great effort,  
3 however, has been made to ensure that all such information is presented fairly.

4 Pachulski Stang Ziehl & Jones LLP (“PSZJ”) and Procopio, Cory, Hargreaves & Savitch  
5 LLP (“PCHS”) relied upon information provided by the Debtor’s management and employees in  
6 connection with preparation of this Disclosure Statement. Although PSZJ and PCHS have  
7 performed certain limited due diligence in connection with the preparation of this Disclosure  
8 Statement, they have not independently verified all of the information contained herein.

9 The contents of this Disclosure Statement should not be construed as legal, business, or tax  
10 advice. Any tax advice herein was not intended to be used, and it cannot be used, for the purpose of  
11 avoiding any tax penalties that may be imposed on any person. There is no limitation imposed on  
12 anyone reading this Disclosure Statement on disclosure of the tax treatment or tax structure of any  
13 transaction. Nothing in this Disclosure Statement may be used or referred to in promoting,  
14 marketing or recommending a partnership or other entity, investment plan, or arrangement to any  
15 person. All Creditors should consult their own legal counsel and/or accountant(s) as to legal, tax,  
16 and other matters concerning their Claims.

### 17 III.

#### 18 OVERVIEW OF THE CHAPTER 11

#### 19 PROCESS AND THE PLAN

##### 20 A. The Chapter 11 Process

21 Chapter 11 of the Bankruptcy Code contains numerous provisions, the general effect of  
22 which is to provide debtors with “breathing space” within which to propose a restructuring of their  
23 obligations to third parties. The filing of a chapter 11 bankruptcy petition creates a bankruptcy  
24 “estate” comprising all of the property interests of a debtor. Unless a trustee is appointed by the  
25 bankruptcy court for cause (no trustee has been appointed in this Case), a debtor remains in  
26 possession and control of all its assets as a “debtor in possession.” The debtor may continue to  
27 operate its business in the ordinary course on a day-to-day basis without bankruptcy court approval.  
28 Bankruptcy court approval is only required for various enumerated kinds of transactions that are out

1 of the ordinary course of a debtor's business (such as certain financing transactions and sales of a  
2 substantially all of a debtor's assets). The filing of the bankruptcy petition gives rise to what is  
3 known as the "automatic stay" which, generally, enjoins creditors from taking any action to collect  
4 or recover obligations owed by a debtor prior to the commencement of a chapter 11 case. A  
5 bankruptcy court can, however, grant relief from the automatic stay, under certain specified  
6 conditions or for cause.

7 A chapter 11 debtor, and, in certain instances, other parties in interest may propose a plan  
8 providing for the reorganization of the debtor or, as the Plan contemplates, for the orderly liquidation  
9 and administration of the assets of the estate. A plan may either be consensual or non-consensual  
10 and provides, among other things, for the treatment of the claims of creditors.

11 **B. Overview of the Proposed Plan**

12 The following is a brief overview of the material provisions of the Plan and is qualified in its  
13 entirety by reference to the full text of the Plan. For a more detailed description of the terms and  
14 provisions of the Plan, see Article VI below, entitled "Summary of the Plan of Liquidation."

15 The Plan's objective is to transfer all Assets of the Debtor, including, but not limited to, Cash  
16 and all Causes of Action, to the Liquidating Trust, which, through the Liquidating Trustee, will  
17 liquidate the remaining non-Cash Assets, including the prosecution of the Causes of Action that the  
18 Liquidating Trustee chooses to pursue, and distribute the proceeds thereof to Holders of Allowed  
19 Claims in satisfaction of the Allowed Claims subject to the satisfaction of the Liquidating Trust  
20 Expenses. The Plan designates the types of Unclassified Claims against the Debtor and four Classes  
21 of Claims, which include all unpaid Claims against the Debtor. These designations and Classes take  
22 into account the differing nature and priority under the Bankruptcy Code of the various Claims and  
23 the agreements of the parties.

24 The following table (the "Plan Summary Table") summarizes the treatment of Claims under  
25 the Plan with: (a) the Proponents' estimates of the amount of Claims in each category or Class that  
26 will be finally determined to be Allowed Claims, and (b) a description of the treatment provided for  
27 in the Plan for each Class of Claims. The dollar amounts included in Plan Summary Table are based  
28 on the Proponents' good faith estimates of the aggregate amount of such Claims upon resolution of

1 all such Claims that are Disputed Claims and do not constitute an admission by either of the  
 2 Proponents as to the validity or amount of any particular Claim. The Debtor and the Committee  
 3 each reserves the right to dispute the validity or amount of any Claim that has not already been  
 4 Allowed by the Bankruptcy Court or by agreement of the parties.

5 The Plan Summary Table also contains a summary of estimated distributions under the Plan.  
 6 The amount of the Pro Rata Distributions of Cash that ultimately will be received by a particular  
 7 Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of  
 8 Administrative Claims, Priority Claims and Unsecured Claims ultimately Allowed. These estimates  
 9 also are based on good faith estimated amounts of available Cash for distribution to Holders of  
 10 Claims, based on all currently known information. These estimates may be adversely or favorably  
 11 affected by the amount of the recoveries from the Causes of Action.

12 For all of the reasons stated above, no representation can be, or is being, made with respect to  
 13 whether (a) the estimated amount of (i) certain Administrative Claims or (ii) the Allowed amount of  
 14 Claims in each Class is accurate, or (b) the estimated percentage recoveries shown on the table  
 15 below actually will be realized by the Holders of Allowed Claims in any particular Class.

#### SUMMARY OF CLAIMS UNDER THE PLAN

Class	Claim	Treatment	Estimated Aggregate Amount of ALLOWED Claims	Estimated Percentage Recovery of Allowed Claims
n/a	Administrative Claims	Except to the extent that any Holder of a 503(b)(9) Claim agrees to a less favorable treatment, each Holder of a 503(b)(9) Claim will receive in full satisfaction, discharge, exchange and release thereof, Cash in an amount equal to such Allowed amount of the 503(b)(9) Claim plus interest at the Judgment Rate from the Petition Date to the date of payment on the later of (i) the Effective Date, and (ii) the fifteenth (15 <sup>th</sup> ) Business Day after such 503(b)(9) Claim becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable.	Approximately \$45,000 in 503(b)(9) Claims	100%
		Professionals must File Final Fee Applications with the Court no later than 45 days after the Effective Date. The Final Fee Applications will	Approximately \$2,050,000 in Professional Fee	100%

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		<p>be scheduled for a hearing subject to the Local Bankruptcy Rules. Professional Fee Claims, to the extent approved by the Bankruptcy Court, are to be paid, in full satisfaction, discharge, exchange and release thereof, Cash in such amounts as are Allowed by the Bankruptcy Court on the date such Professional Fee Claim becomes an Allowed Claim, or as soon thereafter as is practicable.</p> <p>Except to the extent that any entity entitled to payment of a Non-Ordinary Course Allowed Administrative Claim agrees to a less favorable treatment, each Holder of a Non-Ordinary Course Allowed Administrative Claim will receive in full satisfaction, discharge, exchange and release thereof, Cash in an amount equal to such Allowed Non-Ordinary Course Administrative Claim on the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Non-Ordinary Course Administrative Claim becomes an Allowed Non-Ordinary Course Administrative Claim, or, in either case, as soon thereafter as is practicable. Any Non-Ordinary Course Administrative Claim Filed after the applicable Administrative Claims Bar Date will be disallowed and no payment will be made on account thereof, unless otherwise ordered by the Court.</p>	<p>Claims</p> <p>Approximately \$3.4 million to \$4 million in Non-Ordinary Course Administrative Claims. (This estimate excludes any possible recoveries under the WARN Act Complaint, which could be approximately \$4 million The Proponents dispute the WARN Act claims.) The \$3.4 million to \$4 million estimate of Non-Ordinary Course Administrative Claims includes only possible worker's compensation and health benefit claims. There are certain accounts maintained by third-parties allegedly securing, and/or providing a source of payment of a portion of these Claims. The Proponents are currently investigating whether or not these Claims are actually secured</p>	<p>100%</p> <p>100%</p> <p>100%</p>
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		<p>Each Ordinary Course Administrative Claim, unless disputed by Debtor or the Liquidating Trust, shall be satisfied by the Debtor or the Liquidating Trust, as the case may be, under the terms and conditions of the particular transaction giving rise to that Ordinary Course Administrative Claim without any further action by the Holder of such Ordinary Course Administrative Claim.</p> <p>On or before the Effective Date, all fees payable under 28 U.S.C. § 1930 as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash, in full. The Debtor will continue to File the Post-Confirmation Quarterly Reports as required until the Effective Date. After the Effective Date, the Liquidating Trust will File the Post-Confirmation Quarterly Reports as they become due until the Case is closed under section 350 of the Bankruptcy Code.</p>	<p>by the existing accounts, and whether they should be included as Non-Ordinary Course Administrative Claims, Priority Non-Tax Claims or General Unsecured Claims. To the extent it is determined that the Claims are secured by such accounts, after all the Claims are satisfied by payments out of the accounts, any monies remaining in the accounts will be paid to the Liquidating Trust for distribution to Creditors under the terms of the Plan.</p> <p>Approximately \$25,000 in Ordinary Course Administrative Claims</p> <p>Approximately \$9,750 in U.S. Trustee Fees</p>	
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1				
2	n/a	Priority Tax Claims	Each Holder of an Allowed Priority Tax Claim shall receive deferred Cash payments over a period not exceeding five (5) years from the Petition Date. Payments shall be made in equal, quarterly installments and each installment shall include simple interest accrued on the unpaid portion of such Claim at the Judgment Rate per annum from and after the Effective Date; provided, however, that the Liquidating Trust reserves the right to pay any Allowed Priority Tax Claim, or any remaining balance of such Allowed Claim, in full, at any time on or after the Effective Date without premium or penalty.	The Proponents are unaware of any Priority Tax Claims
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8	1	Miscellaneous Secured Claims	As soon as practicable after the Liquidating Trust makes its election as set forth below, each Holder of an Allowed Miscellaneous Secured Claim, except to the extent that the Holder of a particular Claim has agreed to a different treatment, shall receive, at the election of the Liquidating Trust, in its sole discretion, one of the following treatments in full satisfaction, discharge, exchange and release of its Allowed Miscellaneous Secured Claim: a. The Liquidating Trust shall transfer the collateral it owns that secures such Allowed Miscellaneous Secured Claim to the Holder of the Claim in full satisfaction and release of such Claim; b. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous Secured Claim cash equal to the amount of its Allowed Miscellaneous Secured Claim, or such lesser amount to which the Holder of such Claim shall agree, in full satisfaction and release of such Claim; c. The Liquidating Trust shall reinstate the Allowed Miscellaneous Secured Claim in compliance with section 1124(2) of the Bankruptcy Code and shall not otherwise alter the legal, equitable, or contractual rights to which such claim entitles the Holder; d. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous Secured Claim, on account of such Claim, deferred Cash payments, pursuant to section 1129(b)(2)(A)(i)(II) of the Bankruptcy Code, totaling at least the Allowed amount of such Claim, of a present value, as of the Effective Date, of at least the value of such Holder's interest in the Debtor's interest in property that serves as collateral for such Claim; or e. The Liquidating Trust shall deliver to the Holder of the Allowed Miscellaneous Secured Claim the indubitable equivalent of	The Proponents are aware that the United States Filed a Claim for \$112,839,934 and alleges that it is partially secured by rights of setoff. The Proponents do not know the amount of the security alleged. This Claim is subject to dispute.  The \$3.4 million to \$4 million estimate of Non-Ordinary Course Administrative Claims may be secured by certain accounts maintained by third-parties. The Proponents are currently investigating, among other things, whether these Claims are actually secured by the existing accounts To the extent it is determined that the Claims are secured by such accounts, there is sufficient cash in
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1		such Claim. The Liquidating Trust shall have ten (10) business days after the later of the Effective Date or the date upon which the Miscellaneous Secured Claim becomes and Allowed Miscellaneous Secured Claim to elect which treatment to provide to the Holders of such Allowed Miscellaneous Secured Claims but may make the election at any such earlier date as the Debtor deems appropriate.	the accounts to satisfy the Claims in full. The Proponents are not aware of any other Miscellaneous Secured Claims at this time.		
2	1A	Wells Fargo Secured Claim	Class 1A is Unimpaired under the Plan. The Liquidating Trust, on the later of (i) the Effective Date, and (ii) the fifteenth (15 <sup>th</sup> ) Business Day after such Wells Fargo Secured Claim becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable, shall transfer collateral it owns and holds that secures the Allowed Wells Fargo Secured Claim up to an amount sufficient in value to satisfy the Allowed Wells Fargo Secured Claim to the Holder of the Wells Fargo Secured Claim in full satisfaction and release of such Claim.	\$4,047,534.02 (disputed)	100%
3	2	Priority Non-Tax Claims	Class 2 is Unimpaired under the Plan and consists mainly of Priority wage and PTO claims. Each Holder of an Allowed Class 2 Claim will be paid in Cash, in full, with interest at the Judgment Rate from the Petition Date to the date of Payment on the later of (i) the Effective Date, and (ii) the fifteenth (15 <sup>th</sup> ) Business Day after such Priority Non-Tax Claim becomes an Allowed Priority Claim, or, in either case, as soon thereafter as is practicable. Any Priority Claims held by former employees of the Debtor that become Allowed Claims will be in Class 2.	Approximately \$1.2 million in Priority Non-Tax Claims (This estimate excludes any possible recoveries under the WARN Act Complaint, which could be approximately \$1.3 million. The Proponents dispute the WARN Act claims.)	100%
4	3	Allowed General Unsecured Claims	Class 3 is Impaired under the Plan. The Allowed Class 3 Claims will be satisfied as follows: a. On the later of (i) the Effective Date, and (ii) the fifteenth (15 <sup>th</sup> ) Business Day after such General Unsecured Claim becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable, the Liquidating Trustee will distribute Available Cash to the Holders of Allowed Class 3 Claims on a <i>Pro Rata</i> basis; b. If at any time after the Effective Date the Liquidating Trust is holding more than \$1,000,000 in Available Cash or at such times as instructed by the SDH Trust Committee (unless such instruction is determined by the	Approximately \$12 million to \$16 million in General Unsecured Claims (not including any claims for damage resulting from the rejection of executory contracts and unexpired leases or any recoveries by employees on WARN Act	Approximately 0% to 43%  The percentage recovery for Holders of Allowed General Unsecured Claims will vary depending on the success of the Liquidating Trusts efforts in pursuing

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA

		<p>Court on motion by the Liquidating Trust to be unreasonable), the Liquidating Trustee will distribute the Available Cash to the Holders of Allowed Class 3 General Unsecured Claims on a Pro Rata basis, provided, however, the Liquidating Trustee will not pay the Holders of the Allowed General Unsecured Claims more than the full amount of the Allowed General Unsecured Claims plus interest calculated on the balance of the Allowed General Unsecured Claims at the Judgment Rate from the Effective Date through the date the Allowed General Unsecured Claims are paid in full; and</p> <p>c. Upon the resolution of all Claims and litigation, and the liquidation of all Liquidating Trust Assets, the Liquidating Trustee shall distribute all Cash remaining in the Liquidating Trust by making a final distribution to the Holders of Allowed Class 3 General Unsecured Claims, provided, however, the Liquidating Trustee will not pay the Holders of the Allowed General Unsecured Claims more than the full amount of the Allowed General Unsecured Claims plus interest calculated on the balance of the Allowed General Unsecured Claims at the Judgment Rate from the Effective Date through the date the Allowed General Unsecured Claims are paid in full.</p>	<p>Claims, if any)</p>	<p>certain Causes of Action and in objecting to certain Claims.</p>
<p>4</p>	<p>CMS Claim</p>	<p>Class 4 is Impaired under the Plan. CMS, the Holder of the Allowed Class 4 Claim, if CMS agrees to the terms of proposed settlement, will have a bifurcated Claim. (a) a General Unsecured Claim in an amount equal to the aggregate amount of Allowed Class 3 Claims (the "Tier One CMS Claim") and (b) a Subordinated Claim for the balance. The Tier One CMS Claim will be paid <i>Pro Rata</i> with Class 3 until all Class 3 Claims and the Tier One CMS Claim are paid in full with interest at the Judgment Rate. The CMS Subordinated Claim will be paid all Cash remaining after payment in full of all other Allowed Claims, the expenses of the Liquidating Trust, and the expenses of the SDH Trust Committee.<sup>2</sup> If CMS does not agree to the proposed treatment of its Claim as set forth above, the Debtor, the Committee or both will file a motion to estimate the CMS Claim for distribution purposes and the CMS Claim, once estimated,</p>	<p>Unknown</p>	<p>0% to 43% of the Tier One CMS Claim and 0% of the CMS Subordinated Claim</p>

<sup>2</sup> The Liquidating Trustee will not pay CMS on its Subordinated Claim more than the full amount of the Allowed CMS Subordinated Claim plus interest calculated on the balance of the Allowed CMS Subordinated Claim at the Judgment Rate from the Effective Date through the date the Allowed CMS Subordinated Claim is paid in full.



	<p>will be paid <i>Pro Rata</i> with Allowed Class 3 Claims. The Proponents have separately classified the CMS Claim because it is based upon the FCA Complaint, which contains allegations that have not yet been proved, is subject to substantial dispute and litigation and is unliquidated.</p>		
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The treatment and distributions provided to holders of allowed Claims pursuant to the Plan are in full and complete satisfaction of the allowed Claims on account of which such treatment is given and distributions are made.

**C. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure Statement. In other words, the terms of the Plan are not yet binding on anyone. However, if the Bankruptcy Court later confirms the Plan, then the Plan will be binding on the Debtor and on all Creditors in this case.

**1. Time and Place of the Confirmation Hearing**

The hearing where the Court will determine whether or not to confirm the Plan will take place on \_\_\_\_\_, 2013, at \_\_:\_\_ .m., in Department 1, Room 218, 325 West F Street, San Diego, CA 92101

**2. Deadline for Voting For or Against the Plan**

If you are entitled to vote, it is in your best interest to timely vote using the enclosed Ballot and return the Ballot in the enclosed envelope to counsel for the Debtor, Procopio, Cory, Hargreaves & Savitch LLP 525 B Street, Suite 2200, San Diego, California 92101, Attn: Jeffrey Isaacs. Your ballot must be received by 5:00 p.m. Pacific on \_\_\_\_\_, 2013 or it will not be counted.

**3. Deadline for Objecting to the Confirmation of the Plan**

Objections to the confirmation of the Plan must be in writing and Filed with the Court on or before \_\_\_\_\_, 2013, and served upon counsel to the Committee, Pachulski Stang Ziehl & Jones LLP, Attn: Samuel R. Maizel, 10100 Santa Monica Boulevard, 13<sup>th</sup> Floor, Los Angeles, California 90067 and counsel to the Debtor, Procopio, Cory, Hargreaves & Savitch LLP, Attn: Jeffrey Isaacs, 525 B Street, Suite 2200, San Diego, California 92101 so as to be received by that same date.



1 Date, the Debtor's patient population had dropped to approximately 450.

2 Service at the Inpatient Care Facility was suspended and prior to the Petition Date the Debtor  
3 stopped admitting Patients to the facility. As of the Petition Date and for several weeks after Petition  
4 Date, while the Debtor was winding down its business and transferring its remaining patients, the  
5 Debtor provided hospice services to a diminishing pool of patients only in their homes or in outside  
6 skilled nursing facilities. The Debtor transferred its last patient to another hospice provider on  
7 March 21, 2013.

8 **B. Debtor's Assets**

9 As of the Petition Date, the Debtor owned the Real Property free and clear of any known  
10 liens. The sale of the Real Property for \$16,550,000 to Scripps Health, a California non-profit  
11 corporation ("Scripps") was approved by the Court at a hearing held on April 30, 2013, however, the  
12 closing of the sale is contingent on action by the Attorney General of the State of California.

13 The Debtor also owns (i) laptop computers, computer servers and computer equipment  
14 formerly used by clinical staff to access and utilize electronic health records for patients  
15 (collectively, the "Computer Equipment"), (ii) certain intellectual property rights in the form of an  
16 executory electronic medical record application license called Allscripts and certain other licenses  
17 used in the operation of the Hospice (the "Licenses"), (iii) furniture, fixtures and equipment (the  
18 "FF&E") and (iv) a 1991 Toyota Minivan (collectively, the forgoing properties shall be referred to  
19 as the "Personal Property"). The Debtor also leased certain durable medical equipment necessary  
20 for the care and treatment of the patients (the "DME"). The Debtor does not believe that the  
21 Licenses have any value. The Debtor and the Committee are currently negotiating the sale of certain  
22 of the Personal Property to Scripps and certain of it to a liquidator. Any such sales are subject to the  
23 approval of the Bankruptcy Court.

24 The Debtor's other assets include, but are not necessarily limited to, accounts receivable,  
25 Avoiding Power Causes of Action, and certain other Causes of Action, including, but not limited to,  
26 possible Causes of Action against the Foundation, and the officers and directors of the Debtor. The  
27 Proponents estimate that the value of the accounts receivable is approximately \$350,000 and that the  
28 possible range of recovery from pursuit of Avoiding Power Causes of Action and other Causes of

1 Action is from \$0 to \$3,000,000.

2 **C. Events Precipitating the Bankruptcy Filing**

3 The Debtor faced several critical challenges prior to the bankruptcy. Medicare, which  
4 provided 85% of the Debtor's revenue, began conducting an audit of the Debtor's records in  
5 February 2011, and on or about October 19, 2012, unexpectedly placed the Debtor on "prepayment  
6 review." As a result of the prepayment review, the Debtor, rather than submitting claims  
7 electronically that were processed for payment within a short period of time, was required to submit  
8 complete medical charts supporting all claims to be reviewed by Medicare auditors before payment  
9 was allowed. All Medicare payments to the Debtor, therefore, stopped for two weeks while patient  
10 charts were copied, submitted and awaited Medicare review.

11 Although the prepayment review was subsequently changed back to a post-payment review,  
12 which allowed prompt payments to resume, due to the nature of the 2011 audit, the notoriety  
13 surrounding the prepayment review, and Medicare delaying payments, the Debtor's patient census  
14 dropped significantly and resulted in a severe diminution of the Debtor's cash flows in the fall of  
15 2012. Operating expenses for the month of October 2012 exceeded revenue by over \$7.0 million, in  
16 comparison to a shortfall of less than \$800 thousand in the previous month. In November 2012, the  
17 negative variance between actual and budgeted patient care days was 228, equivalent to a 33% drop.  
18 As the decline in the Debtor's patient census continued, this variance climbed to 523 in December  
19 2012, reflecting a decrease of 73% in anticipated patient care revenue alone. As a result of these and  
20 other factors, the Debtor was left facing a year to date operating loss of \$19.5 million and it was  
21 determined that the Debtor could not continue to operate without the protection of the bankruptcy  
22 court.

23 **D. False Claims Act Complaint**

24 The United States has filed a proof of Claim against the Debtor in the amount of  
25 \$112,839,934 (the "CMS Claim") for alleged damages and civil penalties arising from the Debtor's  
26 alleged false claims for payment and making, or causing to be made, alleged false statements in  
27 connection with the provision of hospice and palliative care to beneficiaries under federally funded  
28 government healthcare programs. The United States alleges that the CMS Claim, which the

1 Proponents dispute, arises under the False Claims Act, 31 U.S.C. §§ 3729-33 (the “FCA”), and  
2 common law theories for breach of contract, payment by mistake and unjust enrichment. The United  
3 States alleges that the conduct giving rise to the CMS Claim occurred in 2009 and 2010. The United  
4 States asserts that the basis for the CMS Claim is, in part, the allegations contained in the unsealed  
5 qui tam matter styled *United States of America and the State of California ex rel. Lori A. Rachac,*  
6 *R.N. v. San Diego Hospice & Palliative Care Corporation, a/k/a San Diego Hospice Corp. a/k/a*  
7 *Institute for Palliative Medicine at San Diego Hospice*, Civil Action No. 12-CV-2866 (the “FCA  
8 Complaint”) filed in the United States District Court for the Southern District of California on  
9 December 5, 2012. The FCA Complaint has not been served on the Debtor based on FCA Statutory  
10 provisions, but the Proponents received a copy of the FCA Complaint in February 2013. In addition,  
11 the DOJ is conducting an investigation to determine whether any federal health care offenses,  
12 defined in 18 U.S.C. § 24(a), have been committed by the Debtor. The DOJ has issued a HIPAA  
13 subpoena for documents and information to the Debtor and the Debtor is responding to the  
14 subpoena. As stated, the Proponents dispute the CMS Claim and the Debtor or the Liquidating  
15 Trustee, as the case may be, will respond to the specific allegations in the FCA Complaint at the  
16 appropriate time. The Debtor denies that the allegations in the FCA Complaint support the CMS  
17 Claim in the amount alleged.

18 **E. Management of the Debtor Before and After the Bankruptcy**

19 Prior to the Petition Date, the Debtor’s officers consisted of Kathleen Pacurar as President  
20 and CEO, William Parker, as Chief Operating Officer, Ben Marcantonio as Chief Administrative  
21 Officer, Sharon O’Mary as Chief Clinical Officer, Jolyn Parker as Chief Marketing Officer, Cynthia  
22 Williams as Chief Medical Officer, and Erin Graham as interim Chief Financial Officer. The  
23 officers served under the direction of the Debtor’s Board of Directors consisting of Howard J.  
24 Barnhorst, the Honorable David M. Gill, Marilyn Boesky, Gil Gordon M.D., Mika Buffington, Dan  
25 Hom, Berit Durler, Doris A. Howell, Ames S. Early, Arthur C. Johnson, John M. Gilchrist, Jr.,  
26 Emanuel Kauder, M.D., Paul Kurtin, M.D., Joseph Martinez, Marty Pendarvis, Ann Navarra,  
27 William Stanton, M.D., Andrew E. Nelson, Ruth Westreich, George E. Olmstead, and Richard  
28 Woltman. Mr. Gilchrist was Chairman of the Board, Mr. Early was Treasurer of the Board, and Mr.

1 Olmstead was Secretary of the Board. The Debtor's Board had regular board meetings, not less  
2 often than monthly and emergency meetings when necessary.

3 After the Petition Date, a number of the Debtor's officers resigned or were terminated and a  
4 number of the members of the board resigned so that at present the remaining officers are Ms.  
5 Pacurar as President and CEO, and Ms. O'Mary as Chief Clinical Officer. The remaining officers  
6 serve under the direction of the Debtor's Board of Directors presently consisting of Mr. Barnhorst,  
7 Judge Gill, Ms. Durler, Ms. Early, Mr. Gilchrist, Dr. Kauder, Dr. Kurtin, Ms. Navarra, Dr. Stanton,  
8 Mr. Nelson, and Mr. Woltman.

9 The Board has continued to meet regularly and on an emergency basis as necessary to make  
10 decisions relevant to the operation of the Debtor. The Debtor has also received direction from a  
11 board executive committee consisting of Mr. Barnhorst, Mr. Early, Mr. Olmstead and Mr. Nelson.

12 **F. D&O Insurance**

13 The Debtor currently holds a policy of Directors & Officers/Employment Practices Liability  
14 ("D&O/EPL") insurance through RSUI Indemnity Company ("RSUI"), Policy No. HP 646953 (the  
15 "D&O Policy"). The D&O Policy period is July 1, 2012 through July 1, 2013. Like most  
16 D&O/EPL policies, the D&O Policy is a claims made and reported policy, meaning that in order to  
17 trigger coverage a claim must be first "made" (i.e., asserted to the insurance company under the  
18 D&O Policy) and reported during the policy period.

19 Because any claims made against the Debtor after the current expiration of the D&O Policy  
20 period on July 1, 2013 would not be within the scope of coverage of the current D&O Policy, the  
21 Debtor is investigating a "tail policy" through RSUI that would extend the coverage available under  
22 the D&O Policy through either July 1, 2015 or July 1, 2016. The aggregate limit of liability for the  
23 D&O Policy is \$3 million. This limit is reduced by any defense expenses or settlements paid on  
24 claims. The only claim made on the D&O Policy of which the Proponents are currently aware is the  
25 WARN Complaint. The Committee intends to make and report a claim against the D&O Policy  
26 based upon certain Causes of Action against certain officers and directors of the Debtor.

27 **G. Significant Events During the Bankruptcy**

28 The following is a list of significant events which have occurred during this Case.

1           **1. First Day Motions**

2           On February 6, 2013, the Debtor Filed its First Day Motion for an Order Pursuant to 11  
3 U.S.C. § 102 and 105(a) and Bankruptcy Rules 2002(m) and 9007 Limiting Notice [Dkt. No. 14]  
4 (the “Limited Notice Motion”). The Court granted the Limited Notice Motion by its order entered  
5 February 12, 2013 [Dkt. No. 28].

6           On February 6, 2013, the Debtor also Filed its *Motion for Order Pursuant to 11 U.S.C.*  
7 *§ 366(I) Prohibiting Utility Service Providers from Altering, Refusing or Discontinuing Services to*  
8 *or Discriminating Against The Debtor; (II) providing that a Single Deposit for all the Debtor’s*  
9 *Utilities Shall Constitute “Adequate Assurance of Future Payment;” (III) Establishing Procedures*  
10 *for Determining Requests for Additional Assurance* (the “Utilities Motion”). On February 21, 2013,  
11 the Court entered its order granting the Utilities Motion [Dkt. No. 72].

12           **2. The Winding Down and Closure of the Debtor’s Health Care Business, Transfer**  
13 **of Patients, and Termination of Employees**

14           Shortly after the bankruptcy filing, the Debtor determined that its financial condition and  
15 inability to make payroll to employees directly responsible for patient care made it impossible to  
16 continue providing hospice services. The Debtor further determined that as a “health care business  
17 that is in the process of being closed,” it was required to immediately proceeded to “use all  
18 reasonable and best efforts to transfer patients” to other health care providers as expressly mandated  
19 under 11 U.S.C. § 704(a)(12).

20           On February 13, 2013, letters were distributed to all patients and their families -- generally  
21 by their caregivers or other hospice staff – expressly confirming that the Debtor was ceasing  
22 operations and assuring patients that they were free to choose a new hospice care provider to whom  
23 they would be transferred. Although it was up to the patient or authorized representative to  
24 ultimately decide where to be transferred, the Debtor was required to continue providing quality  
25 health care pending the transfer and during the closure of its hospice business.

26           On February 14, 2013, WARN Act and Cal-WARN Act notices were provided to all of the  
27 Debtor’s remaining clinical staff and employees (the “2/14/13 WARN Notice”). The 2/14/13  
28 WARN Notice confirmed that the Debtor intended to permanently shut down all operations and lay

1 off all employees “due to unforeseeable business circumstances, including a significant and  
2 unanticipated decrease in funding,” caused by a rapid decline of the Debtor’s patient census. The  
3 2/14/13 WARN Notice further advised that the anticipated closure would take place between March  
4 31, 2013 and April 15, 2013, and that employees would be laid off at some point prior to the closure.

5 At the time the Debtor estimated that the expense of terminating approximately 240  
6 employees was \$1.5 million. The Debtor therefore filed an *ex parte* financing motion on February  
7 13, 2013 (the “Financing Motion”). By the Financing Motion, the Debtor sought to borrow  
8 sufficient funds to pay all post-petition wages and benefits to its employees and staff whom the  
9 Debtor began to lay off and terminate on February 26, 2013.

### 10 **3. Schedules and Statement of Financial Affairs**

11 On February 19, 2013, the Debtor timely Filed the balance of its Schedules and Statement of  
12 Financial Affairs [Dkt. No. 64] (collectively, the “Schedules”). The Debtor has Filed minor  
13 amendments to the Schedules and on May 14, 2013, Filed substantive amendments to the Schedules,  
14 including, among other things, adding over 200 creditors.

### 15 **4. Motion to Pay Pre-Petition Wages to Non-Insider Employees/CIGNA Payment**

16 On February 21, 2013, the Debtor Filed its *Emergency Motion for: (1) Payment of Pre-*  
17 *Petition Wages to Non-Insider Employees Remaining Post-Petition; (2) Continuation of Payment of*  
18 *Wages to Non-Insider Employees Post-Petition; and (3) Authorization for Ceridian Tax Service to*  
19 *Continue as Debtor’s Payroll Account Servicer* [Dkt. No. 75] (the “Non-Insider Wages Motion”).  
20 As part of the Non-Insider Wages Motion, the Debtor further sought approval to pay Connecticut  
21 General Life Insurance Company, CIGNA HealthCare of California, Inc., and related CIGNA Dental  
22 entities (collectively, “CIGNA”), all amounts currently then owed for premiums for medical and  
23 dental insurance and related services for the Debtor and its eligible employees. The Court approved  
24 the Non-Insider Wages Motion by order entered March 6, 2013 [Dkt. No. 157].

### 25 **5. The Proposed Sales, Patient Transition and DIP Loan as Part of the Related** 26 **Transactions With Scripps**

27 After months of discussions that started before the bankruptcy and continued following the  
28 Petition Date, the Debtor and Scripps agreed to a plan to transfer and transition to Scripps the care of  
an estimated 300 of the Debtor’s patients. Ultimately, the patients had a right to choose which



1 provider would continue their care, but most patients elected to be transferred and transitioned to  
2 Scripps.

3 Further, subject to Court approval, Scripps also agreed to purchase the Real Property subject  
4 to overbid and auction for a purchase price of \$10,700,000.00 (the “Real Property Sale”). The *Order*  
5 *Authorizing and Approving the Stalking Horse Bid, Sale Procedures and Break-Up Fee in*  
6 *Connection with the Sale of Real Property Pursuant to 11 U.S.C. § 363(b) and Granting Related*  
7 *Relief* (the “Sale Procedures Order”) was entered March 6, 2013 [Dkt. No. 155] and the hearing to  
8 approve the Real Property Sale and auction results was held on April 30, 2013. The Debtor and the  
9 Committee shared oversight of the Real Property Sale and the bid process in connection therewith.  
10 Scripps was the successful bidder at the auction at a purchase price of \$16,550,000 and on April 30,  
11 2013, the Court approved the sale of the Real Property to Scripps for that amount.

12 Scripps also agreed to extend post-petition financing to the Debtor of up to \$5,000,000, that  
13 was the subject of the Financing Motion, secured by a senior lien on the Real Property (the “DIP  
14 Loan”) and to purchase certain of the Debtor’s Personal Property for \$53,000 (the “Proposed  
15 Personal Property Purchase”) in an “integrated” transaction; *i.e.*, Scripps would not go forward with  
16 either the DIP Loan or the Proposed Personal Property Purchase unless both were approved.  
17 However, the Debtor did not require the DIP Loan and patients transitioned to Scripps without the  
18 need for the Proposed Personal Property Purchase. Accordingly, the motion seeking their approval  
19 was withdrawn at a hearing held on March 14, 2013.

## 20 **6. Claims Bar Dates**

21 The Debtor Filed an *Ex Parte Motion for an Order Fixing Deadline (Bar Date) for Filing*  
22 *Proofs of Claim Including Claims Under 11 U.S.C. § 503(b)(9)* (the “Claims Bar Date Motion”),  
23 along with a proposed *Notice of Bar Date* (the “Bar Date Notice”). As a result, the Court set April  
24 26, 2013 as the General Bar Date.

25 The attorneys for certain former employees of the Debtor Filed a motion requesting an  
26 extension of the General Bar Date pending a determination of whether a class will be formed to  
27 pursue Claims under the federal and California WARN Acts. The Debtor and the Committee agreed  
28 to such an extension under certain conditions. As a consequence, the Bankruptcy Court entered an

1 order on April 11, 2013 [Dkt. No. 265] extending the General Bar Date to June 27, 2013 for former  
2 employees of the Debtor.

3 The Governmental Unit Bar Date is August 5, 2013, which is 180 days after the Petition Date  
4 and the Rejection Damages Bar Date is 30 days after the entry of an order approving the rejection of  
5 the lease or contract in question.

6 Because most of the former patients of the Debtor or their survivors were not served with the  
7 Bar Date Notice, on May 15, 2013, the Debtor and the Committee jointly Filed an *ex parte* motion  
8 (the “Patient Bar Date Motion”) seeking an order setting a bar date of June 27, 2013 for the filing of  
9 claims by former patients or survivors of former patients who might assert claims (the “Patient Bar  
10 Date”). The Patient Bar Date Motion was granted on May 17, 2013 and the Debtor served a notice  
11 of the Patient Bar Date by mail on parties that were patients within the last two years and the notice  
12 was also published in *The San Diego Transcript*.

13 As stated above in Section IV.E.2, the Debtor Filed amendments to certain of its Schedules  
14 on May 14, 2013, including, among other things, adding more than 200 creditors to its list of  
15 creditors. As a result, on May 16, 2013, the Debtor and the Committee jointly Filed an *ex parte*  
16 motion (the “Added Creditor Bar Date Motion”) requesting an order setting a bar date of June 27,  
17 2013 for the filing of claims by the parties who are affected by the amendments to the Schedules  
18 who might assert claims (the “Added Creditor Bar Date”). The Added Creditor Bar Date Motion  
19 was granted on May 17, 2013, and the Debtor served a notice of the Added Creditor Bar Date by  
20 mail on all parties affected by the amendments to the Schedules.

#### 21 **7. The Patient Care Ombudsman Motion**

22 Pursuant to stipulation between the US Trustee and the Debtor, and this Court’s order  
23 approving same entered on February 13, 2013 [Dkt. No. 32], the Debtor Filed its *Motion for Order*  
24 *Pursuant to 11 U.S.C. § 333(a) and FRBP 2007.2 Determining that Appointment of Patient Care*  
25 *Ombudsman is Not Necessary* on February 25, 2013 [Dkt. No. 91] (the “Ombudsman Motion”). The  
26 Committee supported the Ombudsman Motion. At a hearing held, on March 6, 2013, the Court  
27 granted the Ombudsman Motion and no ombudsman was appointed.  
28

1           **8. The Debtor's Employment of Professionals**

2           The Debtor has employed: (1) Studley, Inc. as real estate brokers with respect to the  
3 marketing and sale of the Real Property to any overbidder (approved by order entered on February  
4 28, 2013); (2) Carl A. Votolato to value and appraise the Real Property (approved by order entered  
5 February 28, 2013); (3) Procopio, Cory, Hargreaves & Savitch as general bankruptcy counsel  
6 (approved by order entered on March 29, 2013); (4) Squar, Milner, Peterson, Miranda &  
7 Williamson, LLP as accountants and financial consultants (approved by order entered on March 29,  
8 2013); (5) Foley & Lardner as special healthcare regulatory counsel (approved by order entered  
9 April 9, 2013), and (6) Medical Development Specialist as healthcare management consultants to  
10 value the Debtor's going concern value in response to a motion to appoint a chapter 11 trustee  
11 brought by the Committee (approved by order entered on April 9, 2013).

12           **9. Application for Compensation of Insiders**

13           On March 7, 2013 the Debtor Filed its application for approval of insider compensation  
14 pursuant to Local Bankruptcy Rules 2016-2 and 4002-2 [Dkt. No. 159]. *Nunc pro tunc* approval  
15 was sought and granted by order entered March 14, 2013 [Dkt. No. 188].

16           **10. Appointment of Committee of Unsecured Creditors**

17           On February 14, 2013, the US Trustee Filed its *Appointment of the Official Committee of*  
18 *Unsecured Creditors* [Dkt. No. 42] (the "OCC Appointment"). The US Trustee Filed its *Amended*  
19 *Appointment Official Committee of Unsecured Creditors* on February 19, 2013 [Dkt. No. 57].

20           The Committee employed PSZJ as its general bankruptcy counsel (approved *nunc pro tunc* to  
21 February 15, 2013 by order entered March 11, 2013), and may seek to employ other professionals if  
22 and as the need arises.

23           **11. The Committee's Motion for Appointment of a Chapter 11 Trustee**

24           On March 19, 2013, the Committee Filed its *Notice of Motion and Motion for Order*  
25 *Directing the Appointment of a Chapter 11 Trustee* [Docket No. 203] (the "Trustee Motion"),  
26 seeking the appointment of a chapter 11 trustee to complete the wind-down of the Debtor's  
27 operations, oversee the sale of the Real Property and pursue Causes of Action for the benefit of  
28 unsecured creditors. The Debtor opposed the Trustee Motion. At a hearing with respect to the

1 Trustee Motion on March 27, 2013, the Debtor and the Committee reached agreement for (1) the  
2 Committee's withdrawal of the Trustee Motion, (2) joint oversight by the Debtor and the Committee  
3 of the sale of the Real Property and (3) the Committee to propose a plan of liquidation on or after  
4 May 1, 2013 if the Debtor and the Committee are not able to reach agreement on the terms of a  
5 cooperative, jointly Filed, plan of liquidation.

6 **12. Operating Reports**

7 Pursuant to 11 U.S.C. § 1106(a)(7) and the US Trustee Operating and Reporting  
8 Requirements for Chapter 11 Cases, the first monthly operating report for the period from and after  
9 the Petition Date until the end of February 2013 was Filed on March 21, 2013 [Dkt. No. 213] and the  
10 amended schedules attached thereto were filed on March 25, 2013 [Dkt. No. 223]. The Debtor  
11 thereafter Filed monthly operating reports for the periods of March 1, 2013 through March 31, 2013  
12 [Dkt. No. 282], April 1, 2013 through April 30, 2013 [Dkt. No. 324], and May 1, 2013 through May  
13 31, 2013 [Dkt. No. 417].

14 **13. WARN Act Adversary Proceeding**

15 On March 27, 2013, three of the terminated employees Filed a class action complaint with  
16 the Bankruptcy Court on behalf of themselves and 60 employees terminated before the Petition Date  
17 and 300 employees terminated after the Petition Date alleging, among other things, that the Debtor  
18 failed to provide adequate advance notification of their terminations in violation of the so-called  
19 WARN Act, along with claims based on alleged breaches of "Separation Agreements" executed  
20 between the Debtor and a portion of the terminated employees (the "WARN Act Complaint"). See  
21 Adversary Proceeding Case No. 90082-MM. A hearing with respect to the certification of the class  
22 and the Debtor's motion to dismiss the WARN Act Complaint is now set for hearing on June 27,  
23 2013.

24 On April 3, 2013, the three terminated employees who Filed the WARN Act Complaint also  
25 Filed a proof of claim purportedly on behalf of the not yet certified class. The proof of claim was  
26 Filed in an unknown amount.  
27  
28

## V.

**LITIGATION AND CAUSES OF ACTION**

1  
2  
3 Except as otherwise provided in the Plan, the Liquidating Trust shall retain all rights  
4 of the Debtor to commence and pursue, as appropriate, in any court or other tribunal including,  
5 without limitation, in an adversary proceeding Filed in the Case, any and all Causes of Action,  
6 whether such Causes of Action accrued before or after the Petition Date, including, but not limited  
7 to, the actions specified in section VII.B of the Plan as well as those Causes of Action listed on  
8 Exhibit A to the Plan.

9 Except as otherwise provided in the Plan, in accordance with section 1123(b)(3) of  
10 the Bankruptcy Code, any Claims, rights, and Causes of Action that the Debtor may hold against any  
11 Person shall, on the Effective Date, vest in the Liquidating Trust. The Liquidating Trust shall retain  
12 and may exclusively enforce any and all such Claims, rights or Causes of Action, and commence,  
13 pursue and settle the Causes of Action in accordance with the Plan and the Liquidating Trust  
14 Agreement. The Liquidating Trust shall have the exclusive right, authority, and discretion to  
15 institute, prosecute, abandon, settle, or compromise any and all such claims, rights, and Causes of  
16 Action without the consent or approval of any third party and without any further order of court.

17 The Proponents are currently investigating whether to pursue potential Causes of  
18 Action against any Creditors or other Persons. The investigation has not been completed to date, and  
19 under the Plan, the Liquidating Trust retains the right on behalf of the Debtor to commence and  
20 pursue any and all Causes of Action. Potential Causes of Action currently being investigated, which  
21 may, but need not, be pursued by the Debtor or the Committee before the Effective Date or by the  
22 Liquidating Trust after the Effective Date include, without limitation, the following Causes of  
23 Action:

- 24 • All actual or potential avoidance actions pursuant to any applicable section of the  
25 Bankruptcy Code including, without limitation, sections 544, 545, 547, 548, 549, 550,  
26 551, 553(b) and/or 724(a) of the Bankruptcy Code, arising from any transaction involving  
27 or concerning the Debtor, and among others, without limitation, those entities listed on  
28 Exhibit A-1 to the Plan, including, but not limited to, unauthorized postpetition transfers  
to the Foundation or Scripps Health and prepetition transfers to the Foundation or Scripps  
Health for less than adequate consideration;

- 1 • All actual or potential actions, whether legal, equitable or statutory in nature, for, or in  
2 any way involving, the collection of accounts receivable or general ledger items that are  
3 due and owing to the Debtor by any Person (collectively, the “Accounts Receivable”),  
4 including, but not limited to, the Accounts Receivable owed by the Persons listed on  
5 Exhibit A-2 to the Plan;
- 6 • All actual actions or potential actions, whether legal, equitable or statutory in nature,  
7 against vendors, including, but not limited to, those vendors listed on Exhibit A-3 to the  
8 Plan, for overpayment, improper setoff, warranty, indemnity, retention of double  
9 payments, retention of mis-directed wires, deductions owing or improper deductions  
10 taken, claims for damages arising out of goods sold to the Debtor, or any other claim  
11 arising out of the vendor relationship;
- 12 • All actual or potential breach of contract actions against any counterparties to contracts or  
13 leases, including, but not limited to, those listed on Exhibit A-4 to the Plan;
- 14 • All actual or potential actions, whether legal, equitable or statutory in nature, against the  
15 Debtor’s current or former insurance carriers to recover unpaid reimbursements and  
16 claims, overpayment of premiums and fees, claims for breach of contract, indemnity  
17 obligations or coverage or similar Causes of Action, including, but not limited to, those  
18 insurers listed on Exhibit A-5 to the Plan;
- 19 • All actual or potential Causes of Actions, whether legal, equitable or statutory in nature,  
20 against purchasers of assets from the Debtor relating to breach of the purchase agreement  
21 or unpaid compensation thereunder, including, but not limited to, those purchasers listed  
22 on Exhibit A-6 to the Plan;
- 23 • All actions or potential actions, whether legal, equitable or statutory in nature, relating to  
24 deposits or other amounts owed by any creditor, lessor, utility, supplier, vendor, or other  
25 Person, including, but not limited to, those Persons listed on Exhibit A-7 to the Plan.;
- 26 • All actions or potential actions, whether legal, equitable or statutory in nature, relating to  
27 environmental matters;
- 28 • Any litigation or lawsuit initiated by the Debtor that is currently pending, whether in the  
Bankruptcy Court, or any other court or tribunal or initiated against the Debtor after the  
Petition Date for which the Debtor may have counterclaims or other rights, including,  
but, not limited to, those actions listed on Exhibit A-8 to the Plan;
- Potential actions against any of the prepetition directors, officers, employees, attorneys,  
financial advisors, accountants, investment bankers, agents and representatives of the  
Debtor including, but not limited to, those Persons on Exhibit A-9 to the Plan for  
breaches of fiduciary duty, negligent mismanagement, wasting of corporate assets, and  
diversion of corporate opportunity;
- All actual or potential actions, whether legal, equitable or statutory in nature, against all  
Persons arising out of, or in connection with, any of the Debtor’s prepetition  
management, operation and/or reporting of financial or other information, including, but  
not limited to, those Persons listed on Exhibit A-10 to the Plan;

- 1 • All actions or potential actions, whether legal, equitable or statutory in nature, against any  
2 of the Debtor's current or former professionals for breach of fiduciary duty, breach of  
3 contract, negligence or professional misconduct or malpractice, or other tortuous conduct,  
4 including, but not limited to, those former professionals listed on Exhibit A-11 to the  
5 Plan;
- 6 • All rights against any Person for subordination of its Claims pursuant to section 510(b) of  
7 the Bankruptcy Code;
- 8 • All actions or potential actions against the prepetition members of the Debtor's board of  
9 directors and/or officers including, without limitation, the right to equitably subordinate  
10 claims held by such directors and officers pursuant to section 510(c) of the Bankruptcy  
11 Code;
- 12 • All actual or potential actions, whether legal, equitable or statutory in nature, to recover  
13 amounts improperly awarded to employees under the terms of any prepetition  
14 employment arrangement or separation agreement;
- 15 • All actual or potential contract and tort actions that may exist or may subsequently arise;
- 16 • All actual or potential actions whether legal, equitable or statutory in nature, arising out  
17 of, or in connection with the Debtor's business or operations; and
- 18 • The action to substantively consolidate the Foundation with the Debtor.

19 The above categories of preserved of causes of action shall not be limited in any way  
20 by reference to Exhibit A to the Plan nor are the categories intended to be mutually exclusive.

21 The Committee with the cooperation of the Debtor is currently investigating various  
22 potential Causes of Action against the Foundation, including, but not limited to, possible substantive  
23 consolidation, fraudulent conveyances, and the right to funds claimed by the Foundation and hereby  
24 preserve all such possible Causes of Action. This statement is not intended to and in no way limits  
25 the preservation of any Causes of Actions against the Foundation or any other parties as set forth in  
26 this section.

27 In addition, there may be numerous other Causes of Action which currently exist or  
28 may subsequently arise that are not set forth herein, because the facts upon which such Causes of  
Action are based are not fully or currently known by the Proponents and, as a result, cannot be  
specifically referred to herein (collectively, the "Unknown Causes of Action"). The failure to list  
any such Unknown Causes of Action herein, in the Plan, or on **Exhibit A** to the Plan is not intended  
to limit the rights of the Liquidating Trust to pursue any Unknown Cause of Action to the extent the

1 facts underlying such Unknown Cause of Action become fully known to the Debtor, the Committee  
2 or the Liquidating Trust.

3 Unless a Claim or Cause of Action against a Creditor or other Person is expressly  
4 waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor  
5 expressly reserves such Claim or Cause of Action for later adjudication by the Liquidating Trust  
6 (including, without limitation, Unknown Causes of Action), and, therefore, no preclusion doctrine,  
7 including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim  
8 preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or  
9 Causes of Action upon or after the Confirmation or Effective Date of the Plan based on the  
10 Disclosure Statement, the Plan or the Confirmation Order, except where such Claims or Causes of  
11 Action have been expressly released in the Plan or other Final Order.

12 Any Person to whom the Debtor has incurred an obligation (whether on account of  
13 services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a  
14 transfer of money or property of the Debtor, or who has transacted business with the Debtor should  
15 assume that such obligation, transfer, or transaction may be reviewed by the Liquidating Trust  
16 subsequent to the Effective Date and may, if appropriate, be the subject of an action after the  
17 Effective Date, whether or not (i) such Person has Filed a proof of Claim against the Debtor in this  
18 Case; (ii) such Creditor's proof of Claim has been objected to; (iii) such Creditor's Claim was  
19 included in the Debtor's Schedules; or (iv) such Creditor's scheduled Claim has been objected to by  
20 the Debtor or has been identified by the Debtor as disputed, contingent, or unliquidated.

21 As of the Effective Date, subject to the Liquidating Trust Agreement, the Liquidating  
22 Trustee, on behalf of the Liquidating Trust, will be authorized to exercise and perform the rights,  
23 powers and duties held by the Debtor's Estate with respect to the rights, claims, Causes of Action,  
24 defenses, and counterclaims, including, without limitation, the authority under section 1123(b)(3) of  
25 the Bankruptcy Code to provide for the settlement, adjustment, retention and enforcement of claims  
26 and interests of the Estate, without the consent or approval of any third party, and without any  
27 further order of the Bankruptcy Court.  
28





1 Record Date. Except as specifically set forth in the Plan, no distributions will be made and no  
2 rights will be retained on account of any Claim that is not an Allowed Claim.

3 **C. Allowance and Treatment of Unclassified Claims (Administrative Claims and Priority**  
4 **Tax Claims)**

5 Certain types of Claims are not placed into Classes and are therefore not entitled to vote to  
6 accept or reject the Plan. Such Claims are called Unclassified Claims. Such Claims are not  
7 considered Impaired and they do not vote on the Plan because they are automatically entitled to  
8 specific treatment provided for them in the Bankruptcy Code. As such, the Proponents have not  
9 placed the following Claims in a Class. The respective treatments for these Claims are provided  
10 below.

11 **D. Allowance and Treatment of Administrative Claims**

12 Administrative Claims are claims for administrative costs or expenses that are allowable  
13 under section 503(b) of the Bankruptcy Code or 28 U.S.C. § 1930, which costs or expenses are the  
14 actual, necessary costs and expenses of preserving the Debtor's Estate after the Petition Date and  
15 include the following: (a) Non-Ordinary Course Administrative Claims; (b) Ordinary Course  
16 Administrative Claims; (c) Professional Fee Claims; and (d) U.S. Trustee Fees. Claims that arise  
17 under section 503(b)(9) of the Bankruptcy Code and Cure Claims are also treated the same as  
18 Administrative Claims even though they do not fall within the general definition of Administrative  
19 Claims set forth above.

20 **1. Allowance of Administrative Claims**

21 **a. Allowance of Non-Ordinary Course Administrative Claims**

22 Unless otherwise expressly provided in the Plan,<sup>3</sup> Non-Ordinary Course Administrative  
23 Claims will be Allowed Claims only if:

24 (i) On or before the **Non-Ordinary Course Administrative Claim Bar Date, which is**  
25 **45 days after the Effective Date**, the entity holding such Non-Ordinary Course Administrative  
26 Claim both Files with the Court the Non-Ordinary Course Administrative Claim and serves it on the  
27 Liquidating Trust, and

28 <sup>3</sup> This section VI.D.1.a does not apply to the Non-Ordinary Course Administrative Claims held by patients or their  
survivors, which are subject to the Patient Bar Date.

1 (ii) an order is entered by the Bankruptcy Court allowing the Non-Ordinary Course  
2 Administrative Claim.

3 **Entities holding Non-Ordinary Course Administrative Claims, including, but not**  
4 **limited to, any Claims held by former employees of the Debtor that arose after the Petition**  
5 **Date, that do not File and serve a request for payment by the Non-Ordinary Course**  
6 **Administrative Claim Bar Date will be forever barred from asserting those Claims against the**  
7 **Debtor, the Estate, the Liquidating Trust, or their respective property.**

8 The Debtor or the Liquidating Trust, as the case may be, must File any objection to a  
9 Non-Ordinary Course Administrative Claims at least fourteen days prior to the hearing date on such  
10 Claim and any reply to such objection must be Filed at least seven days prior to the hearing date  
11 pursuant to Local Bankruptcy Rule 9013-1(f) and (g). If the Person who Filed the Non-Ordinary  
12 Course Administrative Claim does not set the matter for a hearing, the Debtor or Liquidating Trust  
13 must File any objection to such Non-Ordinary Course Administrative Claim on or before 45 days  
14 after such Claim has been Filed and request a hearing date on such Non-Ordinary Course  
15 Administrative Claim.

16 Claims of Professionals brought under section 503(b)(3) of the Bankruptcy Code are  
17 subject to the Non-Ordinary Course Administrative Claims Bar Date.

18 **b. Allowance of Ordinary Course Administrative Claims**

19 Holders of Ordinary Course Administrative Claims (i.e., claims for administrative  
20 costs or expenses that are allowable under section 503(b) of the Bankruptcy Code that are incurred in  
21 the ordinary course of the Debtor's operations, including, but not limited, to PTO that accrued after  
22 the Petition Date but remains unused) shall not be required to File any request for payment of such  
23 Claims.

24 **c. Allowance of 503(b)(9) Claims**

25 Holders of 503(b)(9) Claims were required to File their Claims by the April 26, 2013,  
26 the General Bar Date. A 503(b)(9) Claim will be an Allowed 503(b)(9) Claim if (i) no objection or  
27 motion to estimate, equitably subordinate, reclassify, set off, or otherwise limit the recovery thereon  
28 has been asserted before the expiration of the Claims Objection Deadline or (ii) any objection or

1 motion to estimate, equitably subordinate, reclassify, or set off has been resolved by agreement  
2 between the Creditor and the Debtor or the Liquidating Trustee or by Final Order of the Bankruptcy  
3 Court.

4 **d. Allowance of Professional Fee Claims**

5 Each Holder of a Professional Fee Claim seeking an award by the Bankruptcy Court  
6 of compensation for services rendered or reimbursement of expenses incurred through and including  
7 the Effective Date must (i) File its final application for allowances of compensation for services  
8 rendered and reimbursement of expenses incurred through the Effective Date by no later than the  
9 forty-fifth (45th) day following the Effective Date. Any objection to such Professionals Fee Claims  
10 shall be Filed on or before the date specified in the application for final compensation. All such  
11 requests for payment of such Professional Fee Claims will be subject to the authorization and  
12 approval of the Bankruptcy Court. **Persons holding Professional Fee Claims who do not timely  
13 File and serve a final fee application will be forever barred from asserting those Claims against  
14 the Debtor, the Liquidating Trustee, or the property of the Liquidating Trust, unless otherwise  
15 ordered by the Bankruptcy Court.**

16 **2. Treatment of Administrative Claims**

17 **a. Payment of Allowed Non-Ordinary Course Administrative Claims**

18 Except to the extent that any entity entitled to payment of a Non-Ordinary Course  
19 Allowed Administrative Claim agrees to a less favorable treatment, each Holder of a Non-Ordinary  
20 Course Allowed Administrative Claim will receive in full satisfaction, discharge, exchange and  
21 release thereof, Cash in an amount equal to such Allowed Non-Ordinary Course Administrative  
22 Claim on the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Non-  
23 Ordinary Course Administrative Claim becomes an Allowed Non-Ordinary Course Administrative  
24 Claim, or, in either case, as soon thereafter as is practicable.

25 **b. Payment of Allowed Ordinary Course Administrative Claims**

26 Each Ordinary Course Administrative Claim, unless disputed by Debtor or the  
27 Liquidating Trustee, shall be satisfied by the Debtor or the Liquidating Trustee, as the case may be,  
28 under the terms and conditions of the particular transaction giving rise to that Ordinary Course

1 Administrative Claim, less any amount of such Claim covered by insurance, without any further  
2 action by the Holder of such Ordinary Course Administrative Claim.

3 **c. Payment of 503(b)(9) Claims**

4 Except to the extent that any Holder of a 503(b)(9) Claim agrees to a less favorable  
5 treatment, each Holder of a 503(b)(9) Claim will receive in full satisfaction, discharge and  
6 release thereof, Cash in an amount equal to such Allowed amount of the 503(b)(9) Claim plus  
7 interest at the Judgment Rate from the Petition Date to the date of payment on the later of (i) the  
8 Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such 503(b)(9) Claim becomes an  
9 Allowed Claim, or, in either case, as soon thereafter as is practicable.

10 **d. Payment of Professionals**

11 Holders of Professional Fee Claims, to the extent approved by the Bankruptcy Court,  
12 are to be paid, in full satisfaction, discharge, exchange and release thereof, Cash in such amounts as  
13 are Allowed by the Bankruptcy Court on the date such Professional Fee Claim becomes an Allowed  
14 Claim, or as soon thereafter as is practicable.

15 **e. Payment of U.S. Trustee Fees**

16 On or before the Effective Date, all fees payable under 28 U.S.C. § 1930, as  
17 determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash, in full. The  
18 Debtor will continue to File the Post-Confirmation Quarterly Reports as required until the Effective  
19 Date. After the Effective Date, the Liquidating Trust will File the Post-Confirmation Quarterly  
20 Reports as they become due until the Case is closed under section 350 of the Bankruptcy Code.

21 The following chart shows the estimated unpaid Administrative Claims of the Estate through  
22 the Effective Date:

Name	Amount Owed	Treatment
Procopio, Cory, Hargreaves & Savitch—General Bankruptcy Counsel for the Debtor	\$900,000 (estimated)	Paid in full after hearing and approval by the Bankruptcy Court
Studley, Inc.—Real Estate Broker for the Debtor	\$234,000	Paid in full after hearing and approval by the Bankruptcy Court
Carl A. Votolato—Appraiser for the Debtor	\$12,000	Paid in full after hearing and approval by the Bankruptcy Court
Squar, Milner, Peterson, Miranda & Williamson, LLP—Accounts for the Debtor	\$190,000 (estimated)	Paid in full after hearing and approval by the Bankruptcy Court

1	Foley & Lardner—Special Medicare Counsel for the Debtor	\$50,000 (estimated)	Paid in full after hearing and approval by the Bankruptcy Court
2	Medical Development Specialist—Medical Valuation Expert for the Debtor	\$10,000 (estimated)	Paid in full after hearing and approval by the Bankruptcy Court
3	Pachulski Stang Ziehl & Jones LLP	\$650,000 (estimated)	Paid in full after hearing and approval by the Bankruptcy Court
4	Clerk's Office Fees	None known	Paid in full on Effective Date
5	U.S. Trustee Fees	\$9,750 (estimated)	Paid in full on Effective Date
6	Non-Ordinary Course Administrative Claims	\$3,400,000 to \$4,000,000 (plus a possible \$4 million in WARN Act Claims that are disputed)	Paid in full on the Effective Date or when the Non-Ordinary Course Administrative Claim becomes an Allowed Claim
7	Ordinary Course Administrative Claims	\$25,000 (estimated)	Paid in full in the ordinary course of Business as they become due
8	503(b)(9) Claims	\$45,000 (estimated)	Paid in full on Effective Date
9	<b>Total</b>	<b>\$5,550,000 to \$6,150,000 (plus a possible \$4 million in WARN Act Claims that are disputed)</b>	
10			

11 The inclusion of any amounts in the above estimates does not mean that the Proponents  
12 agree with such estimated amounts. The Administrative Claims are all subject to objection by the  
13 Debtor or the Committee. The estimates of the Professional Fee Claims are based on the retention  
14 agreements with the Professionals, fees and expenses that have already been incurred and, in certain  
15 cases, estimates by the Professionals of fees and expenses they expect to incur between the current  
16 date and the Effective Date of the Plan. The U.S. Trustee fees are estimated based upon the  
17 expected disbursements in the month preceding the Effective Date.

18 The \$3.4 million to \$4 million estimate of Non-Ordinary Course Administrative Claims  
19 includes only possible worker's compensation and health benefit claims. There are certain accounts  
20 maintained by third-parties allegedly securing, and/or providing a source of payment of a portion of  
21 these Claims. The Proponents are currently investigating whether or not these Claims are actually  
22 secured by the existing accounts, and whether they should be included as Non-Ordinary Course  
23 Administrative Claims, Priority Non-Tax Claims or General Unsecured Claims. To the extent it is  
24 determined that the Claims are secured by such accounts, after all the Claims are satisfied by  
25 payments out of the accounts, any monies remaining in the accounts will be paid to the Liquidating  
26 Trust for distribution to Creditors under the terms of the Plan.

27 The Non-Ordinary Course Administrative Claims estimate excludes possible claims by  
28 former employees under the WARN Act asserted in the WARN Act Complaint and the CIGNA

1 Claim (defined below). The Proponents dispute these Claims. Connecticut General Life Insurance  
2 Company, Cigna Healthcare of California, Inc. and related Cigna Dental Entities (collectively,  
3 “CIGNA”) provided medical and dental insurance and related services to the Debtor and the  
4 Debtor’s eligible employees on and after the Petition Date. The Debtor cancelled its agreements  
5 with CIGNA effective April 30, 2013. CIGNA contends, and the Debtor denies, that the Debtor  
6 withheld funds from its employees’ wages to help pay for the services CIGNA rendered pursuant to  
7 its agreements with the Debtor. CIGNA further asserts that the Debtor has not paid for the post-  
8 Petition Date services rendered by CIGNA and, therefore, CIGNA holds an Administrative Claim  
9 in the amount of \$694,000 (the “CIGNA Claim”). CIGNA further asserts, in the alternative, that to  
10 the extent any portion of the CIGNA Claim is not entitled to be an Administrative Claim, the  
11 CIGNA Claim, to the extent of the limit on such Claims pursuant to section 507(a)(5) of the  
12 Bankruptcy Code, is a Priority Claim. The Proponents dispute the amount of the CIGNA Claim but  
13 have not yet concluded a detailed review of the alleged CIGNA Claim and reserve all rights to  
14 object to such Claim on any grounds. To the extent the parties are not able to resolve the dispute  
15 regarding the CIGNA Claim, the Debtor or the Liquidating Trustee, as the case may be, will file a  
16 motion with the Bankruptcy Court seeking its resolution. To the extent that all or a portion of the  
17 CIGNA Claim becomes an Allowed Claim, it will be paid according to its priority pursuant to the  
18 terms of the Plan.

19 The Ordinary Course Administrative Claims are estimated based upon the Debtor’s books  
20 and records and the expected ordinary course expenses of the Debtor that will remain unpaid as of  
21 the Effective Date. The estimate of the 503(b)(9) Claims is based on proofs of Claim that have  
22 been timely Filed, however, the Proponents have not conducted a review of those Claims and  
23 reserve the right to object to any such proof of Claim.

24 **E. Priority Tax Claims**

25 Priority Tax Claims are Claims entitled to priority against the Estate under section 507(a)(8)  
26 of the Bankruptcy Code. In accordance with section 1129(a)(9)(C) of the Bankruptcy Code, except  
27 as otherwise agreed to by the parties, each holder of an Allowed Priority Tax Claim shall receive  
28 deferred Cash payments over a period not exceeding five (5) years from the Petition Date.

1 Payments shall be made in equal, quarterly installments and each installment shall include simple  
2 interest accrued on the unpaid portion of such Claim at the Judgment Rate per annum from and after  
3 the Effective Date; provided, however, that the Liquidating Trustee reserves the right to pay any  
4 Allowed Priority Tax Claim, or any remaining balance of such Allowed Claim, in full, at any time  
5 on or after the Effective Date without premium or penalty. Notwithstanding the forgoing, any  
6 Allowed Priority Tax Claims that were secured by property of the Debtor, if not paid upon the  
7 closing of the sale of any property that secures such secured Priority Tax Claim, shall be paid in full  
8 on the Effective Date. The Proponents are not aware of any Priority Tax Claims.

9 **F. Classification and Treatment of Miscellaneous Secured Claims (Class 1)**

10 Class 1 consists of the Miscellaneous Secured. Each Claim that is a Miscellaneous  
11 Secured Claim shall be deemed to be classified in a separate sub-Class of Class 1. Each such sub-  
12 Class of Class 1 shall be deemed to be a separate Class under this Plan and, for purposes of voting  
13 on the Plan, each sub-Class shall be deemed to be Impaired and, therefore, each shall be entitled to  
14 vote on the Plan.

15 As soon as practicable after the Liquidating Trust makes its election as set forth  
16 below, each Holder of an Allowed Miscellaneous Secured Claim, except to the extent that the  
17 Holder of a particular Claim has agreed to a different treatment, shall receive, at the election of the  
18 Liquidating Trust, in its sole discretion, one of the following treatments in full satisfaction,  
19 discharge, exchange and release of its Allowed Miscellaneous Secured Claim:

20 a. The Liquidating Trust shall transfer the collateral it owns and holds that  
21 secures such Allowed Miscellaneous Secured Claim to the Holder of the Claim in full satisfaction  
22 and release of such Claim;

23 b. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous  
24 Secured Claim cash equal to the amount of its Allowed Miscellaneous Secured Claim, or such lesser  
25 amount to which the Holder of such Claim shall agree, in full satisfaction and release of such Claim;

26 c. The Liquidating Trust shall reinstate the Allowed Miscellaneous Secured  
27 Claim in compliance with section 1124(2) of the Bankruptcy Code and shall not otherwise alter the  
28 legal, equitable, or contractual rights to which such claim entitles the Holder;



1 d. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous  
2 Secured Claim, on account of such Claim, deferred Cash payments, pursuant to section  
3 1129(b)(2)(A)(i)(II) of the Bankruptcy Code, totaling at least the Allowed amount of such Claim, of  
4 a present value, as of the Effective Date, of at least the value of such Holder's interest in the Debtor's  
5 interest in property that serves as collateral for such Claim; or

6 e. The Liquidating Trust shall deliver to the Holder of the Allowed  
7 Miscellaneous Secured Claim the indubitable equivalent of such Claim.

8 The Liquidating Trust shall have ten (10) business days after the later of the Effective  
9 Date or the date upon which the Miscellaneous Secured Claim becomes and Allowed Miscellaneous  
10 Secured Claim to elect which treatment to provide to the Holders of such Allowed Miscellaneous  
11 Secured Claims but may make the election at any such earlier date as the Debtor deems appropriate.  
12 The Proponents are currently unaware of any Miscellaneous Secured Claims.

13 The Proponents are aware that the United States Filed a Claim for \$112,839,934 and  
14 alleges that it is partially secured by rights of setoff. The Proponents do not know the amount of the  
15 security alleged. This Claim is subject to dispute.

16 The \$3.4 million to \$4 million estimate of Non-Ordinary Course Administrative  
17 Claims may be secured by certain accounts maintained by third-parties. The Proponents are  
18 currently investigating, among other things, whether these Claims are actually secured by the  
19 existing accounts. To the extent it is determined that the Claims are secured by such accounts, there  
20 is sufficient cash in the accounts to satisfy the Claims in full.

21 **G. Classification and Treatment of Wells Fargo Secured Claim**

22 Wells Fargo Bank, N.A. ("Wells Fargo") alleges that the Debtor owes it approximately  
23 \$4,047,534.02 (the "Wells Fargo Claim"), which amount is allegedly secured by all of the Debtor's  
24 accounts, deposit accounts, chattel paper, instruments, promissory notes, documents, general  
25 intangibles, payment intangibles, software, letter of credit rights, health care insurance receivables  
26 and other rights to payment including certain specified accounts maintained with the Investment &  
27 Fiduciary Services Group of Wells Fargo. The Proponents are continuing their investigation of the  
28 Wells Fargo Claim and currently dispute its validity. Certain of the accounts against which Wells

1 Fargo asserts a lien heretofore have not been included in the assets available for distribution to  
2 Creditors because the Debtor has treated such accounts as being held by the Foundation. The  
3 Foundation asserts that the accounts largely contain funds that are restricted as endowment funds  
4 that are not available to satisfy the claims of the Debtor's creditors. The Proponents are  
5 investigating both the ownership of the accounts and the restricted nature of the accounts. If the  
6 security interest in the accounts is determined to be valid, the accounts contain sufficient funds to  
7 satisfy the Wells Fargo Claim to the extent it is determined to be a valid Claim.

8 Class 1A consists of the Wells Fargo Secured Claim. Class 1A is Unimpaired under the  
9 Plan. The Liquidating Trust, on the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>)  
10 Business Day after such Wells Fargo Secured Claim becomes an Allowed Claim, or, in either case,  
11 as soon thereafter as is practicable, shall transfer collateral it owns and holds that secures the  
12 Allowed Wells Fargo Secured Claim up to an amount sufficient in value to satisfy the Allowed  
13 Wells Fargo Secured Claim to the Holder of the Wells Fargo Secured Claim in full satisfaction and  
14 release of such Claim.

15 **H. Classification and Treatment of Priority Non-Tax Claims (Class 2)**

16 Class 2 consists of Priority Non-Tax Claims, including, but not limited to Priority Employee  
17 Claims. Class 2 is Unimpaired under the Plan. Each Holder of an Allowed Class 2 Claim will be  
18 paid in Cash, in full, with interest at the Judgment Rate from the Petition Date to the date of Payment  
19 on the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Priority  
20 Non-Tax Claim becomes an Allowed Priority Claim, or, in either case, as soon thereafter as is  
21 practicable.

22 **I. Classification and Treatment of General Unsecured Claims (Class 3)**

23 Class 3 consists of all Claims that are not Administrative Claims, Priority Tax Claims,  
24 Priority Non-Tax Claims, Secured Claims, or Subordinated Claims. The Proponents estimate that  
25 the Allowed Amount of the General Unsecured Claims will be approximately \$12,000,000 to  
26 \$16,000,000.

27 Class 3 is Impaired under the Plan. The Allowed Class 3 Claims will be satisfied as  
28 follows:

1 a. On the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day  
2 after such General Unsecured Claim becomes an Allowed Claim, or, in either case, as soon  
3 thereafter as is practicable, the Liquidating Trustee will distribute Available Cash to the Holders of  
4 Allowed Class 3 Claims on a *Pro Rata* basis;

5 b. If at any time after the Effective Date the Liquidating Trust is holding more  
6 than \$1,000,000 in Available Cash or at such times as instructed by the SDH Trust Committee  
7 (unless such instruction is determined by the Court on motion by the Liquidating Trust to be  
8 unreasonable), the Liquidating Trustee will distribute the Available Cash to the Holders of Allowed  
9 Class 3 General Unsecured Claims on a *Pro Rata* basis, provided, however, the Liquidating Trustee  
10 will not pay the Holders of the Allowed General Unsecured Claims more than the full amount of the  
11 Allowed General Unsecured Claims plus interest calculated on the balance of the Allowed General  
12 Unsecured Claims at the Judgment Rate from the Effective Date through the date the Allowed  
13 General Unsecured Claims are paid in full; and

14 c. Upon the resolution of all Claims and litigation, and the liquidation of all  
15 Liquidating Trust Assets, the Liquidating Trustee shall distribute all Cash remaining in the  
16 Liquidating Trust by making a final distribution to the Holders of Allowed Class 3 General  
17 Unsecured Claims, provided, however, the Liquidating Trustee will not pay the Holders of the  
18 Allowed General Unsecured Claims more than the full amount of the Allowed General Unsecured  
19 Claims plus interest calculated on the balance of the Allowed General Unsecured Claims at the  
20 Judgment Rate from the Effective Date through the date the Allowed General Unsecured Claims are  
21 paid in full.

22 **J. Classification and Treatment of Subordinated Allowed Claim (Class 4)**

23 Class 4 is Impaired under the Plan. CMS, the Holder of the Allowed Class 4 Claim, if CMS  
24 agrees to the terms of proposed settlement, will have a bifurcated Claim. (a) a General Unsecured  
25 Claim in an amount equal to the aggregate amount of Allowed Class 3 Claims (the “Tier One CMS  
26 Claim”) and (b) a Subordinated Claim for the balance. The Tier One CMS Claim will be paid *Pro*  
27 *Rata* with Class 3 until all Class 3 Claims and the Tier One CMS Claim are paid in full with interest  
28 at the Judgment Rate. The CMS Subordinated Claim will be paid all Cash remaining after payment

1 in full of all other Allowed Claims, the expenses of the Liquidating Trust, and the expenses of the  
2 SDH Trust Committee.<sup>4</sup>

3 If CMS does not agree to the proposed treatment of its Claim as set forth above, the Debtor,  
4 the Committee, or both will File a motion to estimate the CMS Claim for distribution purposes and  
5 the CMS Claim, once estimated, will be paid *Pro Rata* with Allowed Class 3 Claims.

6 The Proponents have separately classified the CMS Claim because it is based upon the FCA  
7 Complaint, which contains allegations that have not yet been proved, is subject to substantial  
8 dispute and litigation and is unliquidated.

9 **K. Executory Contracts and Unexpired Leases**

10 **1. Rejection of Executory Contracts and Unexpired Leases**

11 Each executory contract or unexpired lease of the Debtor that (i) has not expired by  
12 its own terms before the Effective Date, (ii) previously has not been assumed or rejected by the  
13 Debtor, (iii) is not the subject of a pending motion to assume or reject that has been Filed and served  
14 prior to the Confirmation Date, or (iv) does not constitute a contract of insurance in favor of, or that  
15 benefits, the Debtor or the Liquidating Trust is rejected as of the Effective Date pursuant to  
16 section 365 of the Bankruptcy Code. The Confirmation Order shall constitute an order of the  
17 Bankruptcy Court approving such rejection as of the Effective Date.

18 Nothing in the Plan, any Exhibit to the Plan, or any document executed or delivered  
19 in connection with the Plan or any such Exhibit creates any obligation or liability on the part of the  
20 Debtor, the Liquidating Trust, or any other Person that is not currently liable on such obligation,  
21 with respect to any executory contract or unexpired lease.

22 **2. Bar Date for Rejection Damages**

23 If the rejection of an executory contract or unexpired lease pursuant to the Plan and  
24 the Confirmation Order gives rise to a Claim by the other party or parties to such contract or lease,  
25 such Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, or the  
26 Liquidating Trust unless a proof of Claim is Filed and served on the Debtor or the Liquidating Trust,

27 \_\_\_\_\_  
28 <sup>4</sup> Liquidating Trustee will not pay CMS on its Subordinated Claim more than the full amount of the Allowed CMS  
Subordinated Claim plus interest calculated on the balance of the Allowed CMS Subordinated Claim at the Judgment  
Rate from the Effective Date through the date the Allowed CMS Subordinated Claim is paid in full.

1 as the case may be, and its counsel within **thirty (30) days after the Effective Date**. All such  
2 Claims for which proofs of Claim are required to be Filed, if Allowed, will be, and will be treated as,  
3 General Unsecured Claims, subject to the provisions of the Plan.

4 As soon as practicable after the Effective Date, but no later than ten (10) days  
5 thereafter, the Proponents shall File and serve on each non-Debtor counterparty to a contract or lease  
6 the rejection of which has been approved by the Confirmation Order written notice of the bar date  
7 for rejection Claims.

### 8 **3. Insurance Policies**

9 For the avoidance of doubt, the Debtor's rights with respect to all insurance policies under  
10 which the Debtor may be beneficiaries (including all insurance policies that may have expired prior  
11 to the Petition Date, all insurance policies in existence on the Petition Date, all insurance policies  
12 entered into by the Debtor after the Petition Date, and all insurance policies under which the Debtor  
13 holds rights to make, amend, prosecute and benefit from claims), are either retained by the  
14 Liquidating Trust or cancelled, in the Liquidating Trustee's discretion (with the advice of the SDH  
15 Trust Committee), after the Effective Date until its dissolution. Upon the Effective Date, any  
16 existing insurance policies that can be assigned and all proceeds of such policies will be transferred  
17 or assigned by the Debtor to the Liquidating Trust pursuant to this Plan. Notwithstanding any  
18 provision providing for the rejection of executory contracts, any insurance policy that is deemed to  
19 be an executory contract shall neither be rejected nor assumed by operation of this Plan and shall be  
20 the subject of a specific motion by the Liquidating Trust or the Liquidating Trustee, as the case may  
21 be, who shall retain the right to assume or reject any such executory contracts pursuant to and  
22 subject to the provisions of section 365 of the Bankruptcy Code following the Effective Date.

### 23 **L. Provisions Governing Plan Implementation**

24 As a condition to effectiveness of the Plan, the following must occur:

25 (i) the Confirmation Order shall have become a Final Order; provided, however,  
26 at the option of the Proponents, the Confirmation Order, if it is subject to a pending appeal  
27 or certiorari proceeding, may be considered a Final Order provided no court of competent  
28 jurisdiction has entered an order staying the effect of the Confirmation Order;

1 (ii) the Liquidating Trust Agreement is final and approved and the Liquidating  
2 Trustee has been selected;

3 (iii) all actions, documents and agreements necessary to implement the Plan will  
4 have been effected or executed;

5 (iv) the Debtor will have received all authorizations, consents, rulings, opinions  
6 or other documents that are determined by the Proponents to be necessary to implement the  
7 Plan; and

8 (v) the sale of the Real Property shall have closed.

9 The Plan will not be consummated or become binding unless and until the Effective Date  
10 occurs, which shall in all events occur prior to the date that is 90 days following entry of the  
11 Confirmation Order, unless the Confirmation Order is stayed or an order of the Court extending the  
12 Effective Date for good cause shown is entered pursuant to a motion seeking such extension that was  
13 Filed prior to the expiration of said 90 day period.

14 The Proponents may in their reasonable discretion waive any of the conditions to the  
15 Effective Date except condition (i) without notice and a hearing. Unless the condition is waived as  
16 set forth above, the failure to satisfy any condition may be asserted by either of the Proponents as a  
17 basis to allege that the Effective Date has not occurred regardless of the circumstances giving rise to  
18 the failure of such condition to be satisfied (including, without limitation, any act, action, failure to  
19 act, or inaction by the Debtor). If either of the Proponents fails to assert the non-satisfaction of any  
20 such conditions, such failure will not be deemed a waiver of any other rights hereunder.

21 As soon as practicable after the occurrence of the Effective Date, but no later than ten (10)  
22 days thereafter, the Liquidating Trust shall File and serve on each Holder of a Claim a written  
23 notice of occurrence of Effective Date.

24 **M. Corporate Action**

25 Upon the Effective Date, all transactions and applicable matters provided for under the Plan  
26 will be deemed to be authorized and approved by the Debtor without any requirement for further  
27 action by the Court, the Debtor or the Debtor's board of directors.  
28

1 **N. Dissolution of the Debtors and Termination of Current Officers, Directors, Employees**  
2 **and Counsel**

3 From and after the Effective Date, the Debtor shall be dissolved and the Liquidating Trustee  
4 shall be authorized to take all action necessary to dissolve the Debtor.

5 On the Effective Date, the employment, retention, appointment and authority of all officers,  
6 directors, employees and professionals of the Debtor shall be deemed to terminate. No  
7 compensation will be paid to insiders of the Debtor after the Effective Date unless, in the sole  
8 discretion of the Liquidating Trustee with the advice of the SDH Trust Committee, the Liquidating  
9 Trust retains an insider for assistance in the liquidation of the Liquidating Trust Assets or resolution  
10 of the claims filed against the Debtor.

11 **O. Liquidating Trust**

12 **1. Effectiveness of the Liquidating Trust**

13 On the Effective Date the Liquidating Trust Agreement, Exhibit B to the Plan, which will be  
14 Filed by the Exhibit Filing Date, will become effective. The Liquidating Trust is organized and  
15 established as a trust for the benefit of the Beneficiaries and is intended to qualify as a liquidating  
16 trust within the meaning of Treasury Regulation Section 301.7701-4(d). The Liquidating Trust shall  
17 not terminate until all Liquidating Trust Expenses of the Liquidating Trust and the SDH Trust  
18 Committee have been satisfied and all the remaining Liquidating Trust Assets have been disbursed  
19 to Beneficiaries. The Committee has selected Richard Kipperman as the initial Liquidating Trustee.  
20 A copy of his *curriculum vitae* is attached hereto as **Exhibit 2**.

21 **2. Beneficiaries**

22 In accordance with Treasury Regulation Section 301.7701-4(d), the Beneficiaries of the  
23 Liquidating Trust will be the Holders of all Allowed Claims against the Debtor whose Allowed  
24 Claims have not been previously satisfied in full. Each such Holder of an Allowed Claim will  
25 receive its share of the Liquidating Trust Assets as provided for in the Plan and the Liquidating Trust  
26 Agreement. The Beneficiaries of the Liquidating Trust shall be treated as the grantors and owners of  
27 such Beneficiaries' respective portions of the Liquidating Trust.  
28

1           **3. Implementation of the Liquidating Trust**

2           On the Effective Date, the Debtor shall take all such actions as are required to transfer from  
3 the Debtor all of the Debtor's Assets to the Liquidating Trust. From and after the Effective Date, the  
4 Liquidating Trustee will be authorized to, and will take all such actions as required to implement the  
5 Liquidating Trust Agreement and the provisions of the Plan as are contemplated to be implemented  
6 by the Liquidating Trustee, including, without limitation, directing and causing Distributions to be  
7 made to Holders of Allowed Claims pursuant to the terms of the Plan, objecting to Claims, and  
8 prosecuting, determining not to prosecute or otherwise resolving any Causes of Action, subject to the  
9 oversight, direction and approval of the SDH Trust Committee as set forth in the Liquidating Trust  
10 Agreement.

11           In the event that the Liquidating Trustee cannot take any action, including, without  
12 limitation, the prosecution of any Causes of Action or the objection to any Claim, by reason of an  
13 actual or potential conflict of interest or in the event the Liquidating Trustee disagrees with the  
14 directions of the SDH Trust Committee (discussed below), the SDH Trust Committee acting by a  
15 majority is authorized to take any such action(s) in his place and stead, including without limitation,  
16 the retention of professionals (which may include professionals retained by the Liquidating Trustee)  
17 for such purpose of taking such actions.

18           **4. Transfer of Debtor's Assets**

19           On the Effective Date, the Debtor is authorized and directed to transfer, grant, assign,  
20 convey, set over, and deliver to the Liquidating Trust all of the Debtor's right, title and interest in  
21 and to the remaining Debtor's Assets, including, without limitation, all Cash and Causes of Action,  
22 free and clear of all liens, claims, encumbrances or interests of any kind in such Debtor's Assets,  
23 except as otherwise expressly provided in the Plan. To the extent required to implement the transfer  
24 of the Debtor's Assets from the Debtor to the Liquidating Trust, all Persons will cooperate with the  
25 Debtor to assist the Debtor to implement said transfers.

26           **5. Vesting of Assets**

27           Unless otherwise expressly provided under this Plan, on the Effective Date, all of the  
28 Debtor's Assets will vest in the Liquidating Trust free and clear of all claims, liens, encumbrances,



1 charges and other interests, subject to the provisions of the Plan. On and after the Effective Date, the  
2 transfer of the Debtor's Assets to the Liquidating Trust will be deemed final and irrevocable and  
3 Distributions will be made from the Liquidating Trust.

4 In connection with the foregoing:

5 (a) On the Effective Date, the appointment of the Liquidating Trustee shall  
6 become effective and the Liquidating Trustee shall begin to administer the Liquidating Trust  
7 pursuant to the terms of the Liquidating Trust Agreement and the Plan and may use, acquire  
8 and dispose of the Liquidating Trust Assets free of any restrictions imposed under the  
9 Bankruptcy Code.

10 (b) The Confirmation Order will provide the Liquidating Trustee with express  
11 authority to convey, transfer and assign any and all of the Liquidating Trust Assets in  
12 accordance with the terms of this Plan and the Liquidating Trust Agreement and to take all  
13 actions necessary to effectuate same and to prosecute or not prosecute, as the Liquidating  
14 Trustee deems appropriate, any and all objections to Claims or Causes of Action.

15 (c) As of the Effective Date, the Liquidating Trust Assets will be free and clear  
16 of all liens, claims and interests of Holders of Claims, except as otherwise provided in the  
17 Plan.

18 **6. Funding of the Liquidating Trust**

19 The funding of the Liquidating Trust for the payments to be made to Holders of Allowed  
20 Claims under the Plan and the payment of Post-Effective Date Expenses will be from (a) the  
21 Debtor's Cash on hand as of the Effective Date and proceeds from the investment of such Cash, and  
22 (b) the proceeds of the liquidation by the Liquidating Trustee of any other Liquidating Trust Assets.

23 **7. No Liability of Liquidating Trustee**

24 **To the maximum extent permitted by law, the Liquidating Trustee and the Liquidating**  
25 **Trustee's Agents will not have or incur liability to any Person for an act taken or omission**  
26 **made in good faith in connection with or related to the administration of the Liquidating Trust**  
27 **Assets, the implementation of the Plan and the Distributions made thereunder. The**  
28 **Liquidating Trustee and the Liquidating Trustee's Agents will in all respects be entitled to**

1 reasonably rely on the advice of counsel with respect to their duties and responsibilities under  
2 the Plan and the Liquidating Trust Agreement. Entry of the Confirmation Order constitutes a  
3 judicial determination that the exculpation provision contained in Section VIII.A. of the Plan  
4 is necessary, *inter alia*, to facilitate Confirmation and feasibility of the Plan and to minimize  
5 potential claims arising after the Effective Date for indemnity, reimbursement or contribution  
6 from the Liquidating Trust or the Liquidating Trust Assets. The Confirmation Order's  
7 approval of the Plan also constitutes a *res judicata* determination of the matters included in the  
8 exculpation provisions of the Plan.

9 Notwithstanding the foregoing, nothing herein or in Section VIII.A. of the Plan will  
10 alter any provision in the Liquidating Trust Agreement that provides for the potential liability  
11 of the Liquidating Trustee to any Person.

12 **8. Funding of the Liquidating Trust's Liquidating Trust Expenses**

13 All expenses related to implementation of the Plan incurred from and after the Effective Date  
14 will be expenses of the Liquidating Trust, and the Liquidating Trustee will disburse funds from the  
15 Liquidating Trust Assets, as appropriate, for purposes of paying the Liquidating Trust Expenses  
16 without the need for any further Order of the Court. The Liquidating Trust Expenses shall include,  
17 but are not limited to (a) actual costs and expenses of the members of the SDH Trust Committee  
18 incurred in connection with their duties as members of the SDH Trust Committee, (b) the fees and  
19 expenses of (i) the Liquidating Trustee, (ii) the attorneys or any other professionals retained by the  
20 SDH Trust Committee, and (iii) the attorneys and other professionals retained by the Liquidating  
21 Trustee, and (c) other expenses of the Liquidating Trust, if any, until the Liquidating Trust is  
22 dissolved.

23 **9. Provisions Relating to Federal Income Tax Compliance**

24 A transfer to the Liquidating Trust shall be treated for all purposes of the Internal Revenue  
25 Code of 1986, as amended (the "Internal Revenue Code"), as a transfer to Creditors to the extent  
26 Creditors are beneficiaries of the Liquidating Trust. For example, such treatment shall apply for  
27 purposes of sections 61(a)(12), 483, 1001, 1012, and 1274 of the Internal Revenue Code. Any such  
28 transfers shall be treated for federal income tax purposes as a deemed transfers to the

1 Beneficiaries/Creditors followed by deemed transfers by the Beneficiaries/Creditors to the  
2 Liquidating Trust. The Beneficiaries shall be treated for federal income tax purposes as the  
3 grantors and deemed owners of the Liquidating Trust.

4 **P. The SDH Trust Committee**

5 As provided herein and in the Liquidating Trust Agreement, as of the Effective Date, there  
6 will be formed the SDH Trust Committee that will have consultation, approval and information  
7 rights with respect to the Liquidating Trust as set forth in the Liquidating Trust Agreement. The  
8 initial members of the SDH Trust Committee will be as follows: Brookwood Crossroads Investors,  
9 LLC, Inc., represented by Evelyn M. Murphy; Medline Industries, Inc., represented by Shane Reed;  
10 Outcome Resources LLC, represented by Martin McDonough; GlenBrook Skilled Nursing,  
11 represented by Darolyn Jorgensen-Kares; and Departure, represented by Emily Rex.

12 The SDH Trust Committee will prescribe its own rules of procedure and bylaws; provided,  
13 however, that such rules of procedure and bylaws will not be inconsistent with the terms of the Plan  
14 or the Liquidating Trust Agreement. If an SDH Trust Committee member assigns its Claim in full or  
15 releases the Debtor or Liquidating Trust from payment of the balance of its Claim, such act will  
16 constitute a resignation from the SDH Trust Committee. Until a vacancy on the SDH Trust  
17 Committee is filled, the SDH Trust Committee will function in its reduced number. The SDH Trust  
18 Committee's rules of procedure may provide that, in the event any member of the SDH Trust  
19 Committee resigns or otherwise is unable to serve subsequent to the Effective Date, the SDH Trust  
20 Committee may appoint a replacement that represents, to the greatest extent practicable, the same  
21 interests that were represented by the departing member and has the capacity and competency to  
22 serve in place of the resigned or deceased member without approval by the Bankruptcy Court.

23 Except for the reimbursement of reasonable actual costs and expenses incurred in connection  
24 with their duties as members of the SDH Trust Committee, the members of the SDH Trust  
25 Committee will serve without compensation. Reasonable expenses incurred by members of the SDH  
26 Trust Committee may be paid by the Liquidating Trust without need for Bankruptcy Court approval.

27 The SDH Trust Committee will have authority to employ, at the expense of the Liquidating  
28 Trust, counsel or any other professionals.

1           **The SDH Trust Committee and its members will not be liable for any act any member**  
2 **may do or fail to do as a member of the SDH Trust Committee while acting in good faith and**  
3 **in the exercise of the member's best judgment. No member of the SDH Trust Committee will**  
4 **be liable in any event for claims, liabilities or damages unless they arise from such member's**  
5 **personal gross negligence or willful misconduct.**

6           The SDH Trust Committee will dissolve upon the completion of all distributions to  
7 Beneficiaries of the Liquidating Trust and the termination of that Liquidating Trust in accordance  
8 with the terms of the Plan and the Liquidating Trust Agreement.

9 **Q.     Representative of the Estate**

10           The Liquidating Trustee from the Effective Date until the Liquidating Trust is terminated  
11 will be appointed as the representative the Estate pursuant to sections 1123(a)(5), (a)(7) and  
12 (b)(3)(B) of the Bankruptcy Code and as such will be vested with the authority and power to *inter*  
13 *alia*: (i) object to Claims against the Debtor; (ii) administer, investigate, prosecute, and settle or  
14 abandon all Causes of Action; (iii) make Distributions provided for in the Plan, including, but not  
15 limited to, on account of Allowed Claims; and (iv) take such action as required to administer, wind-  
16 down, and close the Case. As the representative of the Estate, the Liquidating Trustee will succeed  
17 to all of the rights and powers of the Debtor and the Estate with respect to all Assets transferred to  
18 the Liquidating Trust and then the Liquidating Trustee, as of the Effective Date, will be substituted  
19 and will replace the Debtor and the Estate, as the party in interest in any litigation pending as of the  
20 Effective Date.

21 **R.     Wind Down**

22           From and after the Effective Date, the Liquidating Trust shall hold all of the Debtor's Assets  
23 and property of the Estate for the benefit of Creditors, in accordance with the provisions of the Plan,  
24 the Liquidating Trust Agreement and the Confirmation Order. From and after the Effective Date,  
25 the Liquidating Trust, through the Liquidating Trustee, shall liquidate the Liquidating Trust's assets  
26 and make distributions to Creditors consistent with the Plan. The Liquidating Trust, the Liquidating  
27 Trustee, and the SDH Trust Committee shall not be required to post a bond in favor of the United  
28 States.

1 The Liquidating Trust, acting through the Liquidating Trustee, shall have the power and  
2 authority to perform the following acts (together, the “Wind-Down”), in addition to any powers  
3 granted by law or conferred by any other provision of the Plan and orders of the Bankruptcy Court;  
4 provided, however, that enumeration of the following powers shall not be considered in any way to  
5 limit or control the power of the Liquidating Trust or the Liquidating Trustee, subject to the  
6 authority of the SDH Trust Committee, to act as specifically authorized by any other provision of the  
7 Plan, the Liquidating Trust Agreement or orders of the Bankruptcy Court, and to act in such manner  
8 as the Liquidating Trustee may deem necessary, or desirable to discharge all obligations assumed by  
9 the Liquidating Trust as provided herein and in the Liquidating Trust Agreement, and to conserve  
10 and protect the Liquidating Trust’s Assets, or to confer on Creditors the benefits intended to be  
11 conferred upon them by the Plan; including without limitation and by example only:

- 12 (1) Determine Tax issues or liabilities in accordance with section 505 of  
13 the Bankruptcy Code;
- 14 (2) Resolve any objections to the allowance or priority of Claims and  
15 Administrative Expenses;
- 16 (3) Distribute Cash to Creditors consistent with the terms of the Plan;
- 17 (4) Perfect and secure the Liquidating Trust’s right, title and interest to  
18 property of the Estate;
- 19 (5) Recover and, to the extent possible, sell and convert the Liquidating  
20 Trust’s Assets to Cash, and distribute the net proceeds consistent with the  
21 terms of the Plan;
- 22 (6) Manage and protect the Liquidating Trust’s Assets and distribute the  
23 net proceeds consistent with the terms of the Plan;
- 24 (7) Purchase or continue insurance to protect the Liquidating Trust, the  
25 Liquidating Trustee, and the Liquidating Trust’s Assets;
- 26  
27  
28

1 (8) Deposit Estate funds, draw checks and make disbursements thereof  
2 consistent with the terms of the Plan;

3 (9) Employ, retain and compensate, and discharge and dismiss, without  
4 further order of the Bankruptcy Court, professionals as the Liquidating  
5 Trustee may deem necessary or desirable to assist in fulfilling the purposes of  
6 the Plan, including the continued retention and payment of Professionals in  
7 connection with any ongoing litigation or other matter pursued or conducted  
8 by the Debtor whether on an hourly, flat fee or contingency basis, including  
9 any litigation related to any Avoiding Power Causes of Action, provided that  
10 the retention of Professionals by the Liquidating Trust shall be subject to the  
11 consent of the SDH Trust Committee;

12 (10) Utilize and compensate the SDH Trust Committee's legal counsel in  
13 connection with the commencement or continuation of any litigation, unless  
14 such counsel has a conflict of interest, in which event the Liquidating Trustee  
15 may employ alternate counsel to represent the Liquidating Trust in those  
16 proceedings.

17 (11) Commence or prosecute in the name of the Liquidating Trust any  
18 lawsuit or other legal or equitable action (except to the extent released  
19 pursuant to the terms of the Plan), including, without limitation, filing  
20 objections to or estimation of Claims, and prosecuting Causes of Action, in  
21 any court of competent jurisdiction, which are necessary to carry out the terms  
22 and conditions of the Plan;

23 (12) Settle, compromise or adjust, pursuant to the standards of Bankruptcy  
24 Rule 9019 (which standards, but not a requirement for Bankruptcy Court  
25 approval, shall be deemed to apply to all post-Effective Date settlements), any  
26 disputes or controversies in favor of, or against, the Liquidating Trust;

27 (13) Incur and pay all and any reasonable costs and expenses incident to the  
28 performance of the duties of the Liquidating Trust and the Liquidating Trustee  
under the Plan, subject to the oversight of the SDH Trust Committee;

(14) Prepare and File cost reports and tax returns, as mandated by  
applicable local, state, federal and foreign law;

(15) Seek entry of a final decree at the appropriate time; and

1 (16) Take such other action as the Liquidating Trustee may determine to be  
2 necessary or desirable to carry out the purpose of the Plan.

3 **S. Dissolution of the Debtor**

4 Upon the entry of a final decree, the Debtor shall be dissolved without need for further  
5 action by any board of directors or the Liquidating Trustee. In connection with the entry of the final  
6 decree, the Liquidating Trustee is authorized to (a) execute, acknowledge and/or file with the  
7 California Secretary of State, or any other state governmental authority having jurisdiction over the  
8 Liquidating Trust, any certificate of dissolution for the Liquidating Trust as may be necessary or  
9 appropriate under applicable non-bankruptcy law to cause the dissolution of the Liquidating Trust  
10 to occur. Notwithstanding anything to the contrary in the Plan, the Liquidating Trustee shall not be  
11 liable as a result of any action taken in accordance with the provisions of the Plan, and after the  
12 entry of the final decree in the Case, the Liquidating Trustee shall not have any responsibility for  
13 the Liquidating Trust, including any further responsibility for the management, supervision,  
14 administration, liquidation, winding up, or cancellation of the charter of the Liquidating Trust.

15 **T. The Committee**

16 Until the Effective Date, the Committee shall continue in existence. As of Effective Date,  
17 the Committee shall terminate and disband and be replaced by the SDH Trust Committee. The  
18 members of the Committee and the Committee shall be released and discharged of and from all  
19 further authority, duties, responsibilities and obligations related to and arising from their service as  
20 Committee members.

21 **U. Earmarked and Unrestricted Charitable Donations**

22 Donations that were made to the Debtor and that the Debtor holds as of the Effective Date  
23 that were earmarked for a special purpose by the donor (the "Earmarked Charitable Donations")  
24 shall be under the control of the Liquidating Trust from and after the Effective Date. The  
25 Liquidating Trustee shall use the Earmarked Charitable Donations in accordance with the directions  
26 from the Attorney General of the State of California.

27 Donations that were made to the Debtor and that the Debtor holds as of the Effective Date  
28 that were not earmarked for a special purpose by the donor (the "Unrestricted Charitable

1 Donations”) shall be under the control of the Liquidating Trust from and after the Effective Date.  
2 The Unrestricted Charitable Donations will become part of the Liquidating Trust Assets and can be  
3 utilized by the Liquidating Trustee to pay the Liquidating Trust Expenses and for Distributions to  
4 Beneficiaries.

5 The Foundation was formed to accept Earmarked Charitable Donations and Unrestricted  
6 Charitable Donations (collectively, the “Donations”) for the benefit of the Debtor. The Foundation,  
7 in the ordinary course of business, transferred Donations to the Debtor for its business purposes  
8 pursuant to the restrictions placed on the Donations by the Donors. The Proponents have been  
9 informed by the Foundation that it currently holds Donations in the approximate amount of \$15  
10 million. The Proponents have been additionally informed by the Foundation that substantially all of  
11 such Donations are Earmarked Charitable Donations that are endowment funds with directives on  
12 the use of the income generated by such endowment funds. The Committee believes that some  
13 significant portion of the Donations are actually Unrestricted Charitable Donations, but the  
14 Foundation disputes that conclusion. The Committee with the cooperation of the Debtor is currently  
15 investigating, among other issues, whether these accounts are actually held by the Foundation rather  
16 than the Debtor, whether the Foundation should be substantively consolidated with the Debtor, and  
17 whether the Earmarked Charitable Donations are actually restricted as to their use. The Proponents  
18 cannot estimate at this time how much, if any, of the Donations might be available for the payment  
19 of Creditors pursuant to the terms of the Plan.

## 20 **V. Provisions Governing Distributions**

### 21 **1. Disbursing Agent**

22 The Liquidating Trustee, after the Effective Date until the Liquidating Trust terminates, will  
23 serve as the Disbursing Agent under the Plan or shall select another entity to serve as the Disbursing  
24 Agent. Any entity other than the Liquidating Trustee that acts as a Disbursing Agent for the  
25 Liquidating Trust will be an agent of the Liquidating Trustee and not a separate taxable entity with  
26 respect to, for example, the assets held, income received or disbursements or Distributions made for  
27 the Liquidating Trustee. The Liquidating Trustee will not be required to provide a bond in  
28 connection with the making of any distributions pursuant to the Plan.



1 The Disbursing Agent will make all Distributions required under this Plan. The Disbursing  
2 Agent shall be authorized to implement such procedures as it deems necessary to make Distributions  
3 pursuant to this Plan so as to efficiently and economically assure prompt and accurate Distributions.

4 **2. The Source of Distributions**

5 The sources of all Distributions and payments made by the Liquidating Trustee under the  
6 Plan will be the Liquidating Trust Assets, including, but not limited to, Cash that vests in the  
7 Liquidating Trust as of the Effective Date and proceeds from the investment of Cash, the liquidation  
8 by the Liquidating Trust of any non-Cash Liquidating Trust Assets, and any proceeds from the  
9 investment of the Liquidating Trust Assets. Prior to any Distribution to any Holders of Allowed  
10 Claims under the Plan, the Liquidating Trustee shall establish and fund the Liquidating Trust  
11 Expense Reserve and thereafter maintain sufficient funds therein to satisfy the anticipated ongoing  
12 Liquidating Trust Expenses of the Liquidating Trust.

13 A chart of the sources and uses of funds will be Filed by the Exhibit Filing Date as Plan  
14 Exhibit C.

15 **3. Distribution Dates**

16 The date of the initial Distribution by the Liquidating Trust shall be on the Effective Date or  
17 as soon thereafter as is practicable. Each subsequent Distribution Date shall be as set forth in  
18 Sections IV.B.3.b. and c. and IV.B.4.

19 **4. Manner of Cash Payments**

20 Distributions made pursuant to the Plan will be in United States funds, by check drawn on a  
21 domestic bank, or, if the Liquidating Trustee so elects in its discretion for Distributions to certain  
22 large Creditors, by wire transfer from a domestic bank.

23 **5. Setoff and Recoupment**

24 **Notwithstanding anything to the contrary in the Plan, the Liquidating Trustee may set**  
25 **off, recoup, or withhold against the Distributions to be made on account of any Allowed Claim**  
26 **any Claims or Causes of Action that the Debtor or the Estate held against the entity holding**  
27 **the Allowed Claim. The Debtor, the Estate, and the Liquidating Trust will not waive or**  
28 **release any Claim or Cause of Action against those entities by failing to effect such a setoff or**

1 **recoupment, by failing to assert any such matter prior to Confirmation or the Effective Date,**  
2 **by allowing any Claim against the Debtor or the Estate, or by making a Distribution on**  
3 **account of an Allowed Claim.**

4 **6. No *De Minimis* Distributions**

5 Notwithstanding anything to the contrary in this Plan, no Distribution of less than \$20.00 will  
6 be made to any Holder of an Allowed Claim on account thereof. No consideration will be provided  
7 in lieu of the *de minimis* Distributions that are not made under this Section.

8 **7. Fractional Cents**

9 When any payment of a fraction of a cent would otherwise be called for, the actual payment  
10 will reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of less  
11 than \$0.005 and rounding up in the case of \$0.005 or more); provided, however, that, in no event,  
12 will a Distribution of less than \$20.00 will be made to any Holder of an Allowed Claim on account  
13 thereof as set forth above.

14 **8. No Distributions with Respect to Disputed Claims**

15 Notwithstanding any other Plan provision, no Distributions will be made on account of a  
16 Disputed Claim. Distribution on a Disputed Claim will be made when the Disputed Claim becomes  
17 or is deemed to be an Allowed Claim for purposes of Distributions.

18 **9. Undeliverable or Unclaimed Distributions**

19 Distributions to entities holding Allowed Claims will initially be made by mail as follows:

20 (a) Distributions will be sent to the address, if any, set forth on a Filed proof of claim as  
21 amended by any written notice of address change received by the Debtor prior to the Effective Date  
22 or Liquidating Trustee no later than ten (10) Business Days prior to the date of any Distribution; or

23 (b) If no such address is available, Distributions will be sent to the address set forth on  
24 the Schedules or address otherwise readily obtainable by a cursory review of the Debtor's other  
25 books and records.

26 If no address is available either on a proof of claim or on the Schedules or on the Debtor's  
27 other books and records after a cursory review, the Distribution will be deemed to be undeliverable.  
28 If a Distribution is returned to the Liquidating Trustee as an undeliverable Distribution or is deemed

1 to be an undeliverable Distribution, the Liquidating Trustee will not make any further Distribution to  
2 the Holder of the Claim on which the Distribution is being made, except as provided below.

3 Any entity that is otherwise entitled to an undeliverable Distribution and that does not, within  
4 45 days after a Distribution is returned as undeliverable, provide the Liquidating Trustee, with a  
5 written notice asserting its claim to or interest in that undeliverable Distribution and setting forth a  
6 current, deliverable address will be deemed to waive any claim to or interest in that undeliverable  
7 Distribution and will be forever barred from receiving that undeliverable Distribution or asserting  
8 any Claim against the Debtor, the Estate, the Liquidating Trust or their respective property. Any  
9 undeliverable Distributions that are not claimed hereunder will be distributed to other Holders of  
10 Allowed Claims pursuant to the terms of the Plan. If after the occurrence of the Effective Date, any  
11 amount of undeliverable Distributions remains undistributed after all Holders of Allowed Claims  
12 have been paid and after all the Liquidating Trust Expenses have been paid in full, the balance of the  
13 funds available from undeliverable Distributions shall be donated as directed by the Attorney  
14 General of the State of California. Nothing herein requires the Liquidating Trustee to attempt to  
15 locate any entity holding an Allowed Claim whose distribution is undeliverable.

16 **10. Distribution Checks Not Cashed**

17 If a Distribution check is not cashed within 90 days after it is mailed to the Holder of the  
18 Claim on which the Distribution is being made, the Liquidating Trustee will cancel payment on that  
19 check and will not make any further Distribution to the Holder of the Claim on which the  
20 Distribution is being made, except as provided below.

21 Any entity that is otherwise entitled to a Distribution but who failed to cash a Distribution  
22 check within the allotted time and that does not, within 45 days after payment on the Distribution  
23 check is cancelled, provide the Liquidating Trustee with a written notice asserting its claim to or  
24 interest in that cancelled Distribution check and setting forth a current, deliverable address will be  
25 deemed to waive any claim to or interest in that Distribution and will be forever barred from  
26 receiving that Distribution or asserting any Claim against the Debtor, the Estate, the Liquidating  
27 Trust or their respective property. Any Distributions that are not claimed hereunder will be  
28 distributed to other Holders of Allowed Claims pursuant to the terms of the Plan. Nothing herein

1 requires the Liquidating Trustee to attempt to locate any entity holding an Allowed Claim whose  
2 Distribution check has been cancelled as provided herein.

3 **11. Record Date**

4 The record date for purposes of Distributions under this Plan shall be the  
5 Confirmation Date. To determine the names of the Holders of Claims as of the Record Date, the  
6 Liquidating Trustee will rely on the proofs of Claim and transfers of such proofs of Claim Filed in  
7 the Case.

8 **W. Donation of Remaining Liquidating Trust Cash**

9 After all the Liquidating Trust Assets have been liquidated and all Allowed Claims have  
10 been fully satisfied as provided in this Plan, and all Liquidating Trust Expenses have been paid, all  
11 remaining Cash held by the Liquidating Trust shall be donated as directed by the Attorney General  
12 of the State of California.

13 **X. Disputed Claims**

14 **1. Disputed Claims Reserve**

15 On the Effective Date, the Liquidating Trust will establish a Disputed Claims Reserve from  
16 the Liquidating Trust's Assets on account of Disputed Claims. The Disputed Claims Reserve will  
17 initially include cash in amounts sufficient to distribute to each holder of a Disputed Claim the  
18 amount estimated by the Debtor that the Holder of Disputed Claims would receive under the Plan if  
19 its Claim should ultimately become an Allowed Claim.

20 After any Disputed Claim becomes an Allowed Claim, the Disbursing Agent, within fifteen  
21 (15) Business Days after the Disputed Claim becomes an Allowed Claim, or as soon thereafter as is  
22 practicable, pay the amount of the Allowed Claim pursuant to the treatment of such Allowed Claim  
23 as provided in this Plan.

24 If a Disputed Claim (i) becomes a Disallowed Claim or (ii) becomes an Allowed Claim in an  
25 amount that would result in such Allowed Claim receiving less than the amount held in the Disputed  
26 Claims Reserve on account thereof, the excess attributable to the Claim's disallowed or expunged  
27 portion will be Available Cash.  
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1 After Final Orders have been entered, or other final resolutions have been reached, with  
 2 respect to all Disputed Claims or the Liquidating Trust has obtained an Order of the Court setting a  
 3 reduced dollar amount of required reserves, any remaining Cash held in the Disputed Claims  
 4 Reserve will be Available Cash.

5 **2. Objections to and Resolution of Disputed Claims**

6 On and after the Effective Date, the Liquidating Trust will have the right to make and File  
 7 objections to any Claim of any nature and to prosecute, settle and/or withdraw such objections. The  
 8 Liquidating Trustee will have the authority to compromise, settle, withdraw or otherwise resolve  
 9 any objections to a Claim without approval of the Bankruptcy Court; provided, however, that the  
 10 the Liquidating Trustee may in its discretion seek relief before the Bankruptcy Court with respect to  
 11 any Disputed Claim. The Liquidating Trust will File and serve all objections to 503(b)(9) Claims,  
 12 Priority Claims, and General Unsecured Claims upon the Holder of the Claim as to which the  
 13 objection is made no later than 90 days after the Effective Date, provided, however, that nothing  
 14 herein will reduce the time permitted under applicable statutes of limitation for bringing any  
 15 affirmative Causes of Action that the Liquidating Trust may assert against any third party. The  
 16 Claim Objection Deadline may be extended only by an order of the Bankruptcy Court.

17 **Y. Other Plan Provisions**

18 **1. Exculpation and Release of Committee and Its Professionals**

19 Except to the extent arising from willful misconduct or gross negligence, any and all Claims,  
 20 liabilities, causes of action, rights, damages, costs and obligations held by any party against the  
 21 Committee and/or the individual members of the Committee (and their respective officers, directors,  
 22 employees, affiliates and agents), and/or each of their respective attorneys, accountants, agents and  
 23 other professionals, whether known or unknown, matured or contingent, liquidated or unliquidated,  
 24 existing, arising or accruing, whether or not yet due in any manner related to the Postpetition  
 25 administration of the Case, any Postpetition act or omission in connection with, arising out of, or  
 26 related to the Case, or the formulation, negotiation, prosecution or implementation of the Plan, will  
 27 be deemed fully waived, barred, released and discharged in all respects, except as to rights,  
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1 obligations, duties, claims and responsibilities preserved, created or established by terms of this  
2 Plan.

3 Pursuant to section 1125(e) of the Bankruptcy Code, the Committee and its present and  
4 former members, and each of their respective affiliates, officers, directors, employees, agents,  
5 advisors, representatives, successors or assigns, and any Professionals employed by any of the  
6 foregoing Persons will neither have nor incur any liability to any Person for their role in soliciting  
7 acceptances of this Plan.

8 **2. Injunction**

9 **The Plan is the sole means for resolving, paying or otherwise dealing with Claims. To**  
10 **that end, except as expressly provided in the Plan, at all times on and after the Effective Date,**  
11 **all Persons who have been, are, or may be Holders of Claims against the Debtor arising prior**  
12 **to the Effective Date, will be permanently enjoined from taking any of the following actions, on**  
13 **account of any such Claim, against the Debtor, the Estate, the Liquidating Trust, the**  
14 **Liquidating Trust or their respective property (other than actions brought to enforce any**  
15 **rights or obligations under the Plan):**

16 (i) **commencing, conducting or continuing in any manner, directly or**  
17 **indirectly any suit, action, or other proceeding of any kind against the Debtor, the**  
18 **Estate, the Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee, their**  
19 **successors, or their respective property or assets (including, without limitation, all suits,**  
20 **actions, and proceedings that are pending as of the Effective Date which will be deemed**  
21 **to be withdrawn or dismissed with prejudice);**

22 (ii) **Enforcing, levying, attaching, executing, collecting, or otherwise**  
23 **recovering by any manner or means whether directly or indirectly any judgment,**  
24 **award, decree, or order against the Debtor, the Estate, the Liquidating Trust, the**  
25 **Liquidating Trust, or the Liquidating Trustee, their successors, or their respective**  
26 **property or assets;**

27 (iii) **creating, perfecting, or otherwise enforcing in any manner, directly or**  
28 **indirectly, any lien, security interest or encumbrance against the Debtor, the Estate, the**

1 **Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee, their successors,**  
2 **or their respective property or assets; and**

3 (iv) **proceeding in any manner in any place whatsoever against the Debtor,**  
4 **the Estate, the Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee,**  
5 **their successors, or their respective property or assets, that does not conform to or**  
6 **comply with the provisions of the Plan.**

7 Nothing in this Section VI.X.2 or the Confirmation Order shall enjoin or act to enjoin the  
8 Liquidating Trustee from pursuing any claim, right or Cause of Action preserved under the terms of  
9 this Plan as set forth above in Section V.

10 **3. Nondischarge of the Debtor**

11 In accordance with section 1141(d)(3) of the Bankruptcy Code, the Confirmation Order will  
12 not discharge Claims. However, no Holder of a Claim may receive any payment from, or seek  
13 recourse against, any Assets that are to be distributed under the Plan other than Assets required to be  
14 distributed to that Holder pursuant to the Plan.

15 **4. Remedy in Event of Default Under the Plan**

16 If there is a material default at any time during the term of this Plan by the Liquidating  
17 Trustee in the performance of any of the duties or obligations of the Liquidating Trust under the  
18 Plan, any Creditor that is damaged by such failure may pursue its remedies in any court of competent  
19 jurisdiction, including, but not limited to, filing a motion to dismiss or convert this Case.

20 **5. Entry of Final Decree**

21 Promptly following the liquidation of all of the non-cash Liquidating Trust Assets and the  
22 completion of all Distributions to the Holders of the Allowed Claims, the Liquidating Trust will File  
23 a motion with the Bankruptcy Court to obtain entry of a final decree closing the Debtor's Case.  
24 After entry of the final decree, the Liquidating Trustee, on behalf of the Liquidating Trust, will be  
25 authorized in its sole and absolute discretion to discard or destroy any and all pre-Effective Date  
26 books and records of the Debtor in the Liquidating Trust's custody or control. The Liquidating  
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1 Trustee will continue to preserve the post-Effective Date books and records subject to further  
2 Bankruptcy Court order.

3 **6. Post-Effective Date Quarterly Reports and Fees**

4 From and after the Effective Date, the Liquidating Trustee, on behalf of the Liquidating  
5 Trust, shall File all required Quarterly Reports if any, and serve the Quarterly Report on the U.S.  
6 Trustee and shall pay all U.S. Trustee Fees if any.

7 **7. Exemption from Stamp, Transfer and Other Taxes**

8 Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of  
9 assets under the Plan by the Debtor, the creation of any mortgage, deed of trust, or other security  
10 interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or  
11 instrument of transfer under, in furtherance of, or in connection with the Plan, will not be subject to  
12 any stamp, real estate transfer, mortgage recording, or other similar tax.

13 **8. Withholding and Reporting Requirements**

14 In connection with the consummation of the Plan, the Liquidating Trust will comply with all  
15 withholding and reporting requirements imposed by any federal, state, local or foreign taxing  
16 authority and all Distributions hereunder will be subject to any such withholding and reporting  
17 requirements. The Liquidating Trust may reasonably request tax reporting information from persons  
18 entitled to receive Distributions under the Plan and may withhold the payment of such Distributions  
19 pending the receipt of such tax reporting information.

20 **9. Pre-Confirmation Injunction and Stays**

21 Unless otherwise provided, all injunctions or stays arising under or entered during the Case  
22 pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the  
23 Confirmation Date, will remain in full force and effect until the Effective Date at which time the  
24 injunction contained in Section VIII.A shall become effective.

25 **10. Retention of Jurisdiction**

26 After Confirmation of the Plan and occurrence of the Effective Date, the Bankruptcy Court  
27 will retain such jurisdiction as is legally permissible, including for the following purposes:  
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- 1           1.       To resolve any and all disputes regarding the operation and interpretation of  
2 the Plan or the Confirmation Order;
- 3           2.       To determine the allowability, classification, or priority of any Claim or  
4 interest, based on any objection by the Debtor, the Liquidating Trust, or by other parties in interest  
5 with standing to bring such objection or proceeding;
- 6           3.       To determine the extent, validity, and priority of any lien asserted against  
7 property of the Debtor, property of the Estate, or the Liquidating Trust Assets;
- 8           4.       To construe and to take any action to (a) enforce and execute the Plan, the  
9 Confirmation Order, and any other order of the Bankruptcy Court; (b) issue such orders as may be  
10 necessary for the implementation, execution, performance, and consummation of the Plan, the  
11 Confirmation Order and all matters referred to in the Plan and the Confirmation Order; and  
12 (c) determine all matters that may be pending before the Bankruptcy Court in this Case on or before  
13 the Effective Date with respect to any Person;
- 14           5.       To determine any and all applications for allowance of compensation and  
15 reimbursement of expenses of Professionals for periods on or before the Effective Date;
- 16           6.       To determine any other request for payment of administrative expenses;
- 17           7.       To resolve any dispute regarding the implementation, execution, performance,  
18 consummation, or interpretation of the Plan or the Confirmation Order;
- 19           8.       To determine motions for the rejection, assumption, or assignment of  
20 executory contracts or unexpired leases and the allowance of any Claims resulting therefrom;
- 21           9.       To adjudicate all adversary proceedings and contested matters, if any, initiated  
22 by the Liquidating Trust to pursue retained causes of action;
- 23           10.      To determine all applications, motions, adversary proceedings, contested  
24 matters, and any other litigated matters commenced during the Case whether before, on, or after the  
25 Effective Date;
- 26           11.      To determine such other matters and for such other purposes as may be  
27 provided in the Confirmation Order;
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1           12. To modify the Plan under section 1127 of the Bankruptcy Code in order to  
2 remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan so  
3 as to carry out its intents and purposes;

4           13. To issue injunctions or take such other actions or issue such other orders as  
5 may be necessary or appropriate to restrain interference with the Plan or the Confirmation Order or  
6 their implementation by any person or entity;

7           14. To issue such orders as may be appropriate in the event that the Confirmation  
8 Order is, for any reason, stayed, revoked, modified, reversed or vacated; and

9           15. To issue such orders in aid of consummation of the Plan and the Confirmation  
10 Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect to any person or  
11 entity, to the full extent authorized by the Bankruptcy Code or Bankruptcy Rules.

12           **11. Successors and Assigns**

13           The rights, benefits and obligations of any entity named or referred to in the Plan are binding  
14 on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors or  
15 assigns of such entity.

16           **12. Modification or Withdrawal of the Plan**

17           In accordance with section 1127 of the Bankruptcy Code, the Proponents reserve the  
18 right to alter, amend, modify, revoke or withdraw the Plan or any Plan exhibit or schedule, including  
19 amending or modifying it to satisfy the requirements of the Bankruptcy Code. The Proponents  
20 reserve the right to withdraw the Plan before the Confirmation Date. Any such modifications or  
21 withdrawal can only be accomplished by the agreement of both Proponents. If, prior to the  
22 Confirmation of the Plan, the Proponents disagree regarding modifications to or withdrawal of the  
23 Plan, either may withdraw as a proponent of the Plan and the remaining Proponent will become the  
24 sole proponent of the Plan and the confirmation process will continue.

25           **13. Severability of Plan Provisions**

26           If, before Confirmation, the Bankruptcy Court holds that any Plan term or provision  
27 is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision  
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1 so that it is valid and enforceable to the maximum extent possible consistent with the original  
2 purpose of that term or provision, so long as such alternative interpretation does not materially alter  
3 the rights, remedies and distributions under the Plan of parties in interest in this Case. That term or  
4 provision will then be applicable as altered or interpreted. Notwithstanding any such holding,  
5 alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and  
6 effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will  
7 constitute a judicial determination providing that each Plan term and provision, as it may have been  
8 altered or interpreted in accordance with this Section, is valid and enforceable under its terms.

9 **14. Exhibits**

10 Any Exhibits to the Plan that are not Filed with the Plan will be Filed not later than the  
11 Exhibit Filing Date. Copies of all such Exhibits not Filed and served with the Plan will not be  
12 served by any method other than ECF, but will be available upon written request to the Debtor's or  
13 the Committee's counsel.

14 **15. No Admission**

15 Except as specifically provided in the Plan, nothing contained in the Plan shall be deemed or  
16 construed in any way as an admission by the Debtor, the Estate or the Committee with respect to any  
17 matter set forth in the Plan , including the amount or allowability of any Claim, or the value of any  
18 property of the Estate.

19 Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the  
20 Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will:  
21 (a) be deemed to be an admission by the Debtor or the Committee with respect to any matter  
22 discussed in the Plan, including liability on any Claim or the propriety of any Claim's classification;  
23 (b) constitute a waiver, acknowledgement, or release of any Claims or any claims held by the  
24 Debtor; or (c) prejudice in any manner the rights of the Debtor, the Estate, or the Committee in any  
25 further proceedings.  
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1           **16.    General Authority**

2           The Debtor shall execute such documents, and take such other actions, as are necessary to  
3 effectuate the transactions provided for in the Plan.

4           **17.    Binding Effect**

5           The Plan and all rights, duties and obligations thereunder shall be binding upon and inure to  
6 the benefit of the Debtor, the Committee, Holders of Claims, the Liquidating Trust, the Liquidating  
7 Trustee and their respective successors and assigns.

8           **18.    Governing Law**

9           Unless a rule of law or procedure is supplied by federal law (including, but not limited to, the  
10 Bankruptcy Code and Federal Rules of Bankruptcy Procedure), the rights and obligations arising  
11 under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the  
12 State of California, without giving effect to the principles of conflict of laws thereof. Unless a rule  
13 of law or procedure is supplied by federal law (including, but not limited to, the Bankruptcy Code  
14 and Federal Rules of Bankruptcy Procedure), the rights and obligations arising under any agreement,  
15 contract, document, or instrument provided for or executed in connection with the Plan, shall be  
16 governed by, and construed and enforced in accordance with express choice of law provision in such  
17 an agreement, contract, document, or instrument; provided, however, if no rule of law or procedure  
18 is supplied by federal law (including, but not limited to, the Bankruptcy Code and Federal Rules of  
19 Bankruptcy Procedure) and if no choice of law provision is contained in such an agreement,  
20 contract, document, or instrument, such agreement, contract, document, or instrument shall be  
21 governed by, and construed and enforced in accordance with, the laws of the State of California,  
22 without giving effect to the principles of conflict of laws thereof.

23           **19.    Payment or Distribution Dates**

24           Whenever any payment or Distribution to be made under the Plan shall be due on a day other  
25 than a Business Day, such payment or distribution shall instead be made, without interest, on the  
26 immediately following Business Day.  
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**20. Headings**

The headings used in the Plan are inserted for convenience only and neither constitutes a portion of the Plan nor in any manner affects the construction of the provisions of the Plan.

**21. No Waiver**

The failure of the Debtor or the Committee or any other person to object to any Claim for purposes of voting shall not be deemed a waiver of the Debtor's, the Committee's, or the Liquidating Trust's right to object to or examine such Claim, in whole or in part.

**22. Post-Effective Date Notice**

From and after the Effective Date, any Person who desires notice of any pleading or document Filed in the Case, or of any hearing in the Court, or of any matter as to which the Bankruptcy Code requires notice to be provided, will File a request for post-Effective Date notice and will serve the request on the Liquidating Trustee. Any Person filing such a request will be placed on the Post-Effective Date Notice List. The U.S. Trustee, the SDH Trust Committee, and the Liquidating Trustee will be deemed to have requested post-Effective Date notice and will be placed on the Post-Effective Date Notice List without taking any further action.

**VII.**

**CERTAIN RISK FACTORS TO BE CONSIDERED**

Holders of Impaired Claims entitled to vote on the Plan should read and consider carefully the factors set forth below, as well as 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. Risk That the Debtor Will Have Insufficient Cash for the Plan to Become Effective**

The Plan cannot be confirmed by the Bankruptcy Court unless there will be sufficient funds on the Effective Date to pay or reserve for all Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims, unless particular Holders of such Claims agree to a deferred payment of their Claims. The Debtor estimates that as of the Effective Date it will have approximately \$13,500,000 Cash on hand. The Proponents estimate that Allowed Administrative

1 Claims, including Professional Fee Claims, 503(b)(9) Claims, and Ordinary Course Administrative  
2 Claims, as of the Effective Date will be approximately \$5,550,000 to \$6,150,000 (plus a possible  
3 \$4,000,000 for WARN Act Claims asserted under the WARN Act Complaint, all of which are  
4 disputed). The Proponents further estimate that the fees it will owe the U.S. Trustee on the Effective  
5 Date will be approximately \$9,750. The Proponents believe that as of the Effective Date the  
6 Liquidating Trust will have sufficient Cash to satisfy or reserve for all such Claims.

7 **B. Risk Regarding the Distributions to Be Made to Creditors**

8 While the Proponents have endeavored to project what they believe is likely to be the amount  
9 distributed to parties holding Allowed Claims, there can be no certainty that the Proponents'  
10 projections will be accurate, and that Creditors will receive the distributions described in the Plan.  
11 The Proponents' projections will necessarily be affected by, among other things: (1) recoveries that  
12 the Liquidating Trustee generates from the Causes of Action; (2) the outcome of objections to  
13 Claims; and (3) the cost and expenses of such actions.

14 **VIII.**

15 **VOTING PROCEDURES AND REQUIREMENTS**

16 IT IS IMPORTANT THAT HOLDERS OF CLAIMS EXERCISE THEIR RIGHT TO  
17 VOTE TO ACCEPT OR REJECT THE PLAN. All known Holders of Claims entitled to vote on the  
18 Plan have been sent a Ballot together with this Disclosure Statement. Such Persons should read the  
19 Ballot carefully and follow the instructions contained therein. Please use only the Ballot that  
20 accompanies this Disclosure Statement.

21 BALLOTS FOR ACCEPTANCE OR REJECTION OF THE PLAN ARE BEING  
22 PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES LISTED IN THE ABOVE CHART  
23 THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. If you are the holder  
24 of a Claim, and (a) did not receive a Ballot, (b) received a damaged or illegible Ballot, or (c) lost  
25 your Ballot, please contact Pachulski Stang Ziehl & Jones LLP, Attn: Felice Harrison, 10100 Santa  
26 Monica Boulevard, Suite 1300, Los Angeles, California 90067; Telephone: (310) 277-6910; E-mail:  
27 [fharrison@pszjlaw.com](mailto:fharrison@pszjlaw.com).

1 FOR YOUR VOTE TO COUNT, YOUR BALLOT MUST BE ACTUALLY RECEIVED  
 2 BY COUNSEL FOR THE DEBTOR NO LATER THAN 5:00 P.M., PACIFIC TIME, ON  
 3 \_\_\_\_\_, 2013.

4 ANY BALLOT THAT IS EXECUTED AND RETURNED BUT DOES NOT INDICATE  
 5 AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DEEMED AN ACCEPTANCE  
 6 OF THE PLAN.

7 **A. Parties Entitled to Vote**

8 Any Holder of a Claim against the Debtor as of the Petition Date, which Claim has not been  
 9 disallowed by order of the Bankruptcy Court or is not the subject of a pending objection, is entitled  
 10 to vote to accept or reject the Plan if (1) such Claim is Impaired under the Plan and (2) either  
 11 (a) such Holder's Claim has been scheduled by the Debtor (and such Claim is not scheduled as  
 12 disputed, contingent, or unliquidated), or (b) such Holder has Filed a proof of Claim on or before the  
 13 applicable deadline for filing the proof of Claim. Unless otherwise permitted in the Plan, the Holder  
 14 of any Disputed Claim is not entitled to vote on the Plan on account of such Disputed Claim unless  
 15 the Bankruptcy Court, upon application by such Holder, temporarily allows such Disputed Claim for  
 16 the limited purpose of voting to accept or reject the Plan. A vote on the Plan may be disregarded if  
 17 the Bankruptcy Court determines, after notice and a hearing, that such vote was not solicited or  
 18 procured in good faith or in accordance with the provisions of the Bankruptcy Code.

19 The following chart summarizes the Classes of Claims and sets forth which are Impaired and,  
 20 therefore, entitled to vote on the Plan.

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>IMPAIRED/ UNIMPAIRED</u>	<u>VOTING STATUS</u>
Class 1	Allowed Miscellaneous Secured Claims	Impaired	Entitled to vote on the Plan
Class 2	Allowed Priority Non-Tax Claims	Unimpaired	Not entitled to vote on the Plan
Class 3	Allowed General Unsecured Claims	Impaired	Entitled to Vote on Plan
Class 4	Allowed Subordinated Claim	Impaired	Entitled to Vote on Plan

1 If you are a Holder of a Claim in Classes 1, 3 or 4, accompanying this Disclosure Statement  
2 is a Ballot for casting your vote(s) on the Plan and a pre-addressed envelope for the return of the  
3 Ballot.

4 **B. Standards for Acceptance of a Class**

5 The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by  
6 holders of at least two-thirds in dollar amount and more than one-half in number of the claims of that  
7 class that actually cast ballots for acceptance or rejection of the Plan. Thus, acceptance of the Plan  
8 by a Class of Claims occurs only if at least two-thirds in dollar amount and a majority in number of  
9 the Holders of such Claims voting cast their Ballots in favor of acceptance.

10 CREDITORS AND OTHER PARTIES IN INTEREST ARE CAUTIONED TO REVIEW  
11 THE DISCLOSURE STATEMENT ORDER FOR A FULL UNDERSTANDING OF VOTING  
12 REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, COMPLETION AND  
13 SUBMISSION OF BALLOTS.

14 **IX.**

15 **CONFIRMATION OF THE PLAN**

16 Under the Bankruptcy Code, the following steps must be taken to confirm the Plan.

17 **A. Confirmation Hearing**

18 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold  
19 a hearing on confirmation of a plan. By order of the Bankruptcy Court, the Confirmation Hearing  
20 has been scheduled for \_\_\_\_\_, 2013 at \_\_\_\_\_ .m. (Pacific Time) at the United States  
21 Bankruptcy Court for the Southern District of California, Department 1, Room 218, 325 West F  
22 Street, San Diego, California 92101. The Confirmation Hearing may be adjourned from time to time  
23 by the Bankruptcy Court without further notice except for an announcement made at the  
24 Confirmation Hearing or any adjournment thereof.

25 Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to  
26 confirmation of a plan. Any objection to Confirmation of the Plan must be in writing, conform to  
27 the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, set forth the name of the  
28 objecting party, the nature and amount of the Claim held or asserted by the objecting party against



1 the Debtor's Estate, the basis for the objection, and the specific grounds therefor. The objection,  
2 together with proof of service thereof, must then be Filed no later than \_\_\_\_\_, 2013, with  
3 the Bankruptcy Court, and served upon: (1) counsel to the Committee, Pachulski Stang Ziehl &  
4 Jones LLP, 10100 Santa Monica Boulevard, 13<sup>th</sup> Floor, Los Angeles, California 90067, Attn:  
5 Samuel R. Maizel; (2) counsel to the Debtor, Procopio, Cory, Hargreaves & Savitch LLP, 525 B  
6 Street, Suite 2200, San Diego, California 92101, Attn: Jeffrey Isaacs, and (3) Office of the United  
7 States Trustee, 402 West Broadway, Suite 600, San Diego, CA 92101, Attn.: Haeji Hong, Esq.

8       Objections to Confirmation of the Plan and to the adequacy of the Disclosure Statement are  
9 governed by Rule 9014 of the Bankruptcy Rules. THE BANKRUPTCY COURT MAY NOT  
10 CONSIDER OBJECTIONS TO THE PLAN OR DISCLOSURE STATEMENT THAT ARE NOT  
11 TIMELY AND PROPERLY SERVED AND FILED.

12 **B. Requirements for Confirmation of the Plan**

13       At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the  
14 requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for  
15 Confirmation are that the Plan (1) is accepted by all Impaired Classes of Claims or, if rejected by an  
16 Impaired Class, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such  
17 Class, (2) is feasible, and (3) is in the "best interests" of holders of Claims that are Impaired under  
18 the Plan.

19 **1. Acceptance**

20       Claims in Classes 1, 3 and 4 are Impaired. The Holders of such Claims are entitled to vote  
21 on the Plan and, therefore, these Classes must accept the Plan in order for the Plan to be confirmed  
22 without application of the "fair and equitable test," described below, to any rejecting Class. As  
23 stated above, a Class of Claims will have accepted the Plan if the Plan is accepted by at least two-  
24 thirds in dollar amount and a majority in number of the Claims of each such Class (other than any  
25 Claims of creditors designated under section 1126(e) of the Bankruptcy Code) that have voted to  
26 accept or reject the Plan.

27       The Proponents will seek to have the Plan confirmed notwithstanding the rejection of the  
28 Plan by any Impaired Class of Claims. If an Impaired Class does not accept the Plan, to obtain

1 Confirmation, the Proponents must demonstrate to the Bankruptcy Court that at least one Impaired  
2 Class has accepted the Plan and that the Plan “does not discriminate unfairly” and is “fair and  
3 equitable” with respect to the dissenting Impaired Class. The Plan does not discriminate unfairly  
4 against any Class of Claims because all Classes are treated in the Plan pursuant to their priority  
5 under the Bankruptcy Code or they have agreed to other treatment.

6 The Bankruptcy Code establishes different “fair and equitable” tests for Secured Claims,  
7 Unsecured Claims and equity interests. There are no known Secured Claims in this Case and the  
8 Debtor, a California nonprofit public benefit corporation, has no interest Holders, therefore, only the  
9 test for Unsecured Claims is applicable. The test for Unsecured Claims is that either (i) each Holder  
10 of an Impaired Unsecured Claim receives or retains under the Plan property of a value equal to the  
11 amount of its Allowed Claim, or (ii) the holders of Claims that are junior to the Claims of the  
12 dissenting Class will not receive any property under the Plan. All Holders of Allowed Claims in  
13 Class 3 will receive their *Pro Rata* share of the Available Cash until they are paid in full prior to the  
14 Claims in the voluntarily subordinated CMS Claim (if CMS agrees to the terms of the proposed  
15 settlement) receiving any distribution. If CMS does not agree to the terms of the proposed  
16 settlement, its Claim will be estimated, will be a General Unsecured Claim and will share *pari pasu*  
17 with Class 3. The Proponents, therefore, believe that the Plan “does not discriminate unfairly” and is  
18 “fair and equitable.”

19 THE PROPONENTS BELIEVE THAT THE PLAN MAY BE CONFIRMED ON A  
20 NONCONSENSUAL BASIS (PROVIDED AT LEAST ONE IMPAIRED CLASS OF CLAIMS  
21 VOTES TO ACCEPT THE PLAN). ACCORDINGLY, THE PROPONENTS WILL  
22 DEMONSTRATE AT THE CONFIRMATION HEARING THAT THE PLAN SATISFIES THE  
23 REQUIREMENTS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AS TO ANY NON-  
24 ACCEPTING CLASS.

## 25 2. Feasibility

26 The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the  
27 liquidation or the need for further financial reorganization of a debtor, unless such liquidation or  
28 reorganization is proposed in such plan. The Plan contemplates that all Assets of the Debtor

1 ultimately will be liquidated, sold, transferred, abandoned, or otherwise disposed of, and all proceeds  
2 of the Assets will be utilized to pay the expenses of liquidating the Assets and winding down the  
3 Liquidating Trust and the balance will be distributed to the Holders of Allowed Claims pursuant to  
4 the terms of the Plan. Since no further financial reorganization of the Debtor will be possible or is  
5 contemplated and, as set forth in the discussion of “Risk Factors” in Article VII hereof, the  
6 Proponents believe that sufficient funds will exist at the Effective Date to make all payments  
7 required to be made on said date under the Plan, the Proponents believe that the Plan meets the  
8 feasibility requirement.

9 **3. “Best Interests” Test**

10 With respect to each Impaired Class of Claims, the Bankruptcy Code requires that each  
11 Holder of an Impaired Claim either (a) accepts the Plan, or (b) receives or retains under the Plan  
12 property of a value, as of the Effective Date of the Plan, that is not less than the value such Holder  
13 would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. This  
14 analysis requires the Bankruptcy Court to determine what the Holders of Allowed Claims in each  
15 Impaired Class would receive from the liquidation of the Debtor’s Assets in the context of a chapter  
16 7 liquidation case.

17 If the Case was converted to a case under chapter 7, a liquidation under chapter 7 would  
18 result in the incurrence of administrative costs in excess of those to be incurred under the Plan  
19 because a chapter 7 trustee that would be appointed would likely seek to retain counsel and perhaps  
20 other professionals that are completely unfamiliar with the Debtor, its ongoing responsibilities, its  
21 remaining assets and liabilities. The appointment of another group of professionals in addition to the  
22 Professionals in this Case would greatly increase the Professional Fees. Also, a new time period for  
23 the filing of Claims would commence under Bankruptcy Rule 1019(2), possibly resulting in the  
24 filing of additional Claims against the Estate. Conversion of the Case to a case under chapter 7 and  
25 appointment of a trustee for administration of the Estate could also delay the prosecution of the  
26 Causes of Action and the distributions to Creditors while the chapter 7 trustee and his new  
27 professionals familiarized themselves with the Case.  
28

1 The Plan provides for an orderly administration and winding down of the Estate by parties  
2 that are familiar with the Debtor, its creditors and its Assets. The familiarity of the SDH Trust  
3 Committee and the Committee Professionals, working together with the Liquidating Trustee, will  
4 allow the Liquidating Trustee to complete liquidation of the Assets, distribute the proceeds to the  
5 Creditors more efficiently than a chapter 7 trustee, while maximizing the value of the Assets for the  
6 benefit of Creditors.

7 In a chapter 7 liquidation, therefore, it is highly likely that there would be less money  
8 available for distribution to Holders of Allowed Class 1 than under the Plan. Also, the Holder of the  
9 Class 4 Claim has agreed that the Subordinated Claim will be subordinated to the other Allowed  
10 General Unsecured Claims and whether this subordination would also be effective in a chapter 7  
11 liquidation is uncertain.

## 12 X.

### 13 ALTERNATIVES TO CONFIRMATION OF THE PLAN

14 Because the Debtor has ceased operations, any plan other than a liquidating plan is not  
15 viable. Congress expressly permitted liquidating chapter 11 plans, and did not limit the kinds of  
16 plans that would satisfy section 1112(b) of the Bankruptcy Code. *See* 11 U.S.C. §§ 1123(b)(4),  
17 1141(d)(3) (providing for liquidation under chapter 11); *see, e.g., In re Dominguez*, 51 F.3d 1502,  
18 1507-08 (9<sup>th</sup> Cir. 1995) (discussing liquidating plan standards for chapter 11 debtor); *In re T-H New*  
19 *Orleans L.P.*, 116 F.3d 790, 803 (5<sup>th</sup> Cir. 1997) (discussing elements of liquidating plan for  
20 chapter 11 debtor); *Rosenberg Real Estate Equity Fund v. Air Beds (In re Air Beds, Inc.)*, 92 B.R.  
21 419, 423 (9<sup>th</sup> Cir. B.A.P. 1988) (liquidating plans allowed in chapter 11 cases); Ali M.M. Mojdehi  
22 and Janet Dean Gertz, *The Implicit "Good Faith" Requirement In Chapter 11 Liquidations: A Rule*  
23 *In Search of a Rationale?*, 14 ABI L. Rev. 143, 152 (noting that "there has been general judicial  
24 recognition of liquidating reorganizations since 1944," which is now codified in section 1123 of the  
25 Bankruptcy Code). The Plan, as discussed above, more than the alternative of conversion to a  
26 chapter 7, maximizes recoveries by efficiently administering the Debtor's remaining responsibilities  
27 and assets and providing for a quick distribution of the Available Cash to the Creditors.  
28

1           Among other things, as set forth above, the administrative costs associated with converting  
2 the Case to a chapter 7 liquidation would be higher than if the prosecution of the Causes of Action,  
3 the resolution of the Claims, the winding down of the Debtor's operations, and the distributions to  
4 Creditors is accomplished pursuant to the Plan. The Proponents believe that the Plan enables the  
5 Creditors to realize the most possible under the circumstances. In a chapter 7 liquidation, holders of  
6 Allowed Claims receive distributions based on the liquidation or collection of the Debtor's assets.  
7 Such assets would include the same assets being collected under the Plan – or which have already  
8 been sold or collected during the Case. However, the net proceeds from the collection and sale of  
9 property of the Estate available for distribution to Creditors would be reduced by the commission  
10 payable to the chapter 7 trustee and the trustee's attorneys and accounting fees, as an addition to the  
11 already incurred administrative costs of the Case and delayed while the chapter 7 trustee and his/her  
12 professionals familiarized themselves with the Case. In addition, a chapter 7 trustee would continue  
13 to be encumbered by Bankruptcy Court supervision and the need for Bankruptcy Court approval of  
14 his decisions, further delaying distributions to Creditors and increasing expense.

15           In a chapter 7 case, the trustee is entitled to seek a sliding scale commission based upon the  
16 funds distributed by such trustee to Creditors, in addition to the fees and expenses of the trustee's  
17 professionals incurred in liquidating the Debtor's assets. Although under section 326 of the  
18 Bankruptcy Code the trustee's compensation is capped by this sliding scale and the trustee should be  
19 required to demonstrate the reasonableness of his or her commissions in relation to work actually  
20 performed or results obtained, the Proponents cannot predict whether the trustee will seek or obtain a  
21 straight commission based solely on distributions or some lesser amount. Nonetheless, whatever the  
22 amount of compensation for a trustee, there is a reasonable likelihood that the chapter 7 trustee  
23 would be entitled to receive a commission in some amount for distributing the funds "handed over"  
24 to the trustee by the Debtor.

25           In addition, a chapter 7 trustee would employ legal counsel and perhaps accountants that  
26 would add additional administrative expenses and would be paid ahead of Allowed General  
27 Unsecured Creditors. The Committee already has legal counsel that is knowledgeable about this  
28 Case and the legal issues surrounding the Assets of the Estate. The SDH Trust Committee, which is

1 made up of members of the Committee, are also knowledgeable about the Case and will continue to  
2 supervise the Liquidating Trust after Confirmation. The costs of familiarizing a chapter 7 trustee,  
3 new counsel, and perhaps new staff with issues relating to the Case will also increase the  
4 administrative expenses that are paid ahead of Creditors holding Unsecured Claims. The Plan  
5 presents a better alternative to Creditors than a chapter 7 liquidation because the Liquidating Trust  
6 can realize upon the Debtor's assets more quickly and cheaply than a trustee who is unfamiliar with  
7 the Debtor's business and its assets and liabilities.

8 Generally, liquidation under chapter 7 is not faster or less expensive than liquidation under  
9 chapter 11. To the contrary, experts who have studied the issue have conclusively debunked that  
10 myth, stating that "Chapter 7 liquidations appear to be no faster or cheaper ... than Chapter 11  
11 reorganizations. However, Chapter 11 seems to preserve assets better, thereby allowing creditors to  
12 recover relatively more." Arturo Bris, Ivo Welch, and Ning Zhu, *The Costs of Bankruptcy:  
13 Chapter 7 Liquidation versus Chapter 11 Reorganization*, The Journal of Finance, Vol. LXI, No. 3,  
14 pp. 1253-1303 (June 2006).<sup>5</sup> This study concludes that the typical chapter 7 case has a more  
15 detrimental impact on the value of assets than the typical chapter 11 case. In other words, they  
16 conclude that the value of assets declines more in a chapter 7 case than in a chapter 11 case, which  
17 can only result in a lower distribution for creditors. *Id.* at 1264. They also note that "the typical  
18 chapter 7 case takes 2 years to unwind" and that this is virtually the same amount of time as the  
19 average chapter 11. *Id.* at 1266, 1270. Particularly noteworthy is their conclusion that "conversions  
20 from chapter 11 to chapter 7 take longer" than pure cases. *Id.* at 1271. Further, they conclude that  
21 the "median expense ratio in Chapter 7 is a slightly higher 2.5% than the 1.9% in Chapter 11." *Id.* at  
22 1279. In other words, they conclude that Chapter 7 cases cost more than chapter 11 cases (although  
23 they caution that the difference is not "statistically significant"). They further conclude that  
24 "Chapter 11 unequivocally seems better for creditors from the perspective of total recovery rate"  
25 which they conclude is based on the advantages "of the [chapter 11] procedure itself" that results in  
26 that recovery rate. *Id.* at 1290. In sum, these experts conclude: "Chapter 7 seems to offer few  
27

28 <sup>5</sup> This article is available on the internet at many websites, including:  
<http://welch.econ.brown.edu/academics/journalcopy/2006-jf.pdf>.

1 advantages: It takes almost as long to resolve, requires similar fees, and in the end provides creditors  
2 with lower recovery rates . . . than a comparable Chapter 11 procedure.” *Id.* at 1301.

3 It is also anticipated that a chapter 7 liquidation would result in a significant delay in the  
4 payments to Creditors. Among other things, a chapter 7 case would trigger a new bar date for filing  
5 Claims that would be more than 90 days following conversion of the Case to chapter 7. Fed. R.  
6 Bankr. P. 3002(c). Hence, a chapter 7 liquidation would not only delay distribution but raise the  
7 prospect of additional claims that were not asserted in the Case.

8 Based on the foregoing, the Debtor and, subsequently, the Liquidating Trustee, subject to the  
9 oversight of the SDH Trust Committee, is in the best position to bring the greatest return to  
10 Creditors. Because under the circumstances here it will be advantageous to Creditors to finish the  
11 liquidation in chapter 11, the Creditors should vote in favor of the Plan.

## 12 **XI.**

### 13 **CERTAIN U.S. FEDERAL TAX**

### 14 **CONSEQUENCES OF THE PLAN**

#### 15 **A. Introduction**

16 The following discussion summarizes certain federal income tax consequences of the  
17 implementation of the Plan to the Holders of General Unsecured Claims. The following summary  
18 does not address the federal income tax consequences to Holders of any other Claims. The  
19 following summary is based on the Internal Revenue Code of 1986, as amended (the “Code”),  
20 Treasury regulations promulgated and proposed thereunder, judicial decisions and published  
21 administrative rules and pronouncements of the Internal Revenue Service (“IRS”) as in effect on the  
22 date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and  
23 could significantly affect the federal income tax consequences described below.

24 The federal income tax consequences of the Plan are complex and are subject to significant  
25 uncertainties. The Proponents have not requested a ruling from the IRS or an opinion of counsel  
26 with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the  
27 interpretation that the IRS or a reviewing court might adopt. In addition, this summary does not  
28 address foreign, state or local tax consequences of the Plan, nor does it purport to address the federal

1 income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers,  
2 broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business  
3 investment companies, regulated investment companies, tax-exempt organizations, investors in pass-  
4 through entities, Holders that hold Claims as part of a hedge, straddle or conversion, Holders who  
5 acquired their Claims as compensation, and Holders who do not hold their Claims as capital assets).

6 Accordingly, the following summary of certain federal income tax consequences is for  
7 informational purposes only and is not a substitute for careful and prudent tax planning and advice  
8 based upon the individual circumstances pertaining to a Holder of a Claim. All Holders of Claims  
9 are urged to consult their own tax advisors for the federal, state, local and other tax consequences  
10 applicable under the Plan.

11 IRS Circular 230 notice: to ensure compliance with requirements imposed by the IRS, please  
12 be advised that any written U.S. tax advice contained in this disclosure statement (including any  
13 attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding  
14 penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another  
15 party any transaction or matter addressed herein.

16 **B. Consequences to the Debtor**

17 The Debtor is organized and operated exclusively for tax-exempt purposes and qualified as a  
18 tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code. The Debtor  
19 believes that it will retain such status through and including the Effective Date. A tax-exempt  
20 organization's exemption from federal income taxation is qualified rather than absolute.

21 Specifically, an organization exempt from federal income tax under section 501(c)(3) of the Internal  
22 Revenue Code is nevertheless taxable on its income from unrelated trade or business and its income  
23 and gain attributable to certain kinds of debt-financed property. The Debtor does not believe that it  
24 will be liable for any such tax liability.

25 **C. Consequences to Holders of General Unsecured Claims**

26 **1. Recognition of Gain or Loss Generally**

27 Pursuant to the Plan, on the Effective Date, each Holder of an Allowed Class 1 Claim will  
28 receive, in full and complete satisfaction thereof, one or more *pro rata* Distributions of Available



1 Cash based upon the amount of the respective Holder's Allowed General Unsecured Claim. In  
2 general, each holder of an Allowed Class 3 Claim will recognize gain or loss in an amount equal to  
3 the difference between (i) the sum of the amount of any Cash that such holder receives in  
4 satisfaction of its Claim (other than in respect of any Claim for accrued but unpaid interest, and  
5 excluding any portion required to be treated as imputed interest due to the post-Effective Date  
6 Distribution of such consideration upon the resolution of Disputed Claims), and (ii) such Holder's  
7 adjusted tax basis in its Claim (other than any Claim for accrued but unpaid interest). For a  
8 discussion of the U.S. federal income tax consequences of any Claim for accrued interest, see  
9 Section XI.C.2 below.

10 Due to the possibility that a Holder of a Class 3 Claim may receive more than one  
11 Distribution subsequent to the Effective Date (due to the subsequent disallowance of certain  
12 Disputed Claims or unclaimed Distributions), the imputed interest provisions of the Code may apply  
13 to treat a portion of such later Distributions to such Holders as imputed interest. In addition, it is  
14 possible that any loss realized by a Holder in satisfaction of an Allowed Class 3 Claim may be  
15 deferred until all subsequent Distributions relating to Disputed Claims are determinable, and that a  
16 portion of any gain realized may be deferred under the "installment method" of reporting. Holders  
17 are urged to consult their tax advisors regarding the possibility for deferral, and the potential ability  
18 to elect out of the installment method of reporting any gain realized in respect of their Claims.

19 Where a Holder recognizes gain or loss in respect of its Claim, the character of such gain or  
20 loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined  
21 by a number of factors, including the tax status of the Holder, whether the Claim constitutes a capital  
22 asset in the hands of the Holder and how long it has been so held, whether the Holder had acquired  
23 the Claim at a market discount, and whether and to what extent the Holder had previously claimed a  
24 bad debt deduction. A Holder that purchased its Claim from a prior holder at a market discount may  
25 be subject to the market discount rules of the Code. Under those rules, assuming that the Holder has  
26 made no election to amortize the market discount into income on a current basis with respect to any  
27 market discount instrument, any gain recognized on the exchange of such Claim (subject to a de  
28

1 minimis rule) generally would be characterized as ordinary income to the extent of the accrued  
2 market discount on such Claim as of the date of the exchange.

3 **2. Distributions in Payment of Accrued but Unpaid Interest**

4 Distributions to any Holder of an Allowed Claim will be allocated first to the original  
5 principal portion of such Claim as determined for federal income tax purposes, and then, to the  
6 extent the consideration exceeds such amount, to the portion of such Claim representing accrued but  
7 unpaid interest. However, there is no assurance that the IRS would respect such allocation for  
8 federal income tax purposes.

9 To the extent a Holder of a Claim receives an amount of Cash or property in satisfaction of  
10 interest accrued during its holding period, such Holder generally recognizes taxable interest income  
11 in such amount (if not previously included in the holder's gross income). Conversely, a Holder  
12 generally recognizes a deductible loss to the extent any accrued interest claimed was previously  
13 included in its gross income and is not paid in full. Each Holder is urged to consult its tax advisor  
14 regarding the allocation of consideration and the deductibility of unpaid interest for U.S. federal  
15 income tax purposes.

16 **3. Withholding**

17 All Distributions to Holders of Allowed General Unsecured Claims are subject to any  
18 applicable tax withholding, including employment tax withholding. Under federal income tax law,  
19 interest, dividends, and other reportable payments may, under certain circumstances, be subject to  
20 "backup withholding" at the then applicable withholding rate (currently 28%). Backup withholding  
21 generally applies if the Holder (a) fails to furnish its social security number or other taxpayer  
22 identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or  
23 dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under  
24 penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup  
25 withholding. Backup withholding is not an additional tax but merely an advance payment, which  
26 may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from  
27 backup withholding, including, in certain circumstances, corporations and financial institutions.  
28

1 THE FOREGOING SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL  
2 PURPOSES ONLY. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR  
3 OWN TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND OTHER  
4 TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

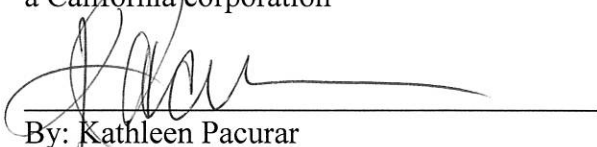
5 XII.

6 RECOMMENDATION

7 The Proponents recommend that all Creditors receiving a Ballot vote in favor of the Plan.  
8 The Proponents believe that the Plan maximizes recoveries to all Creditors and, thus, is in their best  
9 interests. The Plan as structured, among other things, allows said parties to participate in  
10 distributions in excess of those that would be available if the Debtor were liquidated under chapter 7  
11 of the Bankruptcy Code, and minimizes delays in recoveries to all Creditors.

12 Dated: June 24, 2013

SAN DIEGO HOSPICE AND PALLIATIVE  
CARE CORPORATION,  
a California corporation



By: Kathleen Pacurar  
Its: Chief Executive Officer

18 Dated: June \_\_\_\_, 2013

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS FOR SAN DIEGO HOSPICE AND  
PALLIATIVE CARE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman

24 Submitted by:

25 PACHULSKI STANG ZIEHL & JONES LLP

27 By: /s/ Samuel R. Maizel  
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Jeffrey L. Kandel (CA Bar No. 115832)  
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**EXHIBIT 1**  
**THE LIQUIDATING PLAN**

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14 for San Diego Hospice & Palliative Care Corporation

15 **UNITED STATES BANKRUPTCY COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 In re:  
18 SAN DIEGO HOSPICE AND PALLIATIVE CARE  
19 CORPORATION,  
20 Debtor and Debtor in Possession

Case No.: 13-01179-MM11

Chapter 11

**FIRST AMENDED LIQUIDATING  
PLAN FOR SAN DIEGO HOSPICE AND  
PALLIATIVE CARE CORPORATION  
(JUNE 24, 2013) JOINTLY PROPOSED  
BY THE DEBTOR AND THE OFFICIAL  
COMMITTEE OF UNSECURED  
CREDITORS**

**Confirmation Hearing:**

Date: TBD

Time: TBD

Place: United States Bankruptcy Court  
325 West F Street  
Courtroom 1

San Diego, CA 92101

Judge: Hon. Margaret Mann

PACHULSKI STANG ZIEHL & JONES LLP  
 ATTORNEYS AT LAW  
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1 San Diego Hospice & Palliative Care Corporation, a California nonprofit public benefit  
2 corporation, and the Official Committee of Unsecured Creditors propose the following *First*  
3 *Amended Liquidating Plan for San Diego Hospice & Palliative Care Corporation (Dated June 24,*  
4 *2013) Jointly Proposed by the Debtor and the Official Committee of Unsecured Creditors* pursuant  
5 to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. All Holders<sup>1</sup> of Claims  
6 are encouraged to read the Plan in its entirety.

7 **I.**

8 **INTRODUCTION**

9 The Plan effectuates a distribution of the assets of the Estate to Creditors in accordance with  
10 the priorities set forth in the Bankruptcy Code. The Plan provides that all of the Debtor's Assets, to  
11 the extent they have not already been liquidated, will be liquidated and the proceeds will be utilized  
12 to pay Allowed Claims pursuant to the terms of the Plan and to fund the Liquidating Trust Expenses.  
13 All Holders of Allowed Administrative Claims and Allowed Priority Claims against the Debtor will  
14 be satisfied or paid in full. After payment of the Allowed Administrative Claims and Allowed  
15 Priority Claims and the provision for the Liquidating Trust Expenses, the balance of remaining Cash  
16 will be distributed Pro-Rata to Holders of Allowed General Unsecured Claims. The Proponents do  
17 not believe that the Holder of the Subordinated Claim will receive any distributions under the Plan.  
18 The Plan proposes to fairly and efficiently distribute the Debtor's Assets.

19 The Disclosure Statement, distributed with this Plan, contains a discussion of the Debtor's  
20 history, a summary of the Debtor's Assets and liabilities, a summary estimating the possible  
21 recoveries by Holders of Allowed Claims under the Plan, a discussion of certain alternatives to the  
22 Plan, and a summary of the procedures and voting requirements necessary for Confirmation of the  
23 Plan. The Disclosure Statement is intended to provide Holders of Claims with information sufficient  
24 to enable such Holders to vote on the Plan. All Holders of Claims entitled to vote on this Plan are  
25 encouraged to carefully read the Disclosure Statement and this Plan before voting to accept or reject  
26 this Plan. No solicitation materials, other than the Disclosure Statement and related materials

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning given them in Article II below.

1 transmitted herewith have been authorized by the Bankruptcy Court for use in soliciting acceptance  
2 or rejection of this Plan.

3 **II.**

4 **DEFINITIONS AND RULES OF CONSTRUCTION**

5 **A. Definitions**

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

9 **“503(b)(9) Claims”** means Claims for the value of goods received by the Debtor in  
10 the ordinary course of its business within twenty (20) days before the Petition Date as provided in  
11 section 503(b)(9) of the Bankruptcy Code.

12 **“Administrative Claims”** means Claims for administrative costs or expenses that is  
13 allowable under sections 365(b), 503(b) and 507(a)(2) of the Bankruptcy Code or 28 U.S.C. § 1930,  
14 including, without limitation, (a) Non-Ordinary Course Administrative Claims; (b) Ordinary Course  
15 Administrative Claims; (c) 503(b)(9) Claims; (d) Professional Fee Claims; and (e) U.S. Trustee Fees.

16 **“Allowed Administrative Claim”** means an Allowed Claim that is an  
17 Administrative Claim.

18 **“Allowed Claim”** means (a) a Claim, as to which no proof of claim has been Filed,  
19 that is (i) listed in the Schedules in an amount greater than zero and not in an unknown amount and  
20 (ii) not listed as disputed, contingent or unliquidated; or (b) a Claim as to which a proof of claim has  
21 been Filed and (i) no objection or motion to estimate, equitably subordinate, reclassify, set off, or  
22 otherwise limit the recovery thereon has been asserted before the expiration of the time period to  
23 object to such claim as set forth in this Plan or order of the Bankruptcy Court or (ii) any objection or  
24 motion to estimate, equitably subordinate, reclassify, or set off has been resolved by agreement  
25 between the Creditor and the Liquidating Trustee or by Final Order of the Bankruptcy Court.

26 **“Allowed Class ‘\*\*\*’ Claim”** means an Allowed Claim classified in the specified  
27 Class.

1           **“Assets”** means all assets of the Debtor’s Estate including “property of the estate” as  
2 described in section 541 of the Bankruptcy and shall, without limitation, include Cash, Causes of  
3 Action, proceeds of insurance and insurance policies, all rights and interests, all personal property,  
4 and all files, books and records of the Estate.

5           **“Available Cash”** means any Cash held by the Liquidating Trust that is not  
6 designated by the Liquidating Trustee as Cash to be used to satisfy Allowed Administrative Claims,  
7 Allowed Priority Non-Tax Claims, and Liquidating Trust Expenses or otherwise subject to a reserve  
8 established by the Liquidating Trustee.

9           **“Avoiding Power Causes of Action”** means causes of action, if any, arising under  
10 sections 502(d), 506, 544, 545, 547, 548, 549, 550, 553, and 558 of the Bankruptcy Code, or any  
11 fraudulent conveyance, fraudulent transfer or preference laws, or any cause of action arising under,  
12 or relating to, any similar state law or federal law that constitutes property of the Estate under section  
13 541 of the Bankruptcy Code, whether or not an action is initiated on or before the Effective Date.

14           **“Ballot”** means the Ballot for accepting or rejecting the Plan.

15           **“Balloting Deadline”** means the date that is seven (7) days prior to the date of the  
16 Confirmation Hearing.

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

19           **“Bankruptcy Court”** means the United States Bankruptcy Court for the Southern  
20 District of California.

21           **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as  
22 applicable from time to time in the Case.

23           **“Beneficiaries”** means the Holders of Allowed Claims who are the beneficiaries of  
24 the Liquidating Trust.

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

27           **“Case”** means the case under chapter 11 of the Bankruptcy Code commenced by the  
28 Debtor and bearing Case Number 13-01179-MM11.

1           **“Cash”** means all of the Debtor’s cash or cash equivalents held by the Debtor or any  
2 third party as of the Effective Date and all cash held by the Liquidating Trust after the Effective  
3 Date.

4           **“Causes of Action”** means any and all claims, demands, rights, actions, suits, causes  
5 of action, third-party claims, counterclaims and cross-claims of, or liabilities or obligations owing to,  
6 the Debtor or the Estate, of any kind or character whatsoever, known or unknown, suspected or  
7 unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort or otherwise,  
8 at law or in equity or under any other theory (including, but not limited to, all claims in any  
9 avoidance, recovery, subordination or other actions against any Person under the Bankruptcy Code,  
10 including sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553), that the Debtor or the  
11 Estate has or asserts or may have or assert, (including, but not limited to, those actions listed in this  
12 Plan, **Exhibit A** to be filed by the Exhibit Filing Date and the Disclosure Statement whether or not  
13 brought as of the Effective Date or instituted by the Debtor or, after the Effective Date, by the  
14 Liquidating Trustee, acting for the Liquidating Trust, against any Person based on law or equity,  
15 including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or  
16 otherwise and whether asserted or unasserted, known or unknown and which have not been settled or  
17 otherwise resolved by Final Order as of the Effective Date, including but not limited to, (1) rights of  
18 setoff, counterclaim or recoupment, and claims on contracts or for breaches of duties imposed by  
19 law, (2) the right to object to claims or interests, (3) such claims and defenses as fraud, mistake,  
20 duress and usury, (4) Avoiding Power Causes of Action, (5) claims to recover outstanding accounts  
21 receivable, and (6) any other claims which may be asserted against other persons or entities.

22           **“Claim”** means a claim, as the term “claim” is defined in section 101(5) of the  
23 Bankruptcy Code, against the Debtor.

24           **“Claims Objection Deadline”** means no later than six months after the Confirmation  
25 Date, which is the deadline for the Liquidating Trust, through the Liquidating Trustee, to File  
26 objections to 503(b)(9) Claims, Priority Claims, and General Unsecured Claims as set forth in  
27 Section VII.B.2 hereof.

28           **“Class”** means a group of Claims as classified in Article III hereof.

1           “**CMS**” means the Centers for Medicare and Medicaid Services, a component agency  
2 of the U.S. Department of Health and Human Services.

3           “**CMS Claim**” means any Claim asserted by CMS against the Debtor.

4           “**Committee**” means the Official Committee of Unsecured Creditors appointed in the  
5 Case.

6           “**Confirmation**” means the entry of the Order by the Bankruptcy Court confirming  
7 the Plan pursuant to section 1129 of the Bankruptcy Code.

8           “**Confirmation Date**” means the date on which Confirmation occurs.

9           “**Confirmation Hearing**” means the hearing held pursuant to Bankruptcy  
10 Rule 3020(b)(2), including any continuances thereof, at which the Bankruptcy Court will consider  
11 Confirmation of the Plan.

12           “**Confirmation Order**” means the order of the Bankruptcy Court confirming the  
13 Plan under section 1129 of the Bankruptcy Code.

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

16           “**Cure Claims**” means the right to payment of cash or the distribution of other  
17 property (as the parties may agree or the Court may order), as necessary to cure defaults under an  
18 executory contract or unexpired lease of the Debtor, or as otherwise required by section 365(b) of  
19 the Bankruptcy Code as a condition of assumption and assignment, so that the Debtor may assume  
20 and assign the contract or lease pursuant to sections 365 or 1123(b)(2) of the Bankruptcy Code. **The**  
21 **Proponents are unaware of any Cure Claims.**

22           “**Debtor**” means San Diego Hospice & Palliative Care Corporation.

23           “**Disallowed Claim**” means a Claim or any portion thereof that (i) has been  
24 disallowed by agreement between the Creditor and the Debtor or the Liquidating Trust, as  
25 appropriate, or by Final Order, (ii) is Scheduled in an unknown amount or as zero or as contingent,  
26 disputed, or unliquidated or is not Scheduled and as to which no Proof of Claim or Administrative  
27 Claim has been Filed, or (iii) has been withdrawn by the Creditor.

1                   **“Disbursing Agent”** means the Liquidating Trustee on behalf of the Liquidating  
2 Trust, for purposes of making the disbursements to Holders of Allowed Claims pursuant to the terms  
3 of the Plan.

4                   **“Disputed Claim”** means any Claim that is not an Allowed Claim or a Disallowed  
5 Claim.

6                   **“Disputed Claim Reserve”** means the Cash reserves, established pursuant to Section  
7 VII.B.1 hereof by the Liquidating Trustee in the estimated amount necessary to satisfy all  
8 distributions under the Plan on account of Disputed Claims if such Disputed Claims becomes an  
9 Allowed Claims.

10                   **“Distribution(s)”** means any transfer under the Plan of Cash or other property or  
11 instruments to a Holder of an Allowed Claim.

12                   **“Distribution Date(s)”** means the date(s) for making Distributions to Holders of  
13 Allowed Unsecured Claims in accordance with Sections IV.B.3.b. and c. and IV. B. 4 hereof.

14                   **“Effective Date”** means the first Business Day after the date when all of the  
15 following have occurred:

16                   (i) the Confirmation Order shall have become a Final Order; provided, however,  
17 at the option of the Proponents, the Confirmation Order, if it is subject to a pending appeal  
18 or certiorari proceeding, may be considered a Final Order provided no court of competent  
19 jurisdiction has entered an order staying the effect of the Confirmation Order;

20                   (ii) the Liquidating Trust Agreement is final and approved and the Liquidating  
21 Trustee has been selected;

22                   (iii) all actions, documents and agreements necessary to implement the Plan will  
23 have been effected or executed;

24                   (iv) the Debtor will have received all authorizations, consents, rulings, opinions  
25 or other documents that are determined by the Proponents to be necessary to implement the  
26 Plan; and

27                   (v) the sale of the Debtor’s Real Property shall have closed.  
28



1 In no event shall the Effective Date occur more than ninety (90) calendar days  
2 following entry of the Confirmation Order, unless extended by ordered by the Bankruptcy Court.

3 **“Estate”** means the estate created in the Case under section 541 of the Bankruptcy  
4 Code.

5 **“Exhibit Filing Date”** means a Business Day on which drafts of all Exhibits to the  
6 Plan shall be Filed and which day shall be no later than the day the Proponents serve Creditors with  
7 copies of the Plan and Disclosure Statement. The Proponents reserve the right to File amended or  
8 revised versions of any Exhibit through and including the Confirmation Date.

9 **“File” or “Filed”** means filed with the Bankruptcy Court in the Case.

10 **“Final Order”** means an order or judgment of the Bankruptcy Court, as entered on  
11 its docket, which has not been reversed, stayed, modified or amended, and as to which (a) the time to  
12 appeal, petition for certiorari, or move for re-argument or rehearing has expired and as to which no  
13 appeal, petition for certiorari, or other proceedings for re-argument or rehearing shall then be  
14 pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been  
15 waived in writing in form and substance satisfactory to the Debtor or the Liquidating Trustee, as  
16 applicable, or (b) in the event that an appeal, writ of certiorari, or re-argument or rehearing thereof  
17 has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall  
18 have been affirmed by the highest court to which such order or judgment was appealed, or certiorari  
19 has been denied, or from which re-argument or rehearing was sought, and the time to take any  
20 further appeal, petition for certiorari or move for re-argument or rehearing shall have expired.

21 **“Foundation”** means San Diego Hospice Foundation, Inc.

22 **“General Bar Date”** means April 26, 2013, the deadline for filing Prepetition  
23 Claims, except for Claims held by governmental entities, based on damages resulting from the  
24 rejection of an executory contracts or unexpired leases, or recoveries from Avoiding Power Causes  
25 of Action.

26 **“General Unsecured Claims” or “Unsecured Claims”** means Claims that are not  
27 Administrative Claims, a Priority Tax Claims, Claims secured by a lien on any Assets of the Debtor  
28 or the Subordinated Claim.

1                   **“Governmental Unit Bar Date”** means August 5, 2013, the date that is the first  
2 business day after the 180 days after the entry of the order for relief, which occurred on the Petition  
3 Date.

4                   **“Holder”** means the owner of a Claim against the Debtor, provided, however, with  
5 respect to transfers of Claims governed by Bankruptcy Rule 3001(e), in order for the transferor to be  
6 deemed the Holder of the Claim for distribution purposes, the deadline for any objection to the  
7 proposed transfer of a Claim must have passed with either (1) no objection to the transfer having  
8 been Filed, or (2) any objection to such transfer having been resolved in favor of the transferor by no  
9 later than thirty days prior to the initial Distribution Date.

10                   **“Impaired”** means, when used with respect to a Claim, the legal, equitable and  
11 contractual rights to which a Claim entitles the Holder of such Claim are unaltered by the Plan.

12                   **“Judgment Rate”** means the interest rate as set forth in 28 U.S.C. § 1961(a) on a  
13 federal judgment entered on the Petition Date, which was .15% per annum.

14                   **“Liquidating Trustee”** means the trustee of the Liquidating Trust to be selected by  
15 the Committee at least 10 days prior to the Confirmation Hearing, and any successor trustee(s)  
16 appointed pursuant to the Liquidating Trust Agreement, that has the powers and responsibilities set  
17 forth in the Plan, the Confirmation Order and the Liquidating Trust Agreement and in such capacity  
18 shall act as a liquidator of Liquidating Trust Assets for the benefit of Holders of Allowed Claims.  
19 Whenever the Liquidating Trustee is referred to herein, all such references are qualified by the  
20 Liquidating Trustee’s powers, rights and obligations as set forth in the applicable Liquidating Trust  
21 Agreement.

22                   **“Liquidating Trustee’s Agents”** means, collectively, employees, officers, directors,  
23 agents, members, representatives, or professionals employed or retained by the Liquidating Trustee.

24                   **“Liquidating Trust”** means the certain trust as described in Section VI.C of the Plan,  
25 created pursuant to the Plan, Confirmation Order, and Liquidating Trust Agreement, and created for  
26 the benefit of Holders of all Allowed Claims. Except as otherwise expressly provided in the Plan, all  
27 of the Debtor’s Assets will be transferred to the Liquidating Trust on the Effective Date. The  
28 Liquidating Trust will continue and conclude the work started by the Debtor to resolve all Disputed

1 Claims, liquidate the Liquidating Trust Assets, including the resolution of any Causes of Action,  
2 make Distributions to the Holders of Allowed Claims, and pay the expenses of the Liquidating Trust,  
3 all as provided in the Plan.

4 **“Liquidating Trust Agreement”** means the Liquidating Trust Agreement by and  
5 among the Debtor, the SDH Trust Committee and the Liquidating Trustee to be entered into pursuant  
6 to the Plan and the Confirmation Order, substantially in the form of **Exhibit B** hereto, as it may be  
7 amended from time to time, a copy of which will be filed by the Exhibit Filing Date.

8 **“Liquidating Trust Assets”** means any and all of the Debtor’s Assets, including, but  
9 not limited to, Cash, Causes of Action, and other personal property that remain property of the  
10 Debtor on the Effective Date, all of which shall be transferred to the Liquidating Trust by the Debtor  
11 on the Effective Date, plus the Liquidating Trust Proceeds. The Liquidating Trust Assets shall be  
12 free and clear of any liens, claims or interests that might otherwise have existed in favor of any  
13 party, except as otherwise provided in the Plan or the Confirmation Order.

14 **“Liquidating Trust Expense(s)”** means all voluntary and involuntary costs,  
15 expenses, charges, obligations, or liabilities of any kind or nature, including, but not limited to,  
16 expenses that are unmatured, contingent, or unliquidated (collectively, the “Expenses”) incurred by  
17 the Liquidating Trust after the Effective Date until the Liquidating Trust is dissolved, including, but  
18 not limited to: (i) the Expenses of the Liquidating Trust incurred in connection with administering  
19 and implementing the Plan; (ii) all fees that accrue after the Effective Date that are payable to the  
20 U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (iii) the Expenses of the Liquidating Trust in  
21 making the Distributions required by the Plan, including paying taxes and filing tax returns; (iv) any  
22 Expenses incurred by the SDH Trust Committee or the Liquidating Trust resulting from the  
23 employment of independent contractors and professionals (including, without limitation, attorneys,  
24 advisors, accountants, brokers, consultants, experts, professionals and other Persons) providing  
25 necessary services to the SDH Trust Committee or the Liquidating Trust, and (v) any expenses  
26 incurred by the members of the SDH Trust Committee related to their service as members of the  
27 SDH Trust Committee.  
28

1                   **“Liquidating Trust Expense Reserve”** means the reserve created by the Liquidating  
2 Trustee and funded out of the Liquidating Trust Assets for the payment of Liquidating Trust  
3 Expenses throughout the life of the Liquidating Trust.

4                   **“Liquidating Trust Proceeds”** means any and all Cash, property and other rents,  
5 profits and/or proceeds derived from the Liquidating Trust Assets, including reducing Causes of  
6 Action to Cash.

7                   **“Miscellaneous Secured Claims”** means Claims that are Secured Claims against the  
8 Debtor that are not separately classified in this Plan. **The Proponents are unaware of any**  
9 **Miscellaneous Secured Claims.**

10                   **“Non-Ordinary Course Administrative Claims”** means Administrative Claims, but  
11 excluding Ordinary Course Administrative Claims, 503(b)(9) Claims; Professional Fee Claims, or  
12 U.S. Trustee Fees.

13                   **“Non-Ordinary Course Administrative Claim Bar Date”** means the date that is 45  
14 days after the Effective Date.

15                   **“Non-Ordinary Course Administrative Claim Objection Deadline”** means the  
16 date that is at least fourteen (14) days prior to the hearing date set with the Bankruptcy Court for the  
17 request for the allowance of the Non-Ordinary Course Administrative Claim.

18                   **“Ordinary Course Administrative Claims”** means Claims for administrative costs  
19 or expenses that are allowable under section 503(b) of the Bankruptcy Code that are incurred in the  
20 ordinary course of the Debtor's operations but excluding 503(b)(9) Claims.

21                   **“Person”** means any natural person or entity.

22                   **“Petition Date”** means February 4, 2013, the date on which the Debtor Filed its  
23 voluntary petition for relief commencing its Case.

24                   **“Plan”** means this liquidating plan of reorganization under chapter 11 of the  
25 Bankruptcy Code, including, without limitation, all exhibits, supplements, appendices, and schedules  
26 hereto, either in its present form or as it may be altered, amended, or modified from time to time.

27                   **“Plan Documents”** means those documents necessary to effectuate the Plan.  
28

1                   **“Post-Effective Date Notice List”** means the list of Persons who have requested  
2 notice in accordance with Section VIII.U of this Plan of hearings and other matters as to which the  
3 Bankruptcy Code requires that notice be given.

4                   **“Postpetition”** means the time from and after the Petition Date, February 4, 2013,  
5 through the Effective Date.

6                   **“Prepetition”** means prior to the Petition Date.

7                   **“Priority Employee Claims”** means those Claims of the Debtor’s employees which  
8 both (i) constitute unpaid wages (if any), benefits and PTO owed to such employees as of the date  
9 the employee was terminated and (ii) constitute Priority Claims under sections 507(a)(4) and (5) of  
10 the Bankruptcy Code.

11                   **“Priority Non-Tax Claims”** means Claims, other than Administrative Claims or  
12 Priority Tax Claims, entitled to priority in right of payment under section 507(a) of the Bankruptcy  
13 Code, including, but not limited to, Priority Employee Claims.

14                   **“Priority Tax Claims”** means Claims entitled to priority under section 507(a)(8) of  
15 the Bankruptcy Code.

16                   **“Professionals”** means those Persons providing advisory or consulting services (i)  
17 retained pursuant to an order of the Bankruptcy Court in accordance with sections 327, 1103 and/or  
18 1106 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective  
19 Date pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code or (ii) for which  
20 compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to sections  
21 330 and 503(b)(2) of the Bankruptcy Code.

22                   **“Professional Fee Claim”** means a Claim under sections 327, 328, 330, 331, 503, or  
23 1103 of the Bankruptcy Code for compensation for professional services rendered or expenses  
24 incurred on the Estate's behalf; but not a Claim either under section 503(b)(4) of the Bankruptcy  
25 Code for compensation for professional services rendered or under section 503(b)(3)(D) of the  
26 Bankruptcy Code for expenses incurred in making a substantial contribution to the Estate, which is a  
27 Non-Ordinary Course Administrative Claim and is subject to the Non-Ordinary Course  
28 Administrative Claim Bar Date.

1                   **“Proponents”** means, collectively, the Debtor and the Committee.

2                   **“Pro Rata”** means proportionately so that the ratio of (a) the amount of consideration  
3 distributed on account of a particular Allowed Claim to (b) the amount of such Allowed Claim is the  
4 same as the ratio of (x) the amount of consideration distributed on account of all Allowed Claims of  
5 the class in which the particular Allowed Claim is included to (y) the amount of all Allowed Claims  
6 of that class.

7                   **“PTO”** means accrued and unused paid time off owed to any employee of the  
8 Debtor.

9                   **“Real Property”** means, the real property located at 4311 Third Avenue, San Diego,  
10 California.

11                   **“Record Date”** means, for purposes of Distributions under this Plan, the  
12 Confirmation Date.

13                   **“Scheduled”** means set forth on the Schedules.

14                   **“Schedules”** means the Schedules of Assets and Liabilities and the Statement of  
15 Financial Affairs Filed by the Debtor with the Bankruptcy Court, pursuant to section 521(a) of the  
16 Bankruptcy Code, Bankruptcy Rule 1007(b), and the Official Bankruptcy Forms, as may be  
17 amended from time to time.

18                   **“SDH Trust Committee”** means the committee that will function after the Effective  
19 Date in accordance with Section VI.D. hereof, the initial members of which will be the following:  
20 Brookwood Crossroads Investors, LLC, Inc., represented by Evelyn M. Murphy; Medline Industries,  
21 Inc., represented by Shane Reed; Outcome Resources LLC, represented by Martin McDonough;  
22 GlenBrook Skilled Nursing, represented by Darolyn Jorgensen-Kares; and Departure, represented by  
23 Emily Rex.

24                   **“Secured Claims”** means Claims of a Creditor that are secured by a valid,  
25 enforceable and unavoidable lien against property in which the Estate has an interest or that was  
26 subject to setoff under the Bankruptcy Code, to the extent of the value of such Creditor’s interest in  
27 the Estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may  
28 be.

1                   **“Subordinated Claim”** means that portion of the CMS Claim that is subordinated to  
2 all other Allowed Claims in the Case.

3                   **“Unclassified Claims”** means Claims that are not part of any Class, including  
4 Administrative Claims and Priority Tax Claims..

5                   **“Unimpaired”** means that the legal, equitable, and contractual rights to which a  
6 Claim entitles the Holder of such Claim are not altered pursuant to the Plan.

7                   **“U.S. Trustee”** means the Office of the United States Trustee for the Southern  
8 District of California.

9                   **“U.S. Trustee Fees”** means all fees and charges assessed against the applicable  
10 Estate by the U.S. Trustee and due pursuant to 28 U.S.C. § 1930.

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

12 **1. Defined Terms**

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

16 **2. Rules of Interpretation**

17 For purposes of the Plan:

18                   a. whenever from the context it is appropriate, each term, whether stated in the  
19 singular or the plural, shall include both the singular and the plural;

20                   b. any payment required under the Plan on a particular date shall be made on  
21 such date or as soon thereafter as practicable;

22                   c. any reference in the Plan to a contract, instrument, release or other agreement  
23 or document being in a particular form or on particular terms and conditions means that such  
24 document shall be substantially in such form or substantially on such terms and conditions, delivered  
25 and Filed on or before the Exhibit Filing Date as an exhibit to the Plan;

26                   d. any reference in the Plan to an existing document or exhibit Filed or to be  
27 Filed means such document or exhibit, as it may have been or may be amended, modified or  
28

1 supplemented through and including the Confirmation Date which, after they are Filed, may be  
2 amended, modified or supplemented only with the express written consent of the Proponents;

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

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

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

9 h. all exhibits to the Plan and Plan Documents are incorporated herein,  
10 regardless of when those exhibits are Filed;

11 i. to the extent any discrepancy exists between the description contained herein  
12 of a document or agreement that is an exhibit to the Plan and with the provisions of that exhibit, the  
13 actual agreement or document shall govern; and

14 j. the rules of construction set forth in section 102 of the Bankruptcy Code shall  
15 apply.

16 **3. Time Periods**

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

19 **III.**

20 **DESIGNATION OF CLASSES OF CLAIMS**

21 The following is a designation of the classes of Claims under the Plan. Administrative  
22 Claims and Priority Tax Claims have not been classified and are excluded from the following  
23 Classes in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim is classified in a  
24 particular Class only to the extent that the Claim qualifies within the description of that Class and is  
25 classified in a different Class to the extent that any remainder of the Claim qualifies within the  
26 description of such different Class. A Claim is in a particular Class only to the extent that the Claim  
27 is an Allowed Claim and has not been paid, released, or otherwise satisfied before the Effective  
28 Date.



1 **A. Classes of Claims**

2 **1. Miscellaneous Secured Claims (Class 1)**

3 Class 1 consists of the Miscellaneous Secured. Each Claim that is a Miscellaneous Secured  
4 Claim shall be deemed to be classified in a separate sub-Class of Class 1. Each such sub-Class of  
5 Class 1 shall be deemed to be a separate Class under this Plan and, for purposes of voting on the  
6 Plan, each sub-Class shall be deemed to be Impaired and, therefore, each shall be entitled to vote on  
7 the Plan. The Proponents are currently unaware of any Miscellaneous Secured Claims.

8 **2. Priority Non-Tax Claims (Class 2)**

9 Class 2 consists of Priority Non-Tax Claims, including, but not limited to Priority Employee  
10 Claims.

11 **3. General Unsecured Claims (Class 3)**

12 Class 3 consists of all Unsecured Claims other than the CMS Claim.

13 **4. Subordinated Claim (Class 4)**

14 Class 4 consists of the CMS Claim.

15 **B. Unimpaired and Impaired Classes**

16 Class 2 is Unimpaired by the Plan. Classes 1, 3 and 4 are Impaired under the Plan. The  
17 treatment of Allowed Claims in the Unimpaired and the Impaired Classes in this Plan is in full and  
18 complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed  
19 Claim in the Unimpaired and the Impaired Classes. Holders of Claims in the Impaired Classes are  
20 entitled to vote on the Plan.

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

22 If the Plan is confirmed by the Bankruptcy Court, except as specifically set forth in this Plan,  
23 the treatment of Claims under in the Plan supersedes and replaces any agreements or rights the  
24 Holders of the Claims have in or against the Debtor or its Assets. **EXCEPT AS SPECIFICALLY**  
25 **SET FORTH IN THIS PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS**  
26 **WILL BE RETAINED ON ACCOUNT OF ANY CLAIM, WHETHER AN ALLOWED**  
27 **CLAIM OR NOT.**  
28

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

2 All Distributions under the Plan made on the Effective Date will be tendered to the Holders  
3 of the Allowed Claims effective as of the Record Date.

4 **IV.**

5 **TREATMENT OF CLAIMS**

6 **A. Unclassified Claims**

7 Certain types of Claims are not placed into Classes; instead, such Claims are Unclassified  
8 Claims. Such Unclassified Claims are not considered impaired and they do not vote on the Plan  
9 because they are automatically entitled to specific treatment provided for them in the Bankruptcy  
10 Code. As such, the Proponents have not placed the following Claims in a Class. The respective  
11 treatments for these Claims are provided below.

12 **1. Allowance of Administrative Claims**

13 **a. Allowance of Non-Ordinary Course Administrative Claims**

14 Unless otherwise expressly provided in the Plan, Non-Ordinary Course Administrative  
15 Claims will be Allowed Claims only if:

- 16 (i) On or before the **Non-Ordinary Course Administrative Claim Bar**  
17 **Date, which is 45 days after the Effective Date**, the entity holding such Non-  
18 Ordinary Course Administrative Claim both Files with the Court the Non-Ordinary  
19 Course Administrative Claim and serves it on the Liquidating Trust, and  
20 (ii) an order is entered by the Bankruptcy Court allowing the Non-  
21 Ordinary Course Administrative Claim.

22 **Entities holding Non-Ordinary Course Administrative Claims, including, but not**  
23 **limited to, any Claims held by former employees of the Debtor that arose after the Petition**  
24 **Date, that do not File and serve a request for payment by the Non-Ordinary Course**  
25 **Administrative Claim Bar Date will be forever barred from asserting those Claims against the**  
26 **Debtor, the Estate, the Liquidating Trust, or their respective property.**

27 The Debtor or the Liquidating Trust, as the case may be, must File any objection to a Non-  
28 Ordinary Course Administrative Claims at least fourteen days prior to the hearing date on such

1 Claim and any reply to such objection must be Filed at least seven days prior to the hearing date  
2 pursuant to Local Bankruptcy Rule 9013-1(f) and (g). If the Person who Filed the Non-Ordinary  
3 Course Administrative Claim does not set the matter for a hearing, the Debtor or Liquidating Trust  
4 must File any objection to such Non-Ordinary Course Administrative Claim on or before 45 days  
5 after such Claim has been Filed and request a hearing date on such Non-Ordinary Course  
6 Administrative Claim.

7 Claims of Professionals brought under section 503(b)(3) of the Bankruptcy Code are subject  
8 to the Non-Ordinary Course Administrative Claims Bar Date.

9 b. Allowance of Ordinary Course Administrative Claims

10 Holders of Ordinary Course Administrative Claims (i.e., claims for administrative costs or  
11 expenses that are allowable under section 503(b) of the Bankruptcy Code that are incurred in the  
12 ordinary course of the Debtor's operations, including but not limited to PTO that accrued after the  
13 Petition Date but remains unused) shall not be required to File any request for payment of such  
14 Claims.

15 c. Allowance of 503(b)(9) Claims

16 Holders of 503(b)(9) Claims were required to File their Claims by the April 26, 2013, the  
17 General Bar Date. A 503(b)(9) Claim will be an Allowed 503(b)(9) Claim if (i) no objection or  
18 motion to estimate, equitably subordinate, reclassify, set off, or otherwise limit the recovery thereon  
19 has been asserted before the expiration of the Claims Objection Deadline or (ii) any objection or  
20 motion to estimate, equitably subordinate, reclassify, or set off has been resolved by agreement  
21 between the Creditor and the Debtor or the Liquidating Trustee or by Final Order of the Bankruptcy  
22 Court.

23 d. Allowance of Professional Fee Claims

24 Each Holder of a Professional Fee Claim seeking an award by the Bankruptcy Court of  
25 compensation for services rendered or reimbursement of expenses incurred through and including  
26 the Effective Date must (i) file its final application for allowances of compensation for services  
27 rendered and reimbursement of expenses incurred through the Effective Date by no later than the  
28 forty-fifth (45th) day following the Effective Date. Any objection to such Professionals Fee Claims

1 shall be filed on or before the date specified in the application for final compensation. All such  
2 requests for payment of such Professional Fee Claims will be subject to the authorization and  
3 approval of the Bankruptcy Court. **Persons holding Professional Fee Claims who do not timely**  
4 **File and serve a final fee application will be forever barred from asserting those Claims against**  
5 **the Debtor, the Liquidating Trustee, or the property of the Liquidating Trust, unless otherwise**  
6 **ordered by the Bankruptcy Court.**

7 **2. Treatment of Administrative Claims**

8 a. Payment of Allowed Non-Ordinary Course Administrative Claims

9 Except to the extent that any entity entitled to payment of a Non-Ordinary Course Allowed  
10 Administrative Claim agrees to a less favorable treatment, each Holder of a Non-Ordinary Course  
11 Allowed Administrative Claim will receive in full satisfaction, discharge, exchange and release  
12 thereof, Cash in an amount equal to such Allowed Non-Ordinary Course Administrative Claim on  
13 the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Non-Ordinary  
14 Course Administrative Claim becomes an Allowed Non-Ordinary Course Administrative Claim, or,  
15 in either case, as soon thereafter as is practicable.

16 b. Payment of Allowed Ordinary Course Administrative Claims

17 Each Ordinary Course Administrative Claim, unless disputed by Debtor or the Liquidating  
18 Trustee, shall be satisfied by the Debtor or the Liquidating Trustee, as the case may be, under the  
19 terms and conditions of the particular transaction giving rise to that Ordinary Course Administrative  
20 Claim without any further action by the Holder of such Ordinary Course Administrative Claim.

21 c. Payment of 503(b)(9) Claims

22 Except to the extent that any Holder of a 503(b)(9) Claim agrees to a less favorable  
23 treatment, each Holder of a 503(b)(9) Claim will receive in full satisfaction, discharge, exchange and  
24 release thereof, Cash in an amount equal to such Allowed amount of the 503(b)(9) Claim plus  
25 interest at the Judgment Rate from the Petition Date to the date of payment on the later of (i) the  
26 Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such 503(b)(9) Claim becomes an  
27 Allowed Claim, or, in either case, as soon thereafter as is practicable.  
28

1                   d.       Payment of Professionals

2                   Holders of Professional Fee Claims, to the extent approved by the Bankruptcy Court, are to  
3 be paid, in full satisfaction, discharge, exchange and release thereof, Cash in such amounts as are  
4 Allowed by the Bankruptcy Court on the date such Professional Fee Claim becomes an Allowed  
5 Claim, or as soon thereafter as is practicable.

6                   e.       Payment of U.S. Trustee Fees

7                   On or before the Effective Date, all fees payable under 28 U.S.C. § 1930, as determined by  
8 the Bankruptcy Court at the Confirmation Hearing, shall be paid in Cash, in full. The Debtor will  
9 continue to file the Post-Confirmation Quarterly Reports as required until the Effective Date. After  
10 the Effective Date, the Liquidating Trust will file the Post-Confirmation Quarterly Reports as they  
11 become due until the Case is closed under section 350 of the Bankruptcy Code.

12               **3.       Treatment of Priority Tax Claims**

13               The Proponents are not aware of any Priority Tax Claims. To the extent any such Claims  
14 exist, in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, except as otherwise agreed  
15 to by the parties, each holder of an Allowed Priority Tax Claim shall receive deferred Cash  
16 payments over a period not exceeding five (5) years from the Petition Date. Payments shall be made  
17 in equal, quarterly installments and each installment shall include simple interest accrued on the  
18 unpaid portion of such Claim at the Judgment Rate per annum from and after the Effective Date;  
19 provided, however, that the Liquidating Trustee reserves the right to pay any Allowed Priority Tax  
20 Claim, or any remaining balance of such Allowed Claim, in full, at any time on or after the Effective  
21 Date without premium or penalty. Notwithstanding the forgoing, any Allowed Priority Tax Claims  
22 that were secured by property of the Debtor, if not paid upon the closing of the sale of any property  
23 that secures such secured Priority Tax Claim, shall be paid in full on the Effective Date.

24               **B.       Classified Claims**

25               **1.       Class 1 (Miscellaneous Secured Claims)**

26               Class 1 is Impaired under the Plan. As soon as practicable after the Liquidating Trust makes  
27 its election as set forth below, each Holder of an Allowed Miscellaneous Secured Claim, except to  
28 the extent that the Holder of a particular Claim has agreed to a different treatment, shall receive, at

1 the election of the Liquidating Trust, in its sole discretion, one of the following treatments in full  
2 satisfaction, discharge, exchange and release of its Allowed Miscellaneous Secured Claim:

3 a. The Liquidating Trust shall transfer the collateral it owns and holds that  
4 secures such Allowed Miscellaneous Secured Claim to the Holder of the Claim in full satisfaction  
5 and release of such Claim;

6 b. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous  
7 Secured Claim cash equal to the amount of its Allowed Miscellaneous Secured Claim, or such lesser  
8 amount to which the Holder of such Claim shall agree, in full satisfaction and release of such Claim;

9 c. The Liquidating Trust shall reinstate the Allowed Miscellaneous Secured  
10 Claim in compliance with section 1124(2) of the Bankruptcy Code and shall not otherwise alter the  
11 legal, equitable, or contractual rights to which such claim entitles the Holder;

12 d. The Liquidating Trust shall pay the Holder of the Allowed Miscellaneous  
13 Secured Claim, on account of such Claim, deferred Cash payments, pursuant to section  
14 1129(b)(2)(A)(i)(II) of the Bankruptcy Code, totaling at least the Allowed amount of such Claim, of  
15 a present value, as of the Effective Date, of at least the value of such Holder's interest in the Debtor's  
16 interest in property that serves as collateral for such Claim; or

17 e. The Liquidating Trust shall deliver to the Holder of the Allowed  
18 Miscellaneous Secured Claim the indubitable equivalent of such Claim.

19 The Liquidating Trust shall have ten (10) business days after the later of the Effective Date or  
20 the date upon which the Miscellaneous Secured Claim becomes and Allowed Miscellaneous Secured  
21 Claim to elect which treatment to provide to the Holder of such Allowed Miscellaneous Secured  
22 Claims but may make the election at any such earlier date as the Debtor deems appropriate. The  
23 Proponents are currently unaware of any Miscellaneous Secured Claims.

24 **2. Class 1A (Wells Fargo Secured Claim)**

25 **C. Classification and Treatment of Wells Fargo Secured Claim**

26 Class 1A is Unimpaired under the Plan. The Liquidating Trust, on the later of (i) the  
27 Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Wells Fargo Secured Claim  
28 becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable, shall transfer

1 collateral it owns and holds that secures the Allowed Wells Fargo Secured Claim up to an amount  
2 sufficient in value to satisfy the Allowed Wells Fargo Secured Claim to the Holder of the Wells  
3 Fargo Secured Claim in full satisfaction and release of such Claim.

4 **1. Class 2 (Priority Non-Tax Claims)**

5 Class 2 is Unimpaired under the Plan. Each Holder of an Allowed Class 2 Claim will be paid  
6 in Cash, in full, with interest at the Judgment Rate from the Petition Date to the date of Payment on  
7 the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day after such Priority Non-  
8 Tax Claim becomes an Allowed Priority Claim, or, in either case, as soon thereafter as is practicable.

9 **2. Class 3 (General Unsecured Claims)**

10 Class 3 is Impaired under the Plan. The Allowed Class 3 Claims will be satisfied as follows:

11 a. On the later of (i) the Effective Date, and (ii) the fifteenth (15<sup>th</sup>) Business Day  
12 after such General Unsecured Claim becomes an Allowed Claim, or, in either case, as soon  
13 thereafter as is practicable, the Liquidating Trustee will distribute Available Cash to the Holders of  
14 Allowed Class 3 Claims on a *Pro Rata* basis;

15 b. If at any time after the Effective Date the Liquidating Trust is holding more  
16 than \$1,000,000 in Available Cash or at such times as instructed by the SDH Trust Committee  
17 (unless such instruction is determined by the Court on motion by the Liquidating Trust to be  
18 unreasonable), the Liquidating Trustee will distribute the Available Cash to the Holders of Allowed  
19 Class 3 General Unsecured Claims on a *Pro Rata* basis, provided, however, the Liquidating Trustee  
20 will not pay the Holders of the Allowed General Unsecured Claims more than the full amount of the  
21 Allowed General Unsecured Claims plus interest calculated on the balance of the Allowed General  
22 Unsecured Claims at the Judgment Rate from the Effective Date through the date the Allowed  
23 General Unsecured Claims are paid in full; and

24 c. Upon the resolution of all Claims and litigation, and the liquidation of all  
25 Liquidating Trust Assets, the Liquidating Trustee shall distribute all Cash remaining in the  
26 Liquidating Trust by making a final distribution to the Holders of Allowed Class 3 General  
27 Unsecured Claims, provided, however, the Liquidating Trustee will not pay the Holders of the  
28 Allowed General Unsecured Claims more than the full amount of the Allowed General Unsecured

1 Claims plus interest calculated on the balance of the Allowed General Unsecured Claims at the  
 2 Judgment Rate from the Effective Date through the date the Allowed General Unsecured Claims are  
 3 paid in full.

4 **3. Class 4 (CMS Claim)**

5 Class 4 is Impaired under the Plan. CMS, the Holder of the Allowed Class 4 Claim, if CMS  
 6 agrees to the terms of proposed settlement, will have a bifurcated Claim. (a) a General Unsecured  
 7 Claim in an amount equal to the aggregate amount of the Allowed Class 3 Claims, (the “Tier One  
 8 CMS Claim”) and (b) a Subordinated Claim for the balance. The Tier One CMS Claim will be paid  
 9 *Pro Rata* with Class 3 until all Class 3 Claims and the Tier One CMS Claim are paid in full with  
 10 interest at the Judgment Rate. The CMS Subordinated Claim will be paid all Cash remaining after  
 11 payment in full of all other Allowed Claims, the expenses of the Liquidating Trust, and the expenses  
 12 of the SDH Trust Committee.<sup>2</sup>

13 If CMS does not agree to the proposed treatment of its Claim as set forth above, the Debtor,  
 14 the Committee, or both will file a motion to estimate the CMS Claim for distribution purposes and  
 15 the CMS Claim, once estimated, will be paid *Pro Rata* with Allowed Class 3 Claims.

16 **V.**

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

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

19 Each executory contract or unexpired lease of the Debtor that (i) has not expired by its own  
 20 terms before the Effective Date, (ii) previously has not been assumed or rejected by the Debtor, (iii)  
 21 is not the subject of a pending motion to assume or reject that has been Filed and served prior to the  
 22 Confirmation Date, or (iv) does not constitute a contract of insurance in favor of, or that benefits, the  
 23 Debtor or the Liquidating Trust is rejected as of the Effective Date pursuant to section 365 of the  
 24 Bankruptcy Code. The Confirmation Order shall constitute an order of the Bankruptcy Court  
 25 approving such rejection as of the Effective Date.

26 \_\_\_\_\_  
 27 <sup>2</sup> Liquidating Trustee will not pay CMS on its Subordinated Claim more than the full amount of the Allowed CMS  
 28 Subordinated Claim plus interest calculated on the balance of the Allowed CMS Subordinated Claim at the Judgment  
 Rate from the Effective Date through the date the Allowed CMS Subordinated Claim is paid in full.



1 Nothing in the Plan, any Exhibit to the Plan, or any document executed or delivered in  
2 connection with the Plan or any such Exhibit creates any obligation or liability on the part of the  
3 Debtor, the Liquidating Trust, or any other Person that is not currently liable on such obligation,  
4 with respect to any executory contract or unexpired lease.

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

6 If the rejection of an executory contract or unexpired lease pursuant to the Plan and the  
7 Confirmation Order gives rise to a Claim by the other party or parties to such contract or lease, such  
8 Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, or the  
9 Liquidating Trust unless a proof of Claim is Filed and served on the Debtor or the Liquidating Trust,  
10 as the case may be, and its counsel within **thirty (30) days after the entry of the Confirmation**  
11 **Order**. All such Claims for which proofs of Claim are required to be Filed, if Allowed, will be, and  
12 will be treated as, General Unsecured Claims, subject to the provisions of the Plan.

13 As soon as practicable after the entry of the Confirmation Order, but no later than ten (10)  
14 days thereafter, the Proponents shall File and serve on each non-Debtor counterparty to a contract or  
15 lease the rejection of which is approved by the Confirmation Order a written notice of the bar date  
16 for rejection Claims.

17 **C. Insurance Policies**

18 For the avoidance of doubt, the Debtor's rights with respect to all insurance policies under  
19 which the Debtor may be beneficiaries (including all insurance policies that may have expired prior  
20 to the Petition Date, all insurance policies in existence on the Petition Date, all insurance policies  
21 entered into by the Debtor after the Petition Date, and all insurance policies under which the Debtor  
22 holds rights to make, amend, prosecute and benefit from claims), are either retained by the  
23 Liquidating Trust or cancelled, in the Liquidating Trustee's discretion (with the advice of the SDH  
24 Trust Committee), after the Effective Date until its dissolution. Upon the Effective Date, any  
25 existing insurance policies that can be assigned and all proceeds of such policies will be transferred  
26 or assigned by the Debtor to the Liquidating Trust pursuant to this Plan. Notwithstanding any  
27 provision providing for the rejection of executory contracts, any insurance policy that is deemed to  
28 be an executory contract shall neither be rejected nor assumed by operation of this Plan and shall be

1 the subject of a specific motion by the Liquidating Trust or the Liquidating Trustee, as the case may  
2 be, who shall retain the right to assume or reject any such executory contracts pursuant to and  
3 subject to the provisions of section 365 of the Bankruptcy Code following the Effective Date.

4 **VI.**

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

6 **A. Implementing Actions In General; Conditions to the Effective Date**

7 As a condition to effectiveness of the Plan, the following must occur:

8 (i) the Confirmation Order shall have become a Final Order; provided,  
9 however, at the option of the Proponents, the Confirmation Order, if it is subject to a  
10 pending appeal or certiorari proceeding, may be considered a Final Order provided  
11 no court of competent jurisdiction has entered an order staying the effect of the  
12 Confirmation Order;

13 (ii) the Liquidating Trust Agreement is final and approved and the  
14 Liquidating Trustee has been selected;

15 (iii) all actions, documents and agreements necessary to implement the  
16 Plan will have been effected or executed;

17 (iv) the Debtor will have received all authorizations, consents, rulings,  
18 opinions or other documents that are determined by the Proponents to be necessary  
19 to implement the Plan; and

20 (v) the sale of the Debtor's Real Property shall have closed.

21 The Plan will not be consummated or become binding unless and until the Effective Date  
22 occurs, which shall in all events occur prior to the date that is 90 days following entry of the  
23 Confirmation Order, unless the Confirmation Order is stayed or an order of the Court extending the  
24 Effective Date for good cause shown is entered pursuant to a motion seeking such extension that was  
25 filed prior to the expiration of said 90 day period.

26 The Proponents may in their reasonable discretion waive any of the conditions to the  
27 Effective Date except condition (i) without notice and a hearing. Unless the condition is waived as  
28 set forth above, the failure to satisfy any condition may be asserted by the Proponents as a basis to

1 allege that the Effective Date has not occurred regardless of the circumstances giving rise to the  
2 failure of such condition to be satisfied (including, without limitation, any act, action, failure to act,  
3 or inaction by the Debtor). If the Proponents fail to assert the non-satisfaction of any such  
4 conditions, such failure will not be deemed a waiver of any other rights hereunder.

5 As soon as practicable after the occurrence of the Effective Date, but no later than ten (10)  
6 days thereafter, the Liquidating Trust shall File and serve on each Holder of a Claim a written notice  
7 of occurrence of Effective Date.

8 **B. Debtor's Authority**

9 Upon the Effective Date, all transactions and applicable matters provided for under the Plan  
10 will be deemed to be authorized and approved by the Debtor without any requirement of further  
11 action by the Court, the Debtor or the Debtor's board of directors.

12 **C. Dissolution of the Debtors and Termination of Current Officers, Directors, Employees**  
13 **and Counsel**

14 From and after the Effective Date, the Debtor shall be dissolved and the Liquidating Trustee  
15 shall be authorized to take all action necessary to dissolve the Debtor.

16 On the Effective Date, the employment, retention, appointment and authority of all officers,  
17 directors, employees and professionals of the Debtor shall be deemed to terminate. No compensation  
18 will be paid to insiders of the Debtor after the Effective Date unless, in the sole discretion of the  
19 Liquidating Trustee with the advice of the SDH Trust Committee, the Liquidating Trust retains an  
20 insider for assistance in the liquidation of the Liquidating Trust Assets or resolution of the claims  
21 filed against the Debtor.

22 **D. Liquidating Trust**

23 **1. Effectiveness of the Liquidating Trust**

24 On the Effective Date the Liquidating Trust Agreement, **Exhibit B** hereto, which will be  
25 Filed by the Exhibit Filing Date, will become effective. The Liquidating Trust is organized and  
26 established as a trust for the benefit of the Beneficiaries and is intended to qualify as a liquidating  
27 trust within the meaning of Treasury Regulation Section 301.7701-4(d). The Liquidating Trust shall  
28 not terminate until all Liquidating Trust Expenses of the Liquidating Trust and the SDH Trust

1 Committee have been satisfied and all the remaining Liquidating Trust Assets have been disbursed  
2 to Beneficiaries. Richard Kipperman has been selected by the Committee to serve as the initial  
3 Liquidating Trustee.

4 **2. Beneficiaries**

5 In accordance with Treasury Regulation Section 301.7701-4(d), the Beneficiaries of the  
6 Liquidating Trust will be the Holders of all Allowed Claims against the Debtor whose Allowed  
7 Claims have not been previously satisfied in full. Each such Holder of an Allowed Claim will  
8 receive its share of the Liquidating Trust Assets as provided for in the Plan and the Liquidating Trust  
9 Agreement. The Beneficiaries of the Liquidating Trust shall be treated as the grantors and owners of  
10 such Beneficiaries' respective portions of the Liquidating Trust.

11 **3. Implementation of the Liquidating Trust**

12 On the Effective Date, the Debtor shall take all such actions as are required to transfer from  
13 the Debtor all of the Debtor's Assets to the Liquidating Trust. From and after the Effective Date, the  
14 Liquidating Trustee will be authorized to, and will take all such actions as required to implement the  
15 Liquidating Trust Agreement and the provisions of the Plan as are contemplated to be implemented  
16 by the Liquidating Trustee, including, without limitation, directing and causing Distributions to be  
17 made to Holders of Allowed Claims pursuant to the terms of the Plan, objecting to Claims, and  
18 prosecuting, determining not to prosecute or otherwise resolving any Causes of Action, subject to the  
19 oversight, direction and approval of the SDH Trust Committee as set forth in the Liquidating Trust  
20 Agreement.

21 In the event that the Liquidating Trustee cannot take any action, including, without  
22 limitation, the prosecution of any Causes of Action or the objection to any Claim, by reason of an  
23 actual or potential conflict of interest or in the event the Liquidating Trustee disagrees with the  
24 directions of the SDH Trust Committee (discussed below), the SDH Trust Committee acting by a  
25 majority is authorized to take any such action(s) in his place and stead, including without limitation,  
26 the retention of professionals (which may include professionals retained by the Liquidating Trustee)  
27 for such purpose of taking such actions.  
28

1           **4.       Transfer of Debtor's Assets**

2           On the Effective Date, the Debtor is authorized and directed to transfer, grant, assign,  
3 convey, set over, and deliver to the Liquidating Trust all of the Debtor's right, title and interest in  
4 and to the remaining Debtor's Assets, including, without limitation, all Cash, free and clear of all  
5 liens, claims, encumbrances or interests of any kind in such Debtor's Assets, except as otherwise  
6 expressly provided in the Plan. To the extent required to implement the transfer of the Debtor's  
7 Assets from the Debtor to the Liquidating Trust, all Persons will cooperate with the Debtor to assist  
8 the Debtor to implement said transfers.

9           **5.       Vesting of Assets**

10           Unless otherwise expressly provided under this Plan, on the Effective Date, all of the  
11 Debtor's Assets will vest in the Liquidating Trust free and clear of all claims, liens, encumbrances,  
12 charges and other interests, subject to the provisions of the Plan. On and after the Effective Date, the  
13 transfer of the Debtor's Assets to the Liquidating Trust will be deemed final and irrevocable and  
14 Distributions will be made from the Liquidating Trust.

15           In connection with the foregoing:

16           (a)       On the Effective Date, the appointment of the Liquidating Trustee shall  
17 become effective and the Liquidating Trustee shall begin to administer the Liquidating Trust  
18 pursuant to the terms of the Liquidating Trust Agreement and the Plan and may use, acquire  
19 and dispose of the Liquidating Trust Assets free of any restrictions imposed under the  
20 Bankruptcy Code.

21           (b)       The Confirmation Order will provide the Liquidating Trustee with express  
22 authority to convey, transfer and assign any and all of the Liquidating Trust Assets in  
23 accordance with the terms of this Plan and the Liquidating Trust Agreement and to take all  
24 actions necessary to effectuate same and to prosecute or not prosecute, as the Liquidating  
25 Trustee deems appropriate, any and all objections to Claims or Causes of Action.

26           (c)       As of the Effective Date, the Liquidating Trust Assets will be free and clear  
27 of all liens, claims and interests of Holders of Claims, except as otherwise provided in the  
28 Plan.

1           **6.       Funding of the Liquidating Trust**

2           The funding of the Liquidating Trust for the payments to be made to Holders of Allowed  
3 Claims under the Plan and the payment of Post-Effective Date Expenses will be from (a) the  
4 Debtor's Cash on hand as of the Effective Date and proceeds from the investment of such Cash, and  
5 (b) the proceeds of the liquidation by the Liquidating Trustee of any other Liquidating Trust Assets.

6           **7.       No Liability of Liquidating Trustee**

7           **To the maximum extent permitted by law, the Liquidating Trustee and the Liquidating**  
8 **Trustee's Agents will not have or incur liability to any Person for an act taken or omission**  
9 **made in good faith in connection with or related to the administration of the Liquidating Trust**  
10 **Assets, the implementation of the Plan and the Distributions made thereunder. The**  
11 **Liquidating Trustee and the Liquidating Trustee's Agents will in all respects be entitled to**  
12 **reasonably rely on the advice of counsel with respect to their duties and responsibilities under**  
13 **the Plan and the Liquidating Trust Agreement. Entry of the Confirmation Order constitutes a**  
14 **judicial determination that the exculpation provision contained in Section VIII.A. of the Plan**  
15 **is necessary, *inter alia*, to facilitate Confirmation and feasibility of the Plan and to minimize**  
16 **potential claims arising after the Effective Date for indemnity, reimbursement or contribution**  
17 **from the Liquidating Trust or the Liquidating Trust Assets. The Confirmation Order's**  
18 **approval of the Plan also constitutes a *res judicata* determination of the matters included in the**  
19 **exculpation provisions of the Plan.**

20           **Notwithstanding the foregoing, nothing herein or in Section VIII.A. of the Plan will**  
21 **alter any provision in the Liquidating Trust Agreement that provides for the potential liability**  
22 **of the Liquidating Trustee to any Person.**

23           **8.       Funding of the Liquidating Trust's Liquidating Trust Expenses**

24           All expenses related to implementation of the Plan incurred from and after the Effective Date  
25 will be expenses of the Liquidating Trust, and the Liquidating Trustee will disburse funds from the  
26 Liquidating Trust Assets, as appropriate, for purposes of paying the Liquidating Trust Expenses  
27 without the need for any further Order of the Court. The Liquidating Trust Expenses shall include,  
28 but are not limited to (a) actual costs and expenses of the members of the SDH Trust Committee

1 incurred in connection with their duties as members of the SDH Trust Committee, (b) the fees and  
2 expenses of (i) the Liquidating Trustee, (ii) the attorneys or any other professionals retained by the  
3 SDH Trust Committee, and (iii) the attorneys and other professionals retained by the Liquidating  
4 Trustee, and (c) other expenses of the Liquidating Trust, if any, until the Liquidating Trust is  
5 dissolved.

6 **9. Provisions Relating to Federal Income Tax Compliance**

7 A transfer to the Liquidating Trust shall be treated for all purposes of the Internal Revenue  
8 Code of 1986, as amended (the "Internal Revenue Code"), as a transfer to Creditors to the extent  
9 Creditors are beneficiaries of the Liquidating Trust. For example, such treatment shall apply for  
10 purposes of sections 61(a)(12), 483, 1001, 1012, and 1274 of the Internal Revenue Code. Any such  
11 transfers shall be treated for federal income tax purposes as a deemed transfers to the  
12 Beneficiaries/Creditors followed by deemed transfers by the Beneficiaries/Creditors to the  
13 Liquidating Trust. The Beneficiaries shall be treated for federal income tax purposes as the grantors  
14 and deemed owners of the Liquidating Trust.

15 **E. The SDH Trust Committee**

16 As provided herein and in the Liquidating Trust Agreement, as of the Effective Date, there  
17 will be formed the SDH Trust Committee that will have consultation, approval and information  
18 rights with respect to the Liquidating Trust as set forth in the Liquidating Trust Agreement. The  
19 initial members of the SDH Trust Committee will be as follows: Brookwood Crossroads Investors,  
20 LLC, Inc., represented by Evelyn M. Murphy; Medline Industries, Inc., represented by Shane Reed;  
21 Outcome Resources LLC, represented by Martin McDonough; GlenBrook Skilled Nursing,  
22 represented by Darolyn Jorgensen-Kares; and Departure, represented by Emily Rex.

23 The SDH Trust Committee will prescribe its own rules of procedure and bylaws; provided,  
24 however, that such rules of procedure and bylaws will not be inconsistent with the terms of the Plan  
25 or the Liquidating Trust Agreement. If an SDH Trust Committee member assigns its Claim in full or  
26 releases the Debtor or Liquidating Trust from payment of the balance of its Claim, such act will  
27 constitute a resignation from the SDH Trust Committee. Until a vacancy on the SDH Trust  
28 Committee is filled, the SDH Trust Committee will function in its reduced number. The SDH Trust

1 Committee's rules of procedure may provide that, in the event any member of the SDH Trust  
2 Committee resigns or otherwise is unable to serve subsequent to the Effective Date, the SDH Trust  
3 Committee may appoint a replacement that represents, to the greatest extent practicable, the same  
4 interests that were represented by the departing member and has the capacity and competency to  
5 serve in place of the resigned or deceased member without approval by the Bankruptcy Court.

6 Except for the reimbursement of reasonable actual costs and expenses incurred in connection  
7 with their duties as members of the SDH Trust Committee, the members of the SDH Trust  
8 Committee will serve without compensation. Reasonable expenses incurred by members of the SDH  
9 Trust Committee may be paid by the Liquidating Trust without need for Bankruptcy Court approval.

10 The SDH Trust Committee will have authority to employ, at the expense of the Liquidating  
11 Trust, counsel or any other professionals.

12 **The SDH Trust Committee and its members will not be liable for any act any member**  
13 **may do or fail to do as a member of the SDH Trust Committee while acting in good faith and**  
14 **in the exercise of the member's best judgment. No member of the SDH Trust Committee will**  
15 **be liable in any event for claims, liabilities or damages unless they arise from such member's**  
16 **personal gross negligence or willful misconduct.**

17 The SDH Trust Committee will dissolve upon the completion of all distributions to  
18 Beneficiaries of the Liquidating Trust and the termination of that Liquidating Trust in accordance  
19 with the terms of the Plan and the Liquidating Trust Agreement.

20 **F. Representative of the Estate**

21 The Liquidating Trustee from the Effective Date until the Liquidating Trust is terminated  
22 will be appointed as the representative the Estate pursuant to sections 1123(a)(5), (a)(7) and  
23 (b)(3)(B) of the Bankruptcy Code and as such will be vested with the authority and power to *inter*  
24 *alia*: (i) object to Claims against the Debtor; (ii) administer, investigate, prosecute, and settle or  
25 abandon all Causes of Action; (iii) make Distributions provided for in the Plan, including, but not  
26 limited to, on account of Allowed Claims; and (iv) take such action as required to administer, wind-  
27 down, and close the Case. As the representative of the Estate, the Liquidating Trustee will succeed  
28 to all of the rights and powers of the Debtor and the Estate with respect to all Assets transferred to



1 the Liquidating Trust and then the Liquidating Trustee, as of the Effective Date, will be substituted  
2 and will replace the Debtor and the Estate, as the party in interest in any litigation pending as of the  
3 Effective Date.

4 **G. The Committee**

5 The Committee shall continue in existence until the Effective Date. As of Effective Date, the  
6 Committee shall terminate and disband and the members of the Committee and the Committee shall  
7 be released and discharged of and from all further authority, duties, responsibilities and obligations  
8 related to and arising from their service as Committee members.

9 **H. Earmarked Charitable Donations**

10 Donations that were made to the Debtor and that the Debtor holds as of the Effective Date  
11 that were earmarked for a special purpose by the donor (the “Earmarked Charitable Donations”)  
12 shall be under the control of the Liquidating Trust from and after the Effective Date. The  
13 Liquidating Trustee shall use the Earmarked Charitable Donations in accordance with the directions  
14 from the California Attorney General.

15 **I. Unrestricted Charitable Donations**

16 Donations that were made to the Debtor and that the Debtor holds as of the Effective Date  
17 that were not earmarked for a special purpose by the donor (the “Unrestricted Charitable  
18 Donations”) shall be under the control of the Liquidating Trust from and after the Effective Date.  
19 The Unrestricted Charitable Donations will become part of the Liquidating Trust Assets and can be  
20 utilized by the Liquidating Trustee to pay the Liquidating Trust Expenses and for Distributions to  
21 Beneficiaries.

22 **J. Provisions Governing Distributions**

23 **1. Disbursing Agent**

24 The Liquidating Trustee, after the Effective Date until the Liquidating Trust terminates, will  
25 serve as the Disbursing Agent under the Plan or shall select another entity to serve as the Disbursing  
26 Agent. Any entity other than the Liquidating Trustee that acts as a Disbursing Agent for the  
27 Liquidating Trust will be an agent of the Liquidating Trustee and not a separate taxable entity with  
28 respect to, for example, the assets held, income received or disbursements or Distributions made for

1 the Liquidating Trustee. The Liquidating Trustee will not be required to provide a bond in  
2 connection with the making of any distributions pursuant to the Plan.

3 The Disbursing Agent will make all Distributions required under this Plan. The Disbursing  
4 Agent shall be authorized to implement such procedures as it deems necessary to make Distributions  
5 pursuant to this Plan so as to efficiently and economically assure prompt and accurate Distributions.

6 **2. The Source of Distributions**

7 The sources of all Distributions and payments made by the Liquidating Trustee under the  
8 Plan will be Cash that vests in the Liquidating Trust as of the Effective Date and proceeds from the  
9 investment of Cash, the liquidation by the Liquidating Trust of any non-Cash Liquidating Trust  
10 Assets, and any proceeds from the investment of the Liquidating Trust Assets. Prior to any  
11 Distribution to any Holders of Allowed Claims under the Plan, the Liquidating Trustee shall  
12 establish and fund the Liquidating Trust Expense Reserve and thereafter maintain sufficient funds  
13 therein to satisfy the anticipated ongoing Liquidating Trust Expenses of the Liquidating Trust.

14 The sources of all Distributions and payments made by the Liquidating Trustee under the  
15 Plan and the Liquidating Trust Agreement will be the Liquidating Trust Assets.

16 A chart of the sources and uses of funds will be filed by the Exhibit Filing Date as Plan  
17 **Exhibit C.**

18 **3. Distribution Dates**

19 The date of the initial Distribution by the Liquidating Trust shall be on the Effective Date or  
20 as soon thereafter as is practicable. Each subsequent Distribution Date shall be as set forth in  
21 Sections IV.B.3.b. and c. and IV.B.4.

22 **4. Manner of Cash Payments**

23 Distributions made pursuant to the Plan will be in United States funds, by check drawn on a  
24 domestic bank, or, if the Liquidating Trustee so elects in its discretion for Distributions to certain  
25 large Creditors, by wire transfer from a domestic bank.

26 **5. Setoff and Recoupment**

27 **Notwithstanding anything to the contrary in the Plan, the Liquidating Trustee may set**  
28 **off, recoup, or withhold against the Distributions to be made on account of any Allowed Claim**

1 any Claims or Causes of Action that the Debtor or the Estate held against the entity holding  
2 the Allowed Claim. The Debtor, the Estate, and the Liquidating Trust will not waive or  
3 release any Claim or Cause of Action against those entities by failing to effect such a setoff or  
4 recoupment, by failing to assert any such matter prior to Confirmation or the Effective Date,  
5 by allowing any Claim against the Debtor or the Estate, or by making a Distribution on  
6 account of an Allowed Claim.

7 **6. No De Minimis Distributions**

8 Notwithstanding anything to the contrary in this Plan, no Distribution of less than \$20.00 will  
9 be made to any Holder of an Allowed Claim on account thereof. No consideration will be provided  
10 in lieu of the *de minimis* Distributions that are not made under this Section.

11 **7. Fractional Cents**

12 When any payment of a fraction of a cent would otherwise be called for, the actual payment  
13 will reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of less  
14 than \$0.005 and rounding up in the case of \$0.005 or more); provided, however, that, in no event,  
15 will a Distribution of less than \$20.00 will be made to any Holder of an Allowed Claim on account  
16 thereof as set forth above.

17 **8. No Distributions with Respect to Disputed Claims**

18 Notwithstanding any other Plan provision, no Distributions will be made on account of a  
19 Disputed Claim. Distribution on a Disputed Claim will be made when the Disputed Claim becomes  
20 or is deemed to be an Allowed Claim for purposes of Distributions.

21 **9. Undeliverable or Unclaimed Distributions**

22 Distributions to entities holding Allowed Claims will initially be made by mail as follows:

23 (a) Distributions will be sent to the address, if any, set forth on a filed proof of  
24 claim as amended by any written notice of address change received by the Debtor prior to the  
25 Effective Date or Liquidating Trustee no later than ten (10) Business Days prior to the date of  
26 any Distribution; or  
27  
28

1 (b) If no such address is available, Distributions will be sent to the address set  
2 forth on the Schedules or address otherwise readily obtainable by a cursory review of the  
3 Debtor's other books and records.

4 If no address is available either on a proof of claim or on the Schedules or on the Debtor's  
5 other books and records after a cursory review, the Distribution will be deemed to be undeliverable.  
6 If a Distribution is returned to the Liquidating Trustee as an undeliverable Distribution or is deemed  
7 to be an undeliverable Distribution, the Liquidating Trustee will not make any further Distribution to  
8 the Holder of the Claim on which the Distribution is being made, except as provided below.

9 Any entity that is otherwise entitled to an undeliverable Distribution and that does not, within  
10 45 days after a Distribution is returned as undeliverable, provide the Liquidating Trustee with a  
11 written notice asserting its claim to or interest in that undeliverable Distribution and setting forth a  
12 current, deliverable address will be deemed to waive any claim to or interest in that undeliverable  
13 Distribution and will be forever barred from receiving that undeliverable Distribution or asserting  
14 any Claim against the Debtor, the Estate, the Liquidating Trust or their respective property. Any  
15 undeliverable Distributions that are not claimed hereunder will be distributed to other Holders of  
16 Allowed Claims pursuant to the terms of the Plan. If after the occurrence of the Effective Date, any  
17 amount of undeliverable Distributions remains undistributed after all Holders of Allowed Claims  
18 have been paid and after all the Liquidating Trust Expenses have been paid in full, the balance of the  
19 funds available from undeliverable Distributions shall be donated as directed by the California  
20 Attorney General. Nothing herein requires the Liquidating Trustee to attempt to locate any entity  
21 holding an Allowed Claim whose distribution is undeliverable.

22 **10. Distribution Checks Not Cashed**

23 If a Distribution check is not cashed within 90 days after it is mailed to the Holder of the  
24 Claim on which the Distribution is being made, the Liquidating Trustee will cancel payment on that  
25 check and will not make any further Distribution to the Holder of the Claim on which the  
26 Distribution is being made, except as provided below.

27 Any entity that is otherwise entitled to a Distribution but who failed to cash a Distribution  
28 check within the allotted time and that does not, within 45 days after payment on the Distribution

1 check is cancelled, provide the Liquidating Trustee with a written notice asserting its claim to or  
2 interest in that cancelled Distribution check and setting forth a current, deliverable address will be  
3 deemed to waive any claim to or interest in that Distribution and will be forever barred from  
4 receiving that Distribution or asserting any Claim against the Debtor, the Estate, the Liquidating  
5 Trust or their respective property. Any Distributions that are not claimed hereunder will be  
6 distributed to other Holders of Allowed Claims pursuant to the terms of the Plan. Nothing herein  
7 requires the Liquidating Trustee to attempt to locate any entity holding an Allowed Claim whose  
8 Distribution check has been cancelled as provided herein.

9 **11. Record Date**

10 The record date for purposes of Distributions under this Plan shall be the Confirmation Date.  
11 To determine the names of the Holders of Claims as of the Record Date, the Liquidating Trustee will  
12 rely on the proofs of Claim and transfers of such proofs of Claim filed in the Case.

13 **K. Donation of Remaining Liquidating Trust Cash**

14 After all the Liquidating Trust Assets have been liquidated and all Allowed Claims have been  
15 fully satisfied as provided in this Plan, and all Liquidating Trust Expenses have been paid, all  
16 remaining Cash held by the Liquidating Trust shall be donated as directed by the California Attorney  
17 General.

18 **VII.**

19 **LITIGATION AND CLAIMS OBJECTIONS**

20 **A. Preservation of Rights of Action and Defenses**

21 Except as otherwise provided in the Plan, the Liquidating Trust shall retain all rights of the  
22 Debtor to commence and pursue, as appropriate, in any court or other tribunal including, without  
23 limitation, in an adversary proceeding filed in the Case, any and all Causes of Action, whether such  
24 Causes of Action accrued before or after the Petition Date, including, but not limited to, the actions  
25 specified in section VII.B. herein as well as those Causes of Action listed on **Exhibit A** to be filed  
26 by the Exhibit Filing Date.

27 Except as otherwise provided in the Plan, in accordance with section 1123(b)(3) of the  
28 Bankruptcy Code, any Claims, rights, and Causes of Action that the Debtor may hold against any

1 Person shall, on the Effective Date, vest in the Liquidating Trust. The Liquidating Trust shall retain  
2 and may exclusively enforce any and all such Claims, rights or Causes of Action, and commence,  
3 pursue and settle the Causes of Action in accordance with the Plan and the Liquidating Trust  
4 Agreement. The Liquidating Trust shall have the exclusive right, authority, and discretion to  
5 institute, prosecute, abandon, settle, or compromise any and all such claims, rights, and Causes of  
6 Action without the consent or approval of any third party and without any further order of court.

7 The Proponents are currently investigating whether to pursue potential Causes of Action  
8 against any Creditors or other Persons. The investigation has not been completed to date, and under  
9 the Plan, the Liquidating Trust retains the right on behalf of the Debtor to commence and pursue any  
10 and all Causes of Action. Potential Causes of Action currently being investigated, which may, but  
11 need not, be pursued by the Debtor or the Committee before the Effective Date or by the Liquidating  
12 Trust after the Effective Date include, without limitation, the following Causes of Action:

- 13 • All actual or potential avoidance actions pursuant to any applicable section of the  
14 Bankruptcy Code including, without limitation, sections 544, 545, 547, 548, 549, 550,  
15 551, 553(b) and/or 724(a) of the Bankruptcy Code, arising from any transaction involving  
16 or concerning the Debtor, and among others, without limitation, those entities listed on  
17 **Exhibit A-1** hereto, including, but not limited to, unauthorized postpetition transfers to  
18 the Foundation or Scripps Health and prepetition transfers to the Foundation or Scripps  
19 Health for less than adequate consideration;
- 20 • All actual or potential actions, whether legal, equitable or statutory in nature, for, or in  
21 any way involving, the collection of accounts receivable or general ledger items that are  
22 due and owing to the Debtor by any Person (collectively, the “Accounts Receivable”),  
23 including, but not limited to, the Accounts Receivable owed by the Persons listed on  
24 **Exhibit A-2** hereto;
- 25 • All actual actions or potential actions, whether legal, equitable or statutory in nature,  
26 against vendors, including, but not limited to, those vendors listed on **Exhibit A-3** hereto,  
27 for overpayment, improper setoff, warranty, indemnity, retention of double payments,  
28 retention of mis-directed wires, deductions owing or improper deductions taken, claims  
for damages arising out of goods sold to the Debtor, or any other claim arising out of the  
vendor relationship;
- All actual or potential breach of contract actions against any counterparties to contracts or  
leases, including, but not limited to, those listed on **Exhibit A-4** hereto;
- All actual or potential actions, whether legal, equitable or statutory in nature, against the  
Debtor’s current or former insurance carriers to recover unpaid reimbursements and  
claims, overpayment of premiums and fees, claims for breach of contract, indemnity

1 obligations or coverage or similar Causes of Action, including, but not limited to, those  
2 insurers listed on **Exhibit A-5** hereto;

- 3 • All actual or potential Causes of Actions, whether legal, equitable or statutory in nature,  
4 against purchasers of assets from the Debtor relating to breach of the purchase agreement  
5 or unpaid compensation thereunder, including, but not limited to, those purchasers listed  
6 on **Exhibit A-6** hereto;
- 7 • All actions or potential actions, whether legal, equitable or statutory in nature, relating to  
8 deposits or other amounts owed by any creditor, lessor, utility, supplier, vendor, or other  
9 Person, including, but not limited to those Persons listed on **Exhibit A-7** hereto;
- 10 • All actions or potential actions, whether legal, equitable or statutory in nature, relating to  
11 environmental matters;
- 12 • Any litigation or lawsuit initiated by the Debtor that is currently pending, whether in the  
13 Bankruptcy Court, or any other court or tribunal or initiated against the Debtor after the  
14 Petition Date for which the Debtor may have counterclaims or other rights, including,  
15 but, not limited to, those actions listed on **Exhibit A-8** hereto;
- 16 • Potential actions against any of the prepetition directors, officers, employees, attorneys,  
17 financial advisors, accountants, investment bankers, agents and representatives of the  
18 Debtor including, but not limited to, those Persons on **Exhibit A-9** hereto for breaches of  
19 fiduciary duty, negligent mismanagement, wasting of corporate assets, and diversion of  
20 corporate opportunity;
- 21 • All actual or potential actions, whether legal, equitable or statutory in nature, against all  
22 Persons arising out of, or in connection with, any of the Debtor's prepetition  
23 management, operation and/or reporting of financial or other information, including, but  
24 not limited to, those Persons listed on **Exhibit A-10** hereto;
- 25 • All actions or potential actions, whether legal, equitable or statutory in nature, against any  
26 of the Debtor's current or former professionals for breach of fiduciary duty, breach of  
27 contract, negligence or professional misconduct or malpractice, or other tortuous conduct,  
28 including, but not limited to, those former professionals listed on **Exhibit A-11** hereto;
- All rights against any Person for subordination of its Claims pursuant to section 510(b) of  
the Bankruptcy Code;
- All actions or potential actions against the prepetition members of the Debtor's board of  
directors and/or officers including, without limitation, the right to equitably subordinate  
claims held by such directors and officers pursuant to section 510(c) of the Bankruptcy  
Code;
- All actual or potential actions, whether legal, equitable or statutory in nature, to recover  
amounts improperly awarded to employees under the terms of any prepetition  
employment arrangement or separation agreement;
- All actual or potential contract and tort actions that may exist or may subsequently arise;

- All actual or potential actions whether legal, equitable or statutory in nature, arising out of, or in connection with the Debtor's business or operations; and
- The action to substantively consolidate the Foundation with the Debtor.

The above categories of preserved of causes of action shall not be limited in any way by reference to **Exhibit A** nor are the categories intended to be mutually exclusive.

The Committee with the cooperation of the Debtor is currently investigating various potential Causes of Action against the Foundation, including, but not limited to, possible substantive consolidation, fraudulent conveyances, and the right to funds claimed by the Foundation and hereby preserve all such possible Causes of Action. This statement is not intended to and in no way limits the preservation of any Causes of Actions against the Foundation or any other parties as set forth in this section.

In addition, there may be numerous other Causes of Action which currently exist or may subsequently arise that are not set forth herein, because the facts upon which such Causes of Action are based are not fully or currently known by the Proponents and, as a result, cannot be specifically referred to herein (collectively, the "Unknown Causes of Action"). The failure to list any such Unknown Causes of Action herein, or on **Exhibit A** to be filed by the Exhibit Filing Date is not intended to limit the rights of the Liquidating Trust to pursue any Unknown Cause of Action to the extent the facts underlying such Unknown Cause of Action become fully known to the Debtor, the Committee or the Liquidating Trust.

Unless a Claim or Cause of Action against a Creditor or other Person is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtor expressly reserves such Claim or Cause of Action for later adjudication by the Liquidating Trust (including, without limitation, Unknown Causes of Action), and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or Causes of Action upon or after the Confirmation or Effective Date of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Claims or Causes of Action have been released in the Plan or other Final Order.



1 Any Person to whom the Debtor has incurred an obligation (whether on account of services,  
2 purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer  
3 of money or property of the Debtor, or who has transacted business with the Debtor should assume  
4 that such obligation, transfer, or transaction may be reviewed by the Liquidating Trust subsequent to  
5 the Effective Date and may, if appropriate, be the subject of an action after the Effective Date,  
6 whether or not (i) such Person has filed a proof of Claim against the Debtor in this Case; (ii) such  
7 Creditor's proof of Claim has been objected to; (iii) such Creditor's Claim was included in the  
8 Debtor's Schedules; or (iv) such Creditor's scheduled Claim has been objected to by the Debtor or  
9 has been identified by the Debtor as disputed, contingent, or unliquidated.

10 As of the Effective Date, subject to the Liquidating Trust Agreement, the Liquidating  
11 Trustee, on behalf of the Liquidating Trust, will be authorized to exercise and perform the rights,  
12 powers and duties held by the Debtor's Estate with respect to the rights, claims, causes of action,  
13 defenses, and counterclaims, including, without limitation, the authority under section 1123(b)(3) of  
14 the Bankruptcy Code to provide for the settlement, adjustment, retention and enforcement of claims  
15 and interests of the Estate, without the consent or approval of any third party, and without any  
16 further order of the Bankruptcy Court.

17 The Liquidating Trustee, subject to the Liquidating Trust Agreement, from and after the  
18 Effective Date will make the decision of whether or not to pursue any Cause of Action.

19 **B. Disputed Claims**

20 **1. Disputed Claims Reserve**

21 On the Effective Date, the Liquidating Trust will establish a Disputed Claims Reserve from  
22 the Liquidating Trust's Assets on account of Disputed Claims. The Disputed Claims Reserve will  
23 initially include cash in amounts sufficient to distribute to each holder of a Disputed Claim the  
24 amount estimated by the Debtor that the Holder of Disputed Claims would receive under the Plan if  
25 its Claim should ultimately become an Allowed Claim.

26 After any Disputed Claim becomes an Allowed Claim, the Disbursing Agent, within fifteen  
27 (15) Business Days after the Disputed Claim becomes an Allowed Claim, or as soon thereafter as is  
28

1 practicable, pay the amount of the Allowed Claim pursuant to the treatment of such Allowed Claim  
2 as provided in this Plan.

3 If a Disputed Claim (i) becomes a Disallowed Claim or (ii) becomes an Allowed Claim in an  
4 amount that would result in such Allowed Claim receiving less than the amount held in the Disputed  
5 Claims Reserve on account thereof, the excess attributable to the Claim's disallowed or expunged  
6 portion will be Available Cash.

7 After Final Orders have been entered, or other final resolutions have been reached, with  
8 respect to all Disputed Claims or the Liquidating Trust has obtained an Order of the Court setting a  
9 reduced dollar amount of required reserves, any remaining Cash held in the Disputed Claims  
10 Reserve will be Available Cash.

## 11 **2. Objections to and Resolution of Disputed Claims**

12 On and after the Effective Date, the Liquidating Trust will have the right to make and file  
13 objections to any Claim of any nature and to prosecute, settle and/or withdraw such objections. The  
14 Liquidating Trustee will have the authority to compromise, settle, withdraw or otherwise resolve any  
15 objections to a Claim without approval of the Bankruptcy Court; provided, however, that the the  
16 Liquidating Trustee may in its discretion seek relief before the Bankruptcy Court with respect to any  
17 Disputed Claim. The Liquidating Trust will file and serve all objections to 503(b)(9) Claims,  
18 Priority Claims, and General Unsecured Claims upon the Holder of the Claim as to which the  
19 objection is made no later than 90 days after the Effective Date, provided, however, that nothing  
20 herein will reduce the time permitted under applicable statutes of limitation for bringing any  
21 affirmative Causes of Action that the Liquidating Trust may assert against any third party. The  
22 Claim Objection Deadline may be extended only by an order of the Bankruptcy Court.

## 23 **VIII.**

### 24 **OTHER PLAN PROVISIONS**

#### 25 **A. Exculpation and Release of Committee and Its Professionals**

26 **Except to the extent arising from willful misconduct or gross negligence, any and all**  
27 **Claims, liabilities, causes of action, rights, damages, costs and obligations held by any party**  
28 **against the Committee and/or the individual members of the Committee (and their respective**

1 officers, directors, employees, affiliates and agents), and/or each of their respective attorneys,  
2 accountants, agents and other professionals, whether known or unknown, matured or  
3 contingent, liquidated or unliquidated, existing, arising or accruing, whether or not yet due in  
4 any manner related to the Postpetition administration of the Case, any Postpetition act or  
5 omission in connection with, arising out of, or related to the Case, or the formulation,  
6 negotiation, prosecution or implementation of the Plan, will be deemed fully waived, barred,  
7 released and discharged in all respects, except as to rights, obligations, duties, claims and  
8 responsibilities preserved, created or established by terms of this Plan.

9 Pursuant to section 1125(e) of the Bankruptcy Code, the Committee and its present and  
10 former members, and each of their respective affiliates, officers, directors, employees, agents,  
11 advisors, representatives, successors or assigns, and any Professionals employed by any of the  
12 foregoing Persons will neither have nor incur any liability to any Person for their role in  
13 soliciting acceptances of this Plan.

14 **B. Injunction**

15 The Plan is the sole means for resolving, paying or otherwise dealing with Claims. To  
16 that end, except as expressly provided in the Plan, at all times on and after the Effective Date,  
17 all Persons who have been, are, or may be Holders of Claims against the Debtor arising prior  
18 to the Effective Date, will be permanently enjoined from taking any of the following actions, on  
19 account of any such Claim, against the Debtor, the Estate, the Liquidating Trust, the  
20 Liquidating Trust or their respective property (other than actions brought to enforce any  
21 rights or obligations under the Plan):

- 22 (i) commencing, conducting or continuing in any manner, directly or  
23 indirectly any suit, action, or other proceeding of any kind against the Debtor, the  
24 Estate, the Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee, their  
25 successors, or their respective property or assets (including, without limitation, all suits,  
26 actions, and proceedings that are pending as of the Effective Date which will be deemed  
27 to be withdrawn or dismissed with prejudice);  
28

1           (ii)    **Enforcing, levying, attaching, executing, collecting, or otherwise**  
2 **recovering by any manner or means whether directly or indirectly any judgment,**  
3 **award, decree, or order against the Debtor, the Estate, the Liquidating Trust, the**  
4 **Liquidating Trust, or the Liquidating Trustee, their successors, or their respective**  
5 **property or assets;**

6           (iii)   **creating, perfecting, or otherwise enforcing in any manner, directly or**  
7 **indirectly, any lien, security interest or encumbrance against the Debtor, the Estate, the**  
8 **Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee, their successors,**  
9 **or their respective property or assets; and**

10          (iv)   **proceeding in any manner in any place whatsoever against the Debtor,**  
11 **the Estate, the Liquidating Trust, the Liquidating Trust, or the Liquidating Trustee,**  
12 **their successors, or their respective property or assets, that does not conform to or**  
13 **comply with the provisions of the Plan.**

14           Nothing in this Section VIII. A. or the Confirmation Order shall enjoin or act to enjoin the  
15 Liquidating Trustee from pursuing any claim, right or Cause of Action preserved under the terms of  
16 this Plan as set forth above in Section VII.A.

17 **C.    Nondischarge of the Debtor**

18           In accordance with section 1141(d)(3) of the Bankruptcy Code, the Confirmation Order will  
19 not discharge Claims. However, no Holder of a Claim may receive any payment from, or seek  
20 recourse against, any Assets that are to be distributed under the Plan other than Assets required to be  
21 distributed to that Holder pursuant to the Plan.

22 **D.    Remedy in Event of Default Under the Plan**

23           If there is a material default at any time during the term of this Plan by the Liquidating  
24 Trustee in the performance of any of the duties or obligations of the Liquidating Trust under the  
25 Plan, any Creditor that is damaged by such failure may pursue its remedies in any court of competent  
26 jurisdiction, including, but not limited to, filing a motion to dismiss or convert this Case.

27  
28

1 **E. Entry of Final Decree**

2 Promptly following the liquidation of all of the non-cash Liquidating Trust Assets and the  
3 completion of all Distributions to the Holders of the Allowed Claims, the Liquidating Trust will file  
4 a motion with the Bankruptcy Court to obtain entry of a final decree closing the Debtor's Case.  
5 After entry of the final decree, the Liquidating Trustee, on behalf of the Liquidating Trust, will be  
6 authorized in its sole and absolute discretion to discard or destroy any and all pre-Effective Date  
7 books and records of the Debtor in the Liquidating Trust's custody or control. The Liquidating  
8 Trustee will continue to preserve the post-Effective Date books and records subject to further  
9 Bankruptcy Court order.

10 **F. Post-Effective Date Quarterly Reports and Fees**

11 From and after the Effective Date, the Liquidating Trustee, on behalf of the Liquidating  
12 Trust, shall File all required Quarterly Reports if any, and serve the Quarterly Report on the U.S.  
13 Trustee and shall pay all U.S. Trustee Fees if any.

14 **G. Exemption from Stamp, Transfer and Other Taxes**

15 Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of  
16 assets under the Plan by the Debtor, the creation of any mortgage, deed of trust, or other security  
17 interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or  
18 instrument of transfer under, in furtherance of, or in connection with the Plan, will not be subject to  
19 any stamp, real estate transfer, mortgage recording, or other similar tax.

20 **H. Withholding and Reporting Requirements**

21 In connection with the consummation of the Plan, the Liquidating Trust will comply with all  
22 withholding and reporting requirements imposed by any federal, state, local or foreign taxing  
23 authority and all Distributions hereunder will be subject to any such withholding and reporting  
24 requirements. The Liquidating Trust may reasonably request tax reporting information from persons  
25 entitled to receive Distributions under the Plan and may withhold the payment of such Distributions  
26 pending the receipt of such tax reporting information.

1 **I. Pre-Confirmation Injunction and Stays**

2 Unless otherwise provided, all injunctions or stays arising under or entered during the Case  
3 pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the  
4 Confirmation Date, will remain in full force and effect until the Effective Date at which time the  
5 injunction contained in Section VIII.A shall become effective.

6 **J. Retention of Jurisdiction**

7 After Confirmation of the Plan and occurrence of the Effective Date, the Bankruptcy Court  
8 will retain such jurisdiction as is legally permissible, including for the following purposes:

9 1. To resolve any and all disputes regarding the operation and interpretation of  
10 the Plan or the Confirmation Order;

11 2. To determine the allowability, classification, or priority of any Claim or  
12 interest, based on any objection by the Debtor, the Liquidating Trust, or by other parties in interest  
13 with standing to bring such objection or proceeding;

14 3. To determine the extent, validity, and priority of any lien asserted against  
15 property of the Debtor, property of the Estate, or the Liquidating Trust Assets;

16 4. To construe and to take any action to (a) enforce and execute the Plan, the  
17 Confirmation Order, and any other order of the Bankruptcy Court; (b) issue such orders as may be  
18 necessary for the implementation, execution, performance, and consummation of the Plan, the  
19 Confirmation Order and all matters referred to in the Plan and the Confirmation Order; and  
20 (c) determine all matters that may be pending before the Bankruptcy Court in this Case on or before  
21 the Effective Date with respect to any Person;

22 5. To determine any and all applications for allowance of compensation and  
23 reimbursement of expenses of Professionals for periods on or before the Effective Date;

24 6. To determine any other request for payment of administrative expenses;

25 7. To resolve any dispute regarding the implementation, execution, performance,  
26 consummation, or interpretation of the Plan or the Confirmation Order;

27 8. To determine motions for the rejection, assumption, or assignment of  
28 executory contracts or unexpired leases and the allowance of any Claims resulting therefrom;

1           9. To adjudicate all adversary proceedings and contested matters, if any, initiated  
2 by the Liquidating Trust to pursue retained causes of action;

3           10. To determine all applications, motions, adversary proceedings, contested  
4 matters, and any other litigated matters commenced during the Case whether before, on, or after the  
5 Effective Date;

6           11. To determine such other matters and for such other purposes as may be  
7 provided in the Confirmation Order;

8           12. To modify the Plan under section 1127 of the Bankruptcy Code in order to  
9 remedy any apparent defect or omission in the Plan or to reconcile any inconsistency in the Plan so  
10 as to carry out its intents and purposes;

11           13. To issue injunctions or take such other actions or issue such other orders as  
12 may be necessary or appropriate to restrain interference with the Plan or the Confirmation Order or  
13 their implementation by any person or entity;

14           14. To issue such orders as may be appropriate in the event that the Confirmation  
15 Order is, for any reason, stayed, revoked, modified, reversed or vacated; and

16           15. To issue such orders in aid of consummation of the Plan and the Confirmation  
17 Order, notwithstanding any otherwise applicable nonbankruptcy law, with respect to any person or  
18 entity, to the full extent authorized by the Bankruptcy Code or Bankruptcy Rules.

19 **K. Successors and Assigns**

20           The rights, benefits and obligations of any entity named or referred to in the Plan are binding  
21 on, and will inure to the benefit of, any permitted heirs, executors, administrators, successors or  
22 assigns of such entity.

23 **L. Modification or Withdrawal of the Plan**

24           In accordance with section 1127 of the Bankruptcy Code, the Proponents reserve the right to  
25 alter, amend, modify, revoke or withdraw the Plan or any Plan exhibit or schedule, including  
26 amending or modifying it to satisfy the requirements of the Bankruptcy Code. The Proponents  
27 reserve the right to withdraw the Plan before the Confirmation Date. Any such modifications or  
28 withdrawal can only be accomplished by the agreement of both Proponents. If, prior to the

1 Confirmation of the Plan, the Proponents disagree regarding modifications to or withdrawal of the  
2 Plan, either may withdraw as a proponent of the Plan and the remaining Proponent will become the  
3 sole proponent of the Plan and the confirmation process will continue.

4 **M. Severability of Plan Provisions**

5 If, before Confirmation, the Bankruptcy Court holds that any Plan term or provision is  
6 invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so  
7 that it is valid and enforceable to the maximum extent possible consistent with the original purpose  
8 of that term or provision, so long as such alternative interpretation does not materially alter the  
9 rights, remedies and distributions under the Plan of parties in interest in this Case. That term or  
10 provision will then be applicable as altered or interpreted. Notwithstanding any such holding,  
11 alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and  
12 effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will  
13 constitute a judicial determination providing that each Plan term and provision, as it may have been  
14 altered or interpreted in accordance with this Section, is valid and enforceable under its terms.

15 **N. Exhibits**

16 Any Exhibits to the Plan that are not filed with the Plan will be Filed not later than the  
17 Exhibit Filing Date. Copies of all such Exhibits not filed and served with the Plan will not be served  
18 by any method other than ECF, but will be available upon written request to the Debtor's or the  
19 Committee's counsel.

20 **O. No Admission**

21 Except as specifically provided in the Plan, nothing contained in the Plan shall be deemed or  
22 construed in any way as an admission by the Debtor, the Estate or the Committee with respect to any  
23 matter set forth in the Plan , including the amount or allowability of any Claim, or the value of any  
24 property of the Estate.

25 Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the  
26 Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will:  
27 (a) be deemed to be an admission by the Debtor or the Committee with respect to any matter  
28 discussed in the Plan, including liability on any Claim or the propriety of any Claim's classification;



1 (b) constitute a waiver, acknowledgement, or release of any Claims or any claims held by the  
2 Debtor; or (c) prejudice in any manner the rights of the Debtor, the Estate, or the Committee in any  
3 further proceedings.

4 **P. General Authority**

5 The Debtor shall execute such documents, and take such other actions, as are necessary to  
6 effectuate the transactions provided for in the Plan.

7 **Q. Binding Effect**

8 The Plan and all rights, duties and obligations thereunder shall be binding upon and inure to  
9 the benefit of the Debtor, the Committee, Holders of Claims, the Liquidating Trust, the Liquidating  
10 Trustee and their respective successors and assigns.

11 **R. Governing Law**

12 Unless a rule of law or procedure is supplied by federal law (including, but not limited to, the  
13 Bankruptcy Code and Federal Rules of Bankruptcy Procedure), the rights and obligations arising  
14 under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the  
15 State of California, without giving effect to the principles of conflict of laws thereof. Unless a rule  
16 of law or procedure is supplied by federal law (including, but not limited to, the Bankruptcy Code  
17 and Federal Rules of Bankruptcy Procedure), the rights and obligations arising under any agreement,  
18 contract, document, or instrument provided for or executed in connection with the Plan, shall be  
19 governed by, and construed and enforced in accordance with express choice of law provision in such  
20 an agreement, contract, document, or instrument; provided, however, if no rule of law or procedure  
21 is supplied by federal law (including, but not limited to, the Bankruptcy Code and Federal Rules of  
22 Bankruptcy Procedure) and if no choice of law provision is contained in such an agreement,  
23 contract, document, or instrument, such agreement, contract, document, or instrument shall be  
24 governed by, and construed and enforced in accordance with, the laws of the State of California,  
25 without giving effect to the principles of conflict of laws thereof.

1 **S. Payment or Distribution Dates**

2 Whenever any payment or Distribution to be made under the Plan shall be due on a day other  
3 than a Business Day, such payment or distribution shall instead be made, without interest, on the  
4 immediately following Business Day.

5 **T. Headings**

6 The headings used in the Plan are inserted for convenience only and neither constitutes a  
7 portion of the Plan nor in any manner affects the construction of the provisions of the Plan.

8 **U. No Waiver**

9 The failure of the Debtor or the Committee or any other person to object to any Claim for  
10 purposes of voting shall not be deemed a waiver of the Debtor's, the Committee's, or the Liquidating  
11 Trust's right to object to or examine such Claim, in whole or in part.

12 **V. Post-Effective Date Notice**

13 From and after the Effective Date, any Person who desires notice of any pleading or  
14 document filed in the Case, or of any hearing in the Court, or of any matter as to which the  
15 Bankruptcy Code requires notice to be provided, will file a request for post-Effective Date notice  
16 and will serve the request on the Liquidating Trustee. Any Person filing such a request will be  
17 placed on the Post-Effective Date Notice List. The U.S. Trustee, the SDH Trust Committee, and the  
18 Liquidating Trustee will be deemed to have requested post-Effective Date notice and will be placed  
19 on the Post-Effective Date Notice List without taking any further action.

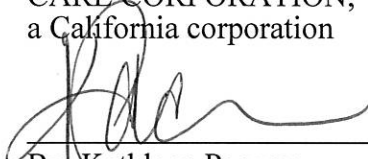
IX.

**CONDITIONS TO CONFIRMATION**

The only conditions precedent to Confirmation of the Plan are that at least one of Classes 1, 3, and 4 have voted to accept the Plan and the Bankruptcy Court shall have entered the Confirmation Order in a form acceptable to the Proponents.

Dated: June 24, 2013

SAN DIEGO HOSPICE AND PALLIATIVE CARE CORPORATION,  
a California corporation



By: Kathleen Pacurar  
Its: Chief Executive Officer

Dated: June \_\_\_\_, 2013

OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR SAN DIEGO HOSPICE AND PALLIATIVE CARE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman

Submitted by:

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Samuel R. Maizel  
Samuel R. Maizel (CA Bar No. 189301)  
Jeffrey L. Kandel (CA Bar No. 115832)  
Teddy M. Kapur (CA Bar No. 242486)  
Attorneys for the Official Committee of Unsecured Creditors

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

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