

1 SAMUEL R. MAIZEL (SBN 189301)
samuel.maizel@dentons.com
2 TANIA M. MOYRON (SBN 235736)
tania.moyron@dentons.com
3 REBECCA M. WICKS (SBN 313608)
rebecca.wicks@dentons.com
4 Dentons US LLP
601 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5704
Telephone: 213 623 9300
6 Facsimile: 213 623 9924

JEFFREY N. POMERANTZ (SBN
143717)
jpomerantz@pszjlaw.com
STEVEN W. GOLDEN (Admitted *Pro*
Hac Vice)
sgolden@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES
LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
Telephone: 310 227 6910
Facsimile: 310 201 0760

7 Attorneys for Chapter 11 Debtor and
Debtor In Possession

Attorneys to the Official Committee of
Unsecured Creditors

9
10 **UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 In re:

12 BORREGO COMMUNITY
HEALTH FOUNDATION,
13
14 Debtor and Debtor In Possession.

Case No. 22-02384
Chapter 11 Case

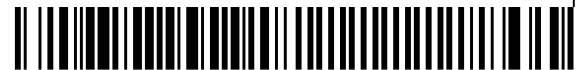
**FIRST AMENDED JOINT COMBINED
DISCLOSURE STATEMENT AND
CHAPTER 11 PLAN OF LIQUIDATION
OF BORREGO COMMUNITY HEALTH
FOUNDATION**

Judge: Hon. Laura S. Taylor

Hearing:
Date: January 17, 2024
Time: 10:00 a.m.
Place: Department 3

HOOPER, LUNDY & BOOKMAN, P.C.
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067
TEL (310) 551-8111 • FAX (310) 551-8181

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LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

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DISCLAIMERS

EACH HOLDER OF A CLAIM AGAINST THE DEBTOR ENTITLED TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT SHOULD READ THE COMBINED PLAN AND DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE VOTING. NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT MAY BE MADE EXCEPT PURSUANT TO THE TERMS HEREOF AND SECTIONS 1121 AND 1125 OF THE BANKRUPTCY CODE.¹ IF YOU ARE ENTITLED TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT, YOU ARE RECEIVING A BALLOT WITH YOUR NOTICE OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE DEBTOR URGES YOU TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT. THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS JOINTLY PROPOSED WITH THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “COMMITTEE”) WHICH SUPPORTS THE COMBINED PLAN AND DISCLOSURE STATEMENT AND URGES CREDITORS IN CLASS 3 TO VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH §§ 1121 AND 1125 AND BANKRUPTCY RULES 3016 AND 3017, AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD EVALUATE THE COMBINED PLAN AND DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT AS TO HOLDERS OF CLAIMS AGAINST THE DEBTOR. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE COMBINED PLAN AND

¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended. All references to “Bankruptcy Rules” are to the Federal Rules of Bankruptcy Procedure.

1 **DISCLOSURE STATEMENT.**

2 **THE COMBINED PLAN AND DISCLOSURE STATEMENT**
3 **CONTAINS SUMMARIES OF CERTAIN STATUTORY PROVISIONS,**
4 **DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE**
5 **STATEMENT, EVENTS IN THE CHAPTER 11 CASE, AND FINANCIAL**
6 **INFORMATION. ALTHOUGH THE DEBTOR AND THE COMMITTEE**
7 **BELIEVE THAT THE STATEMENTS AND DESCRIPTIONS CONTAINED**
8 **IN THE COMBINED PLAN AND DISCLOSURE STATEMENT ARE TRUE**
9 **AND ACCURATE, THEY ARE QUALIFIED TO THE EXTENT THAT THEY**
10 **DO NOT SET FORTH THE ENTIRE TEXT OF THE DOCUMENTS**
11 **RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT**
12 **AND APPLICABLE STATUTORY PROVISIONS. THE TERMS OF THE**
13 **DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE**
14 **STATEMENT AND APPLICABLE STATUTES GOVERN IN THE EVENT**
15 **OF ANY DISCREPANCY WITH THE COMBINED PLAN AND**
16 **DISCLOSURE STATEMENT. CREDITORS AND OTHER INTERESTED**
17 **PARTIES SHOULD READ THE COMBINED PLAN AND DISCLOSURE**
18 **STATEMENT, THE DOCUMENTS RELATED TO THE COMBINED PLAN**
19 **AND DISCLOSURE STATEMENT, AND THE APPLICABLE STATUTES**
20 **THEMSELVES FOR THE FULL AND COMPLETE STATEMENTS OF**
21 **SUCH TERMS AND PROVISIONS.**

22 **THE FACTUAL STATEMENTS AND REPRESENTATIONS**
23 **CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT**
24 **ARE MADE BY THE DEBTOR AND THE COMMITTEE AS OF THE DATE**
25 **HEREOF, UNLESS OTHERWISE SPECIFIED, AND THE DEBTOR AND**
26 **THE COMMITTEE DISCLAIM ANY OBLIGATION TO UPDATE ANY**
27 **SUCH STATEMENTS AFTER THE SOLICITATION OF VOTES TO**
28 **ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE**
STATEMENT. THE DELIVERY OF THE COMBINED PLAN AND
DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED
TO CREATE ANY IMPLICATION THAT THE INFORMATION
CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE
HEREOF.

THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT
BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS
NOT NECESSARILY BEEN PREPARED IN ACCORDANCE WITH
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

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601 SOUTH FIGUEROA STREET, SUITE 2500
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213 623 9300

1 ALL FORWARD-LOOKING STATEMENTS CONTAINED HEREIN
2 OR OTHERWISE MADE BY THE DEBTOR OR THE COMMITTEE
3 INVOLVE MATERIAL RISKS AND UNCERTAINTIES AND ARE SUBJECT
4 TO CHANGE BASED ON NUMEROUS FACTORS, INCLUDING FACTORS
5 THAT ARE BEYOND THE DEBTOR'S CONTROL. ACCORDINGLY, THE
6 DEBTOR'S FUTURE PERFORMANCE AND FINANCIAL RESULTS MAY
7 DIFFER MATERIALLY FROM THOSE EXPRESSED OR IMPLIED IN ANY
8 SUCH FORWARD-LOOKING STATEMENTS. SUCH FACTORS INCLUDE,
9 BUT ARE NOT LIMITED TO, THOSE DESCRIBED IN THE COMBINED
10 PLAN AND DISCLOSURE STATEMENT. THE DEBTOR AND THE
11 COMMITTEE DO NOT INTEND TO UPDATE OR REVISE THEIR
12 FORWARD-LOOKING STATEMENTS EVEN IF EXPERIENCE OR
13 FUTURE CHANGES MAKE IT CLEAR THAT ANY PROJECTED RESULTS
14 EXPRESSED OR IMPLIED THEREIN WILL NOT BE REALIZED.

15 ANY PROJECTED RECOVERIES TO CREDITORS SET FORTH IN
16 THIS DISCLOSURE STATEMENT ARE BASED UPON THE ANALYSES
17 PERFORMED BY THE DEBTOR AND ITS ADVISORS. ALTHOUGH THE
18 DEBTOR AND ITS ADVISORS HAVE MADE EVERY EFFORT TO VERIFY
19 THE ACCURACY OF THE INFORMATION PRESENTED HEREIN, THE
20 DEBTOR AND ITS ADVISORS CANNOT MAKE ANY REPRESENTATIONS
21 OR WARRANTIES REGARDING THE ACCURACY OF THIS
22 INFORMATION.

23 IN CONNECTION WITH THE DEBTOR'S AND THE COMMITTEE'S
24 SOLICITATION OF ACCEPTANCES OF THE COMBINED PLAN AND
25 DISCLOSURE STATEMENT PURSUANT TO § 1126(b), THE DEBTOR AND
26 THE COMMITTEE ARE FURNISHING A SOLICITATION PACKAGE,
27 CONSISTING OF THE COMBINED PLAN AND DISCLOSURE
28 STATEMENT, THE EXHIBIT A HERETO, CONFIRMATION NOTICE,
AND A BALLOT AND/OR A RELEASE OPT-OUT ELECTION FORM, AS
APPLICABLE, TO EACH RECORD HOLDER OF CLAIMS ELIGIBLE TO
VOTE OR ITS COUNSEL. THE COMBINED PLAN AND DISCLOSURE
STATEMENT IS TO BE USED BY EACH SUCH ELIGIBLE HOLDER
SOLELY IN CONNECTION WITH ITS EVALUATION OF THE COMBINED
PLAN AND DISCLOSURE STATEMENT; USE OF THE COMBINED PLAN
AND DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE IS NOT
AUTHORIZED. NOTHING STATED IN THE COMBINED PLAN AND
DISCLOSURE STATEMENT SHALL BE DEEMED OR CONSTRUED AS AN
ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE
ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR, THE

1 **COMMITTEE OR ANY OTHER PARTY. THE COMBINED PLAN AND**
2 **DISCLOSURE STATEMENT MAY NOT BE REPRODUCED OR PROVIDED**
3 **TO ANYONE OTHER THAN ADVISORS TO THE RECIPIENT WITHOUT**
4 **THE PRIOR WRITTEN CONSENT OF THE DEBTOR.**

5 **SECTION 1.**
6 **INTRODUCTION**

7 Borrego Community Health Foundation, (the “Debtor”), the debtor and debtor-
8 in-possession in the above-captioned chapter 11 case, and the Official Committee of
9 Unsecured Creditors (the “Committee”) hereby jointly propose the following
10 combined disclosure statement and plan pursuant to §§ 1121(a) and 1125(b) (the
11 disclosure statement portion hereof, the “Disclosure Statement” and the chapter 11
12 plan portion hereof, the “Plan,” as may be modified and/or amended from time to
13 time, and collectively, the “Combined Plan and Disclosure Statement”). Capitalized
14 terms used in the Combined Plan and Disclosure Statement and not otherwise defined
15 have the meanings ascribed to such terms in Section 3.

16 The Plan proposes to pay or otherwise satisfy Allowed Administrative Claims,
17 Allowed Secured Claims, Allowed General Unsecured Claims, and a portion of the
18 Allowed DHCS Claim, in full on the Effective Date or as soon as practicably
19 thereafter. The Plan creates Class A and Class B Liquidating Trust Interests and
20 proposes to pay Allowed General Unsecured Claims and the Allowed DHCS Claim
21 in accordance with the DHCS Settlement. The Plan also proposes the resolution of
22 certain other Claims and the distribution of proceeds to Holders of Allowed Claims.
23 Claims against the Debtor—other than Unclassified Claims—are classified in Section
24 9 and treated in accordance with Section 10 hereof. The Plan provides that (i) the
25 Liquidating Trustee will administer the Class B Liquidating Trust Assets and continue
26 the wind-down and liquidation of the Debtor after the Effective Date, and (ii) the Co-
27 Liquidating Trustee will administer the Class A Liquidating Trust Assets to pay
28 Holders of Allowed General Unsecured Claims.

29 The Debtor and the Committee will distribute the Combined Plan and
30 Disclosure Statement to all holders of Claims in accordance with § 1125(b);
31 Bankruptcy Rules 2002, 3016, and 3017; and the Bankruptcy Court’s order
32 conditionally approving the Combined Plan and Disclosure Statement [Docket No. _]
33 (the “Conditional Approval and Procedures Order”).

34 The Combined Plan and Disclosure Statement and the exhibit hereto include a
35 discussion of: (i) the nature and history of the Debtor’s business and liabilities; (ii)
36 events during the Chapter 11 Case; (iii) the requirements for confirmation of the Plan
37 and procedures for voting to accept or reject the Plan; (iv) additional factors and
38

1 disclosures to be considered, including risk factors and certain U.S. federal income
2 tax consequences of the Plan; and (v) the terms of the Plan, including the treatment
3 of holders of Claims under the Plan. The Disclosure Statement was prepared with the
4 intent to provide “adequate information” (as defined in the Bankruptcy Code) to
5 enable holders of Claims against the Debtor to make informed judgments about the
6 Plan.

7 Subject to the restrictions on modifications set forth in § 1127 and Bankruptcy
8 Rule 3019 and those restrictions on modifications set forth in Section 20.4 of the
9 Combined Plan and Disclosure Statement, the Debtor and the Committee expressly
10 reserve the right to alter, amend, or modify the Combined Plan and Disclosure
11 Statement, including the Plan Supplement, one or more times, before substantial
12 consummation thereof.

13 Please read the Combined Plan and Disclosure Statement, the exhibit, other
14 supporting materials, and any appropriate ballot carefully and follow the instructions
15 set forth below and on the appropriate ballot to vote on the Combined Plan and
16 Disclosure Statement. The Debtor and the Committee believe that the Combined Plan
17 and Disclosure Statement provides the best method of maximizing the recoveries for
18 the holders of Claims against the Debtor. **Therefore, the Debtor and the Committee**
19 **recommend that all creditors who are entitled to vote should vote in favor of the**
20 **Combined Plan and Disclosure Statement.**

21 Unless otherwise specified, all section or exhibit references in the Combined
22 Plan and Disclosure Statement are to the respective section in, or exhibit to, the
23 Combined Plan and Disclosure Statement, as the same may be amended, waived, or
24 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and
25 other words of similar import refer to the Combined Plan and Disclosure Statement
26 as a whole and not to any particular section, subsection, or clause contained herein.
27 The headings in the Combined Plan and Disclosure Statement are for convenience of
28 reference only and shall not limit or otherwise affect the provisions hereof. For
purposes herein: (a) in the appropriate context, each term, whether stated in the
singular or the plural, shall include both the singular and the plural, and pronouns
stated in the masculine, feminine, or neuter gender shall include the masculine,
feminine, and the neuter gender; (b) any reference herein to a contract, lease,
instrument, release, or other agreement or document being in a particular form or on
particular terms and conditions means that the referenced document shall be
substantially in that form or substantially on those terms and conditions; and (c) unless
otherwise noted above, the rules of construction set forth in § 102 shall apply.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

SECTION 2.
**SUMMARY OF CLASSIFICATION OF CLAIMS
UNDER PLAN AND IMPORTANT SOLICITATION AND
CONFIRMATION DATES AND DEADLINES**

2.1 *Summary of Classification of Claims.*

The following table designates the Classes of Claims against the Debtor and specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional Claims, Statutory Fees, and Priority Tax Claims, have not been classified. All of the potential Classes for the Debtor are set forth herein. If, ultimately, the Debtor does not have Holders of Claims in a particular Class or Classes, such Classes shall be treated as set forth in Section 10.

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

2.2 *Important Dates and Deadlines.*

Event	Proposed Date
Voting Record Date	November 28, 2023
Solicitation commences	December 11, 2023
Deadline to file Plan Supplement	December 11, 2023
Voting Objection Deadline	December 22, 2023
Deadline for Creditors to file Rule 3018 Motions	December 29, 2023
Deadline to respond to Voting Objection	December 29, 2023
Deadline for Debtor to respond to Rule 3018 Motions	January 5, 2024
Voting Deadline and deadline to submit the Release Opt-Out Election Form	January 8, 2024, at 4:00 p.m., Pacific Time

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

Event	Proposed Date
Combined Plan and Disclosure Statement Objection Deadline	January 8, 2024, at 4:00 p.m., Pacific Time
Deadline to file Confirmation Brief and other evidence supporting the Combined Plan and Disclosure Statement	January 11, 2024
Deadline to file Voting Tabulation Affidavit	January 11, 2024
Confirmation Hearing	January 17, 2024, at 10:00 a.m.

SECTION 3.
DEFINITIONS AND INTERPRETATION

A. Definitions.

As used in the Combined Plan and Disclosure Statement, capitalized terms not otherwise defined have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

3.1 **Administrative Claim** means a Request for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2) or § 507(b), including: (i) the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estate and operating the business of the Debtor through the Effective Date; (ii) the value of goods received by the Debtor within 20 days before the Petition Date in which the goods have been sold to the Debtor in the ordinary course of the Debtor’s business pursuant to § 503(b)(9); (iii) Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court; (iv) Professional Claims; (v) and Statutory Fees.

3.2 **Administrative Claims Bar Date** means the deadline set by an order of the Bankruptcy Court by which Holders of Administrative Claims, other than Administrative Claims arising in the ordinary course of business for the Debtor or Professional Claims, must assert Administrative Claims or be forever barred, which shall be (a) thirty days after the Effective Date for Administrative Claims other than Professional Claims, and (b) 45 days after the Effective Date for Professional Claims.

3.3 **Administrative Claims Objection Bar Date** means the deadline for filing objections to requests for Administrative Claims required to be filed, which shall be

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 90 days following the Effective Date, *provided, however*, that the Administrative
2 Claims Objection Bar Date may be extended by the Bankruptcy Court.

3 3.4 ***Administrative Claims Reserve*** means Cash to be set aside by the Debtor
4 on the Effective Date in an aggregate amount estimated to fund the required amounts
5 for payment of all unpaid Allowed Administrative Claims that will be paid after the
6 Effective Date and all Administrative Claims that are not yet Allowed as of the
7 Effective Date.

8 3.5 ***Adversary Proceeding*** shall have the meaning provided below in Section
9 5.5.

10 3.6 ***Allowed*** means for Distribution purposes, a Claim, or any portion
11 thereof, or a particular Class of Claims: (a) that is Allowed by a Final Order of the
12 Bankruptcy Court (or such other court as provided by the Plan or as the Liquidating
13 Trustee or Co-Liquidating Trustee, as applicable, and the Holder of such Claim agree
14 may adjudicate such Claim and objections thereto); (b) that is Allowed by this Plan
15 and/or Confirmation Order; (c) is scheduled as not contingent, not unliquidated, and
16 not disputed, and for which no superseding Proof of Claim has been timely filed; (d)
17 for which a Proof of Claim in a liquidated amount has been timely filed with the
18 Bankruptcy Court pursuant to the Bankruptcy Code or deemed timely filed by any
19 Final Order of the Bankruptcy Court or other applicable bankruptcy law, and as to
20 which (i) no objection to its allowance has been filed prior to the date of entry of the
21 Confirmation Order or is not listed on the Disputed Claims Schedule; or (ii) any filed
22 objection to its allowance has been settled or withdrawn, or has been denied by a Final
23 Order of the Bankruptcy Court; (e) following the Effective Date, with respect to
24 General Unsecured Claims, as otherwise may be determined as Allowed by the
25 Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement;
26 or (f) that is expressly allowed in a liquidated amount pursuant to this Plan.

27 3.7 ***Allowed DHCS Balance Claim*** means the Allowed DHCS Claim after:
28 (i) the application of the DHCS Allowed Offset Amount, which amounts have been
withheld by DHCS; and (ii) the payment of the DHCS Sales Proceeds Recovery. As
set forth herein, the Allowed DHCS Balance Claim shall be subordinated to the prior
payment in full of: (a) Allowed Administrative Claims; (b) Allowed Priority Claims;
(c) Allowed General Unsecured Claims; and (d) the Effective Date Professional Claim
Reserves.

3.8 ***Allowed DHCS Claim*** means the Allowed General Unsecured Claim of
DHCS in the total amount of \$112,000,000, as accounted for and adjusted as set forth
in the DHCS Settlement Agreement.

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1 3.9 **Appeal** shall have the meaning provided below in Section 5.5.

2 3.10 **Assets** means all legal or equitable interests of the Estate in any and all
3 (a) property of every kind, nature, character and description, whether real, personal,
4 or mixed, whether tangible or intangible (including contract rights), wherever situated
5 and by whomever possessed, and any goodwill related thereto, including any real
6 estate, buildings, structures, improvements, privileges, rights, easements, leases,
7 subleases, goods, materials, supplies, furniture, fixtures, equipment, work in process,
8 accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights,
9 intellectual property rights, claims, Causes of Action, securities, investments and any
other general intangibles, and (b) the proceeds, products, offspring, rents or profits
thereof, including all assets of the Debtor constituting “property of the estate” as
described in § 541.

10 3.11 **Asset Purchase Agreement** means the agreement between the Debtor
11 and DAP Health setting forth the terms of the DAP Sale, pursuant to § 363, and
12 approved by the Sale Order.

13 3.12 **Avoidance Actions** means any Causes of Action arising under any
14 section of chapter 5 of the Bankruptcy Code, including, without limitation, §§ 502,
15 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 or under similar or
related state or federal statutes and common law, including state fraudulent transfer
laws.

16 3.13 **Ballots** means the ballots upon which the Holders of Impaired Claims
17 shall indicate their acceptance or rejection of the Plan, in accordance with the Plan
and the Voting Instructions.

18 3.14 **Ballot Deadline** means the date by which all Ballots must be properly
19 executed, completed and delivered by First Class Mail, overnight courier, or hand
20 delivery, to Kurtzman Carson Consultants LLC, at 222 N. Pacific Coast Highway, 3rd
21 Floor, El Segundo, CA 90245, so as to be actually received by Kurtzman Carson
22 Consultants LLC no later than 4:00 p.m. (Pacific Time), on the date set by the
Bankruptcy Court in the Conditional Approval and Procedures Order.

23 3.15 **Bankruptcy Code** means title 11 of the United States Code, 11 U.S.C.
24 §§ 101, *et seq.*, as amended.

25 3.16 **Bankruptcy Court** means the United States Bankruptcy Court for the
26 Southern District of California, or any other court having jurisdiction over the Chapter
27 11 Case, including, to the extent the jurisdictional reference of the Bankruptcy Court
has been withdrawn to the United States District Court for the Southern District of
28 California, pursuant to section 157(d) of title 28 of the United States Code.

1 3.17 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as
2 promulgated by the United States Supreme Court under section 2075 of title 28 of the
3 United States Code, as may be amended from time to time.

4 3.18 **Bar Date** means the applicable deadlines by which a Proof of Claim or
5 Request for Payment must be, or must have been, filed in in this Chapter 11 Case, as
6 established by either the Bar Date Order, an order of the Bankruptcy Court or this
7 Plan, including without limitation: (a) November 21, 2022 deadline to file Proofs of
8 Claim relating to prepetition Claims; (b) the March 13, 2023 deadline to file Proofs
9 of Claim for Governmental Units; (c) the Administrative Claims Bar Date; (d) the
10 Extended DHCS Bar Date; and (e) the Rejection Bar Date.

11 3.19 **Bar Date Order** means any order of the Bankruptcy Court establishing
12 Bar Dates for filing Proofs of Claim or Requests for Payment in this Chapter 11 Case,
13 as the same may be amended, modified or supplemented including, but not limited to,
14 the order at Docket No. 16.

15 3.20 **Business Day** means any day other than a Saturday, a Sunday, or any
16 other day on which banking institutions in the State of California are required or
17 authorized to close by law or executive order.

18 3.21 **Cash** means the legal tender of the United States of America and its
19 equivalent.

20 3.22 **Causes of Action** means any and all present or future claims, rights,
21 interests, legal and equitable defenses, offsets, recoupments, actions in law or equity
22 or otherwise, choses in action, obligation, guaranty, controversy, demand, action
23 suits, damages, judgments, third-party claims, counter-claims, cross-claims against
24 any Person, whether known or unknown, liquidated or unliquidated, foreseen or
25 unforeseen, existing or hereafter arising, whether based on legal or equitable relief,
26 whether arising under the Bankruptcy Code or federal, state, common, or other law or
27 equity, whether or not the subject of a pending litigation or proceedings on the
28 Effective Date or thereafter of the Estate, the Debtor, or the Liquidating Trust, as
applicable, including without limitation: (a) all Avoidance Actions; (b) all other
claims in avoidance, recovery, and/or subordination; (c) all claims for the turnover of
property to the Debtor or the Liquidating Trust; (d) all claims for compensation for
damages incurred by the Debtor; (e) all claims arising in connection with *Husam E.*
Aldairi, et al. v. Borrego Community Health Foundation, Case No. 37-2021-
00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego); (f) all claims in *Borrego*
Community Health Foundation v. Inland Valley, LLC, et al., Case No. 3:21-cv-01417-
AJB-AGS (S.D. Cal.); (g) all claims in *Borrego Community Health Foundation v.*
Karen Hebets, et al., Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.); (h) all claims in

1 *Borrego Community Health Foundation v. Travelers Casualty and Surety Company*
2 *of America*, Case No. 3:22-CV-161-L-MDD (S.D. Cal.); and (i) all other actions
3 described in this Combined Plan and Disclosure Statement, the Confirmation Order,
the Schedules, or the Plan.

4 3.23 **Chapter 11 Case** means the voluntary chapter 11 case filed by the Debtor
5 on the Petition Date under the caption, *In re Borrego Community Health Foundation*,
6 Case No. 22-02384, currently pending before the Bankruptcy Court.

7 3.24 **CHOW** means the change of ownership application submitted pursuant
8 to 42 C.F.R § 489.18 by the Debtor and DAP Health for approval by CMS that will
9 result in the transfer of the Debtor's Medicare Identification Number and Medicare
Provider Agreement to DAP Health.

10 3.25 **CHOW Effective Date** means date of the approval of the CHOW by
11 CMS.

12 3.26 **Claim** has the meaning set forth in § 101(5).

13 3.27 **Claims and Balloting Agent** means Kurtzman Carson Consultants LLC,
14 which was appointed as the Debtor's claims, noticing, and balloting agent.

15 3.28 **Claims Objection Deadline** means the first Business Day that is the later
16 of (a) two hundred ten (210) days after the Effective Date, or (b) such other later date
17 as the Bankruptcy Court may establish upon a motion by the Liquidating Trustee in
accordance with the Plan.

18 3.29 **Claimant** means the Holder of a Claim.

19 3.30 **Class** means a class of Claims established pursuant to Section 9 herein.

20 3.31 **Class A Liquidating Trust Assets** means, collectively: (i) the Remaining
21 Cash; and (ii) (a) 67% of the first \$1 million of Net Recovery, (b) 33% of the second
22 \$1 million of Net Recovery, and (c) for any Net Recovery thereafter, the Pro Rata
23 share of such Net Recovery among the Holders of Class A Trust Beneficial Interests
and Class B Trust Beneficial Interests.

24 3.32 **Class A Trust Beneficial Interests** means the interests in the Liquidating
25 Trust of the Holders of Allowed Claims in Class 3 and their concomitant entitlement
26 to Distributions to be made by the Liquidating Trust on account of Allowed General
Unsecured Claims from the Class A Liquidating Trust Assets.

1 3.33 **Class B Liquidating Trust Assets** means collectively: (i) the DHCS
2 Sales Proceeds Recovery; (ii) (a) 33% of the first \$1 million of Specified Litigation
3 Recoveries, (b) 67% of the second \$1 million of Specified Litigation Recoveries, and
4 (c) for any Specified Litigation Recoveries thereafter, the Pro Rata share of such
5 Specified Litigation Recoveries among the Holders of Class A Trust Beneficial
6 Interests and Class B Trust Beneficial Interests; and (iii) solely to the extent any Class
7 A Liquidating Trust Assets remain after Holders of Class A Trust Beneficial Interests
8 are paid in full, the Class A Liquidating Trust Assets.

9 3.34 **Class B Trust Beneficial Interests** means the interest in the Liquidating
10 Trust of the Holders of Allowed Claims in Class 4 and their concomitant entitlement
11 to Distributions to be made by the Liquidating Trust on account of the Allowed DHCS
12 Balance Claim from the Class B Liquidating Trust Assets.

13 3.35 **Closing** means the consummation of the transactions contemplated by
14 the DAP Sale pursuant to the terms of the Asset Purchase Agreement.

15 3.36 **Closing Date** means July 31, 2023, pursuant to the Asset Purchase
16 Agreement, as set forth in the *Notice of Occurrence of Closing of Sale to DAP Health,*
17 *Inc.* [Docket No. 823].

18 3.37 **CMS** means the Centers for Medicare and Medicaid Services.

19 3.38 **Committee** means the Official Committee of Unsecured Creditors
20 appointed on September 26, 2022, by the U.S. Trustee in this Chapter 11 Case
21 pursuant to § 1102 [Docket No. 49].

22 3.39 **Conditional Approval and Procedures Order** means the order entered
23 by this Court (i) conditionally approving the disclosures set forth in the Combined
24 Plan and Disclosure Statement, and (ii) approving the solicitation procedures set forth
25 in the Combined Plan and Disclosure Statement on December [], 2023 [Docket No.
26 _].

27 3.40 **Confirmation** means the entry of the Confirmation Order, subject to all
28 conditions specified in Section 18.1 hereof having been satisfied.

3.41 **Confirmation Date** means the date on which the Clerk of the Bankruptcy
Court enters the Confirmation Order on the docket.

3.42 **Confirmation Hearing** means the hearing to be held by the Bankruptcy
Court to consider Confirmation of the Plan, as such hearing may be adjourned or
continued from time to time.

1 3.43 **Confirmation Order** means the order of the Bankruptcy Court
2 confirming this Plan pursuant to § 1129.

3 3.44 **Co-Liquidating Trustee** means such person selected pursuant to Section
4 15 of the Plan or any successor or replacement officer appointed under the terms of
5 the Plan and Liquidating Trust Agreement.

6 3.45 **DAP Health** means Desert Aids Project d/b/a DAP Health.

7 3.46 **DAP Sale** means the sale of substantially all of the Debtor's assets to
8 DAP Health pursuant to § 363.

9 3.47 **Debtor** means Borrego Community Health Foundation, in its capacity as
10 debtor and debtor in possession in this Chapter 11 Case.

11 3.48 **DHCS** means the California Department of Health Care Service.

12 3.49 **DHCS 9019 Order** means the Order granting the Debtor's Motion to
13 Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,
14 and California Department of Health Care Services [Docket No. 544] and approving
15 the DHCS Settlement Agreement.

16 3.50 **DHCS Allowed Offset Amount** means the approximately \$20,600,000
17 that DHCS is withholding from the Debtor, which amount is inclusive of
18 approximately \$6,200,000 in monies otherwise payable to the Debtor for the
19 provision of in-house dental services to Medi-Cal beneficiaries, consistent with the
20 definition in the DHCS Settlement Agreement.

21 3.51 **DHCS Findings of Fact** shall have the meaning provided below in
22 Section 5.5.

23 3.52 **DHCS Order** shall have the meaning provided below in Section 5.5.

24 3.53 **DHCS Sales Proceeds Recovery** means the 40% of the Net Cash
25 Proceeds of the DAP Sale received by DHCS on or around the Effective Date of this
26 Plan, consistent with the definition in the DHCS Settlement Agreement.

27 3.54 **DHCS Settlement Agreement** means the settlement agreement by and
28 between the Debtor, the Committee, and DHCS that resolved all disputes between the
Debtor, the Committee, and DHCS, approved by the DHCS 9019 Order.

3.55 **DHHS** means the United States Department of Health and Human
Services.

1 3.56 **Disbursing Agent** means the individual or individuals as may be retained
2 by the Liquidating Trustee or Co-Liquidating Trustee, as applicable, to assist him or
3 her distribute the Liquidating Trust Assets in accordance with this Plan and the
Liquidating Trust Agreement.

4 3.57 **Dispute Resolution** shall have the meaning set forth below in Section
5 13.4.

6 3.58 **Disputed Claim** means a Claim that is either: (i) as of the date of entry
7 of the Confirmation Order, the subject of a pending objection; or (ii) listed on a
8 schedule included with the Plan Supplement (the “Disputed Claims Schedule”).

9 3.59 **Disputed Claim Reserve** shall have the meaning set forth below in
10 Section 12.7.

11 3.60 **Distribution Date** means the Initial Distribution Date or any Subsequent
12 Distribution Date, as applicable.

13 3.61 **Distributions** means the distributions of Cash to be made in accordance
14 with the Plan and the Liquidating Trust Agreement.

15 3.62 **Distribution Record Date** means the close of business on the Business
16 Day immediately preceding the Effective Date.

17 3.63 **District Court** means the United States District Court for the Southern
18 District of California.

19 3.64 **Effective Date** means a day, as determined by the Plan Proponents, that
20 is a Business Day as soon as reasonably practicable after all conditions to the Effective
21 Date specified in Section 18.2 hereof have been satisfied or waived.

22 3.65 **Effective Date Professional Claim Reserves** means cash to be set aside
23 by the Liquidating Trustee on the Effective Date sufficient in the aggregate to fund a
24 reserve on account of accrued and unpaid Professional Claims not yet fixed and
25 allowed by the Bankruptcy Court prior to or on the Effective Date.

26 3.66 **Entity** means an entity as defined in § 101(15).

27 3.67 **Estate** means the estate created upon the Petition Date pursuant to § 541.

28 3.68 **Exculpated Party** means, individually and collectively: (a) the Debtor;
(b) the Debtor’s trustees, officers, and managers serving in such capacity on and after
the Petition Date; (c) members of the Committee (solely in their capacities as
Committee members); and (d) Bankruptcy Court-approved Estate and Committee

1 professionals. Notwithstanding the foregoing, none of the Prepetition Fraud Parties
2 are an Exculpated Party.

3 3.69 **Excluded Party** means all enumerated defendants in the Causes of
4 Action and the Prepetition Fraud Parties, as set forth in the Plan Supplement.

5 3.70 **Executory Agreement** means any executory contract or unexpired lease
6 subject to § 365, excluding any executory contract or unexpired lease entered into
after the Petition Date and approved by an order of the Bankruptcy Court.

7 3.71 **Extended DHCS Bar Date** means December 29, 2023, which is the
8 deadline by which DHCS must file a Proof of Claim for any further General
9 Unsecured Claims against the Debtor for Medi-Cal overpayments, consistent with the
definition in the DHCS Settlement Agreement.

10 3.72 **Final Decree** means the decree contemplated under Bankruptcy Rule
11 3022.

12 3.73 **Final Distribution** means the last payment to Holders of Allowed
13 Claims in accordance with the provisions of the Plan.

14 3.74 **Final Order** means an order or judgment, the operation or effect of
15 which has not been reversed, stayed, modified, or amended, is in full force and effect,
16 and as to which order or judgment (or any reversal, stay, modification, or amendment
17 thereof) (a) the time to appeal, seek *certiorari*, or request reargument, further review,
18 or rehearing has expired and no appeal, petition for *certiorari*, request for reargument
19 or further review, or rehearing has been timely filed, or (b) any appeal that has been
20 or may be taken, or any petition for *certiorari* or request for reargument or further
21 review or rehearing that has been or may be filed, has been resolved by the highest
22 court to which the order or judgment was appealed, from which *certiorari* was sought,
23 or to which the request was made, and no further appeal, petition for *certiorari*,
24 request for reargument, or further review or rehearing has been or can be taken or
granted; provided, however, that the possibility that a motion under Rule 60 of the
Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules,
may be filed relating to such order shall not prevent such order from being a Final
Order; provided, further, that the Debtor or Liquidating Trustee, as applicable, reserve
the right to waive any appeal period for an order or judgment to become a Final Order.

25 3.75 **General Unsecured Claim** means any Claim against the Debtor that is
26 not a/an: (i) Administrative Claim; (ii) Professional Claim; (iii) Secured Claim; (iv)
27 Priority Claim; (v) Allowed DHCS Claim; (vi) Allowed DHCS Balance Claim; or
28 (vii) Statutory Fee.

1 3.76 **Governmental Unit** has the definition set forth in § 101(27).

2 3.77 **Holder** means a holder of a Claim against the Debtor.

3 3.78 **Impaired** means, with respect to a Class of Claims, that such Class is
4 “impaired” within the meaning of § 1124.

5 3.79 **Indemnified Parties** shall have the meaning set forth below in Section
6 17.6.

7 3.80 **Initial Distribution Date** means the Effective Date, or as soon as
8 practicable thereafter when the initial Distribution of Cash shall be made to the
9 Holders of Allowed Claims, as determined by the Debtor, the Liquidating Trustee, or
the Co-Liquidating Trustee, as applicable.

10 3.81 **Insurance Policy** means any insurance policy maintained by or for the
11 benefit of the Debtor, regardless of whether such Insurance Policy is set forth in a
12 schedule to the Plan Supplement.

13 3.82 **Liquidating Trust** means the liquidating trust created pursuant to the
14 Liquidating Trust Agreement.

15 3.83 **Liquidating Trust Agreement** means the *Liquidating Trust Agreement*,
16 to be dated on or prior to the Effective Date, as may be modified from time to time,
between the Debtor and the Liquidating Trustee.

17 3.84 **Liquidating Trust Assets** means all assets of the Debtor that (i) exist
18 immediately prior to the Effective Date and are not otherwise used by the Debtor to
19 make Distributions or create Reserves on the Effective Date to or for the benefit of
20 Holders of Allowed Administrative Claims, Priority Non-Tax Claims, Professional
21 Claims and Secured Claims, and (ii) are not Purchased Assets. The Liquidating Trust
22 Assets also include, without limitation, to the extent not otherwise expressly excluded
23 by this definition: (i) the Remaining Cash; (ii) all Causes of Action the Debtor holds
24 or may hold against any Person or Entity as of the Effective Date (except to the extent
25 they are the subject of any of the Releases set forth in the Plan); (iii) all Claims and
26 rights of the Debtor under any Insurance Policies; (iv) any and all other non-Cash
assets, interests, rights, claims and defenses of the Debtor or the Estate, including,
without limitation, all rights under any order of the Bankruptcy Court; (v) any and all
tax refunds to which the Debtor may be entitled; and (vi) any and all proceeds of any
of the foregoing.

27 3.85 **Liquidating Trust Beneficiaries** means the Holders of Trust Beneficial
28 Interests, as of any point in time.

1 3.86 **Liquidating Trustee** means such person selected pursuant to Section 15
2 of the Plan or any successor or replacement officer appointed under the terms of the
3 Plan and Liquidating Trust Agreement.

4 3.87 **Litigation** means the interest of the Estate, the Debtor, or the Liquidating
5 Trust, as applicable, in any and all claims, rights, and Causes of Action that have been
6 or may be commenced by the Debtor or the Liquidating Trust, as applicable, except
7 to the extent concerning any Released Parties. Litigation includes, without limitation
8 not otherwise stated herein, any action: (i) to avoid and recover any transfers of
9 property determined to be preferential, fraudulent, or avoidable pursuant to §§ 544,
10 545, 547, 548, 549(a), and 550; (ii) for the turnover of property to the Debtor or
11 Liquidating Trust, as applicable; (iii) for the recovery of property or payment of
12 money that belongs to or can be asserted by the Debtor or the Liquidating Trust, as
13 applicable; (iv) for compensation for damages incurred by the Debtor; and (v)
14 equitable subordination actions against Creditors.

15 3.88 **Litigation Recoveries** means any Cash or other property received by the
16 Debtor or the Liquidating Trust, as applicable, from all or any portion of the Litigation
17 of any of the Causes of Action, including, but not limited to, awards of damages,
18 attorneys' fees and expenses, interest, and punitive damages, whether recovered by
19 way of settlement, execution on judgment, or otherwise. If any litigation of any of the
20 Causes of Action is pursued on a contingent-fee basis, the Litigation Recovery will
21 be net of any expenses of such litigation and any contingent fee paid to legal counsel.

22 3.89 **Local Bankruptcy Rules** means the Local Rules of the United States
23 Bankruptcy Court of the Southern District of California, as amended from time to
24 time.

25 3.90 **Management Services Support Agreement** means the agreement
26 between the Debtor and DAP Health for DAP Health to provide a broad range of
27 management support services prior to the Closing Date as set forth in the Asset
28 Purchase Agreement.

 3.91 **Medi-Cal** means the program administered by the State of California for
medical assistance under title XIX of the Social Security Act.

 3.92 **Medicare** means the federal health insurance program administered by
CMS under title XVIII of the Social Security Act.

 3.93 **Net Cash Proceeds** means the aggregate cash consideration paid to or
retained by the Debtor at Closing of the DAP Sale net of the Sale Proceeds Holdback.

1 3.94 **Net Recovery** means the aggregate amount of any cash recovery from
2 litigation of any of the Causes of Action realized by the Debtor or its successor-in-
3 interest net of the fees (including attorney’s fees) and expenses of such litigation.

4 3.95 **Nonprofit Laws** means any and all federal, state, local and other laws
5 and governmental regulations applicable to nonprofit corporations, including without
6 limitation, any administrative and judicial interpretations thereof (as applicable).

7 3.96 **Nonprofit Status** means status as a nonprofit corporation under
8 applicable Nonprofit Laws.

9 3.97 **Ombudsman Parties** has the meaning set forth in Section 17.8 herein.

10 3.98 **Operate** (and any such variations, such as “**Operation**”) means to
11 operate, oversee, manage, administer, coordinate, control, supervise and/or direct the
12 business and operations of any and/or all of the Purchased Assets, whether in the
13 ordinary course of business or in accordance with the Asset Purchase Agreement,
14 Transition Services Agreement, or otherwise, and including undertaking or pursuing
15 strategies, activities, or actions with the intent of furthering the objectives of, and
16 otherwise to effectuate the Plan as contemplated by the provisions hereof, including
17 any strategies, activities or actions aimed at retaining, renewing, amending, extending
18 or Transferring any of the Purchased Assets.

19 3.99 **Operating Account** means one or more deposit accounts of Cash
20 established and/or maintained by the Liquidating Trustee as set forth in Section
21 15.5(c).

22 3.100 **Ordinary Course Professionals Order** means the order [Docket No.
23 400] entered by the Bankruptcy Court granting the Debtor’s motion to retain and
24 compensate professionals utilized by the Debtor in the ordinary course of business
25 [Docket No. 271].

26 3.101 **Ordinary Course Professionals** means the professionals retained by the
27 Debtor in the ordinary course of their business operations, pursuant to the Ordinary
28 Course Professionals Order.

3.102 **Patient Care Ombudsman** means Dr. Jacob Nathan Rubin, MD, FACC,
appointed by the U.S. Trustee to serve as the patient care ombudsman in the Chapter
11 Case, pursuant to § 333(a), in accordance with the order entered by the Bankruptcy
Court on September 16, 2022 [Docket No. 25].

3.103 **Person** means an individual, partnership, corporation, limited liability
company, business trust, joint stock company, trust, unincorporated association, joint

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601 SOUTH FIGUEROA STREET, SUITE 2500
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1 venture, governmental authority, Governmental Unit or other entity of whatever
2 nature.

3 3.104 **Petition Date** means September 12, 2022, which is the date that the
4 Debtor filed a voluntary chapter 11 petition.

5 3.105 **Plan** means this plan of liquidation proposed by the Plan Proponents,
6 including the Plan Supplement and the exhibit hereto and thereto, as the same may be
7 amended, modified or supplemented from time to time in accordance with the
provisions of the Bankruptcy Code and its terms.

8 3.106 **Plan Proponent** means each of the Debtor and the Committee.

9 3.107 **Plan Supplement** means a supplemental appendix to this Plan, as may
10 be amended from time to time on or prior to the Effective Date, which will contain
the following items:

- 11 a) the Schedule of Assumed Contracts;
- 12 b) the list of Retained Causes of Action;
- 13 c) the list of Excluded Parties;
- 14 d) the Disputed Claims Schedule;
- 15 e) the schedule of Insurance Policies;
- 16 f) the initial Wind-down Budget;
- 17 g) the identity of the directors serving on the Post-Effective
18 Date Board of Directors;
- 19 h) the identity of the initial Liquidating Trustee;
- 20 i) the identity of the initial Co-Liquidating Trustee;
- 21 j) the form of Liquidating Trust Agreement; and
- 22 k) the schedule of estimated costs of administration and any
23 other funds required to be distributed upon the Effective Date
24 as required by Local Rule 3020-1.
25
26
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28

1 *provided that*, the Debtor shall file items (a) through (k) by December 11, 2023. The
2 Debtor may file separately each of the foregoing documents. The Plan Supplement
3 shall be in substance and form acceptable to each of the Plan Proponents.

4 3.108 ***Post-Effective Date Board of Directors*** means the three (3) member
5 board of directors for the Debtor that will be formed prior to or on the Effective Date
6 in accordance with Section 15.5(b) hereof. The initial members of the Post-Effective
7 Date Board of Directors shall be: (i) Jenna LeComte-Hinley, PhD; (ii) Frank Figueroa;
8 and (iii) Martha Deichler. All proposed members of the Post-Effective Date Board of
9 Directors are members of the Debtor's existing Board of Directors.

10 3.109 ***Post-Effective Date Debtor*** means the Debtor, in existence as of the
11 Effective Date, which shall exist solely for the limited duration and purposes set forth
12 in the Plan.

13 3.110 ***Prepetition Fraud*** means the fraud discovered by the Debtor
14 orchestrated by certain of the Debtor's prior management, landlords and contractors
15 and community contract dentists that involved filing false claims for dental services
16 provided by the contract dentists.

17 3.111 ***Prepetition Fraud Parties*** means the parties who are alleged to have
18 participated in the Prepetition Fraud as set forth in the Plan Supplement.

19 3.112 ***Priority Claim*** means a Priority Non-Tax Claim or a Priority Tax Claim.

20 3.113 ***Priority Non-Tax Claim*** means any Claim entitled to priority in payment
21 as specified in § 507(a)(4), (5), (6), (7) or (9) other than Administrative Claims and
22 Priority Tax Claims.

23 3.114 ***Priority Tax Claims*** means Claims of any Governmental Unit entitled to
24 priority under § 507(a)(8) and 507(c).

25 3.115 ***Professional*** means any Person (a) retained in the Chapter 11 Case by
26 Final Order, pursuant to §§ 327, 363, and 1103 or otherwise; or (b) awarded
27 compensation and reimbursement by the Bankruptcy Court, pursuant to § 503(b)(4).

28 3.116 ***Professional Claim*** means an Administrative Claim of a Professional for
compensation for services rendered or reimbursement of costs, expenses, or other
charges and disbursements incurred relating to services rendered or expenses incurred
after the Petition Date and prior to and including the Effective Date.

3.117 ***Proof of Claim*** means a proof of claim filed in this Chapter 11 Case.

1 3.118 **Provider Agreements** means (i) the Medicare Health Insurance Benefits
2 Agreements between the Debtor and DHHS, and (ii) the Medi-Cal Provider
3 Agreements between the Debtor and DHCS.

4 3.119 **Purchased Assets** means collectively all of the Assets listed in Section
5 1.7 of the Asset Purchase Agreement.

6 3.120 **Rejection Bar Date** means the last date for any Entity whose claims arise
7 out of the Bankruptcy Court approved rejection of an executory contract or unexpired
8 lease to file a Proof of Claim for damages related to such rejection. The Rejection Bar
9 Date for such Claims will be, (i) with respect to executory contracts and unexpired
10 leases rejected pursuant to a Bankruptcy Court order other than the Confirmation
11 Order, the date provided by an order approving the rejection, and, (ii) with respect to
12 executory contracts and unexpired leases rejected pursuant to the Confirmation Order,
13 the date that is thirty (30) days after the Effective Date.

14 3.121 **Related Persons** means, subject to any exclusions expressly set forth in
15 the Plan, with respect to a specific Person, said Person's successors and assigns, as
16 applicable, its current and former shareholders, affiliates, subsidiaries, employees,
17 agents, investment managers, subagents, officers, directors, managers, trustees,
18 partners, members, professionals, representatives, advisors, attorneys, financial
19 advisors, accountants, and consultants.

20 3.122 **Releases** shall have the meaning provided below in Section 17.2.

21 3.123 **Release Opt-Out Election Form** means a form for Holders of Claims to
22 opt out of being a Releasing Party in connection with the Third Party Release set forth
23 in Section 17 of the Plan.

24 3.124 **Released Party** means, individually and collectively: (a) the Debtor, (b)
25 the Committee, (c) the following members of the Committee: McKesson Corporation;
26 Greenway Health, LLC; We Klean Inc.; Mustafa Bilal, DDS, Inc.; Vista Village
27 Family Dentistry; Vitamin D Public Relations, LLC; and Pourshirazi & Youssefi
28 Dental Corporation; and (d) each of the Related Persons of each of the Entities in the
foregoing clauses (a)-(c); provided, however, that notwithstanding anything to the
contrary herein, including the definition of "Related Persons," none of the Prepetition
Fraud Parties are a Released Party.

3.125 **Releasing Party** means (a) the Released Parties; and (b) all Claimants
that (i) vote to accept the Plan (or are deemed to accept the Plan), and (ii) do not
affirmatively opt out of Third Party Releases pursuant to a duly executed Release Opt-
Out Election Form; *provided, that*, notwithstanding anything contained herein to the

1 contrary, in no event shall an Entity be a Releasing Party that (x) does not vote to
2 accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately marks the
3 Release Opt-Out Election Form to opt out of the Third Party Releases and returns
4 such Release Opt-Out Election Form in accordance with the Plan and the Voting
Instructions.

5 3.126 **Remaining Cash** means the actual sum of Cash that constitutes
6 Liquidating Trust Assets after: (i) the payment of Cash necessary to satisfy all
7 Allowed Unclassified Claims that are Allowed on or prior to the Effective Date; (ii)
8 the funding of reserves for disputed Unclassified Claims to the extent required by the
9 Bankruptcy Court on or prior to the Effective Date; (iii) the payment of all Allowed
10 Claims payable on the Effective Date as set forth in Classes 1-2; and (iv) the Transfer
into or maintenance of funds in the Operating Accounts for the Post-Effective Date
Debtor on the Effective Date in accordance with Section 15.5(c).

11 3.127 **Remaining Estate Funds** means the actual sum of Cash held by the
12 Debtor on the Effective Date.

13 3.128 **Request for Payment** means a request for payment of an Administrative
14 Claim filed in the Chapter 11 Case.

15 3.129 **Retained Causes of Action** shall have the meaning set forth below in
16 Section 17.7(b).

17 3.130 **Sale Effective Time** means midnight (Pacific Coast Time) following the
Closing Date of the DAP Sale.

18 3.131 **Sale Order** means the Final Order approving the DAP Sale, pursuant to
19 § 363, titled Order (A) Authorizing the Sale of Property to Desert Aids Project d/b/a
20 DAP Health Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B)
21 Approving the Assumption and Assignment of an Unexpired Lease Related Thereto;
and (C) Granting Related Relief [Docket No. 559].

22 3.132 **Sale Proceeds Holdback** means \$16,000,000, which amount is the
23 Debtor's good faith estimate of the aggregate amount of Secured Claims, Priority
24 Claims, and Administrative Claims, which amount may be adjusted only in a manner
consistent with the DHCS Settlement Agreement.

25 3.133 **Schedule of Assumed Contracts** means the schedule listing the
26 Executory Agreements to be assumed pursuant to the Plan.

27 3.134 **Scheduled** means, with respect to any Claim, the status, priority, and
28 amount, if any, of such Claim as set forth in the Schedules.

1 3.135 **Schedules** means the schedules of assets and liabilities and the
2 statements of financial affairs filed by the Debtor in the Chapter 11 Case pursuant to
3 § 521 and Bankruptcy Rule 1007 [Docket Nos. 97, 98], which incorporate by
4 reference the global notes and statement of limitations, methodology, and disclaimer
5 regarding the Debtor's schedules and statements, as such schedules or statements have
6 been or may be further modified, amended, or supplemented from time to time in
7 accordance with Bankruptcy Rule 1009 or Final Orders of the Bankruptcy Court.

8 3.136 **Secured Claim** means a Claim that is (a) secured by a lien on any of the
9 Assets, which lien is valid, perfected, and enforceable under applicable law or by
10 reason of a Final Order, to the extent of the value of the claimant's interest in such
11 Asset, or (b) entitled to setoff under § 553, to the extent of the amount subject to such
12 setoff, as determined pursuant to § 506(a) or § 1129(b).

13 3.137 **Solicitation Package** shall have the meaning set forth below in Section
14 6.10.

15 3.138 **Specified Litigation** means the following lawsuits: (i) Husam E. Aldairi,
16 et al. v. Borrego Community Health Foundation, Case No. 37-2021-00046200-CU-
17 BC-CTL (Cal. Sup. Ct. San Diego); (ii) Borrego Community Health Foundation v.
18 Inland Valley, LLC, et al., Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.); (iii)
19 Borrego Community Health Foundation v. Karen Hebets, et al., Case No. 3:22-cv-
20 01056-AJB-AGS (S.D. Cal.); and (iv) Borrego Community Health Foundation v.
21 Travelers Casualty and Surety Company of America, Case No. 3:22-CV-161-L-MDD
22 (S.D. Cal.).

23 3.139 **Specified Litigation Defendant** means any counterparty to the Debtor in
24 the Specified Litigation.

25 3.140 **Specified Litigation Recoveries** means the Net Recovery, if any, realized
26 by the Debtor or the Liquidating Trust from any or all of the Specified Litigation.

27 3.141 **Statutory Fees** means the fees payable pursuant to section 1930 of title
28 28 of the United States Code that were incurred in connection with the Chapter 11
Case.

3.142 **Subsequent Distribution Date** means any date after the Initial
Distribution Date upon which the Liquidating Trust makes a Distribution to any
Holders of Allowed Claims, as determined by the Liquidating Trustee or Co-
Liquidating Trustee, as applicable.

3.143 **Tax** means any tax, charge, fee, levy, impost, or other assessment by any
federal, state, local, or foreign taxing authority, including, without limitation, income,

1 excise, property, sales, transfer, employment, payroll, franchise, profits, license, use,
2 ad valorem, estimated, severance, stamp, occupation, and withholding tax.

3 3.144 **Third Party Releases** shall have the meaning provided below in Section
4 17.2(b).

5 3.145 **Transition Period** means the time between the Sale Effective Time and
6 the occurrence of both (i) the CHOW Effective Date, and (ii) the dissolution of the
7 Post-Effective Date Debtor.

8 3.146 **Transition Services Agreement** means the agreement between the
9 Debtor and DAP Health in which the parties (or their successors-in interest, including
10 the Post-Effective Date Debtor) agree to provide certain services and support after the
11 Closing of the Sale pending the approval of the CHOW by CMS.

12 3.147 **Transfer (and any variations such as “Transferring”)** means to,
13 directly or indirectly, sell, convey, assign, pledge, encumber, hypothecate, gift,
14 contribute, subject to a joint venture, partnership, or similar arrangement, abandon,
15 convey, or transfer or otherwise dispose of, either voluntarily or involuntarily, any
16 Asset or enter into any contract for any Asset that will effectuate the foregoing
17 whether or not the foregoing is subject to approvals or conditions.

18 3.148 **Trust Assets Accounts** means interest-bearing bank account(s) or
19 money-market account(s) to be established and held in trust by the Liquidating
20 Trustee or Co-Liquidating Trustee, as applicable, on or after the Effective Date, for
21 the purpose of holding the Liquidating Trust Assets to be distributed pursuant to the
22 Plan and any interest, dividends, or other income earned upon the investment of the
23 Liquidating Trust Assets.

24 3.149 **Trust Beneficial Interests** mean, collectively, (i) Class A Trust
25 Beneficial Interests, and (ii) the Class B Trust Beneficial Interests. The Trust
26 Beneficial Interests shall be evidenced as set forth in Section 13.3 and shall not be
27 transferable, except to the limited extent provided in the Liquidating Trust Agreement.

28 3.150 **Unclassified Claims** means, collectively, Administrative Claims,
Professional Claims, Statutory Fees, and Priority Tax Claims.

3.151 **Unimpaired Claim** means a Claim that is not impaired because the Plan
leaves unaltered the legal, equitable, and contractual rights to which such Claim
entitles the Holder of such Claim, as set forth in § 1124(1).

3.152 **U.S. Trustee** means the Office of the United States Trustee for the
Southern District of California.

1 3.153 *Vacatur Stipulation* shall have the meaning provided below in Section
2 5.5.

3 3.154 *Voting Instructions* means the instructions for voting on the Plan
4 contained on the Ballots.

5 3.155 *Wind-down Budget* means the budget (as the same may be amended or
6 modified from time to time as provided in the Liquidating Trust Agreement) setting
7 forth the projected costs and expenses associated with winding down the Debtor and
8 the Estate and for the Liquidating Trustee and Co-Liquidating Trustee to discharge
9 their duties under the Plan and the Liquidating Trust Agreement.

10 **B. Interpretation and Rules of Construction.**

11 Unless otherwise specified, all Section or exhibit references in the Combined
12 Plan and Disclosure Statement are to the respective Section in, or exhibit to, the
13 Combined Plan and Disclosure Statement, as the same may be amended, waived, or
14 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,” and
15 other words of similar import refer to the Combined Plan and Disclosure Statement
16 as a whole and not to any particular Section, subsection, or clause contained therein.
17 The headings in the Combined Plan and Disclosure Statement are for convenience of
18 reference only and shall not limit or otherwise affect the provisions hereof. For
19 purposes herein: (1) in the appropriate context, each term, whether stated in the
20 singular or the plural, shall include both the singular and the plural, and pronouns
21 stated in the masculine, feminine, or neuter gender shall include the masculine,
22 feminine, and the neuter gender; (2) any reference herein to a contract, lease,
instrument, release, indenture, or other agreement or document being in a particular
form or on particular terms and conditions means that the referenced document shall
be substantially in that form or substantially on those terms and conditions; (3) the
rules of construction set forth in § 102 shall apply; and (4) any term used in capitalized
form herein that is not otherwise defined, but that is used in the Bankruptcy Code or
the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy
Code or the Bankruptcy Rules, as the case may be.

23 **C. Controlling Document.**

24 The Combined Plan and Disclosure Statement (without reference to the Plan
25 Supplement) shall govern and control in the event of an inconsistency between the
26 terms and provisions in the Combined Plan and Disclosure Statement (without
27 reference to the Plan Supplement), the Plan Supplement, any other instrument or
28 document created or executed pursuant to the Combined Plan and Disclosure
Statement, or any order (other than the Confirmation Order) referenced in the

1 Combined Plan and Disclosure Statement (or any exhibit, schedules, appendices,
2 supplements or amendments to any of the foregoing); provided that, notwithstanding
3 anything herein to the contrary, the Confirmation Order shall govern and control in
4 all respects in the event of a conflict between the Confirmation Order and any
provision of the Combined Plan and Disclosure Statement or the Plan Supplement.

5 **SECTION 4.**
6 **BACKGROUND**

7 **4.1 *Overview of the Debtor.***

8 The Debtor is a non-profit public charity, tax-exempt under section 501(c)(3)
9 of the Internal Revenue Code. The Debtor strives to be the community leader in
10 improving the health of the populations in its service area, many of whom struggle
11 with job and housing insecurity or disabilities. Its primary focus is the underserved,
12 with an empowered workforce providing measurable quality and compassionate care
13 to its patients. On the Petition Date, the Debtor had 24 brick and mortar sites including
14 administrative sites, 2 pharmacies, and 6 mobile units covering a service area
15 consisting of a 250-mile corridor on the eastern side of San Diego and Riverside
16 Counties, CA. During 2021, the Debtor provided approximately 386,000 patient care
17 visits. As of 2021, of Debtor's patients: (a) 94% had incomes below 200% of the FPL;
18 (b) 71% lived in poverty; (c) approximately 75% were Medi-Cal (Medicaid)
19 recipients or participate in other public health programs; (d) 36% were under the age
20 18; and (e) 93% were under the age of 65. The Debtor's services included
comprehensive primary care, pediatric care, urgent care, behavioral health, dental
services, specialty care, transgender health, women's health, prenatal care, veteran's
health, chiropractic services, telehealth, and pharmacy. The Debtor was also an active
partner in the training of medical residents, medical students, nurse practitioner
students, physician assistant students, nursing students and other healthcare
professionals.

21 As of the Petition Date, the Debtor operated as a federally qualified health
22 center ("FQHC"). FQHCs are federally designated entities that receive federal grants
23 and enhanced state payments to provide health care services to low-income and rural
24 patients. The Debtor's health services were targeted to families with incomes below
25 200% of the Federal Poverty Level. As an FQHC, the Debtor strived to deliver high
26 quality, comprehensive, compassionate primary health care to people in the
surrounding area, regardless of ability to pay.

27 The Debtor also operated as a Federal Tort Claims Act ("FTCA") "deemed
28 facility." Under section 224 of the Public Health Service Act, as amended by the

1 Federally Supported Health Centers Assistance Acts of 1992 and 1995, employees of
2 eligible health centers like the Debtor may be deemed as federal employees for the
3 purposes of liability protections under the FTCA for acts or omissions in the
4 performance of medical, surgical, dental, or related functions resulting in personal
5 injury, including death, and occurring within the scope of employment. Congress
6 extended eligibility for FTCA protections to health centers like the Debtor in order to
7 increase the availability of funds for health centers to provide primary health care
8 services by reducing or eliminating health centers' malpractice insurance premiums.

7 Further information concerning the Debtor's operations is available in the
8 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor's*
9 *Emergency First Day Motions* [Docket No. 7] (the "First-Day Declaration").

10 **4.2 Events Leading to Chapter 11 Filing.**

11 In 2020, the Debtor's Board of Trustees (the "Board") became aware that
12 members of the Debtor's leadership, certain landlords/contractors, and community
13 dentists orchestrated what appears to be significant fraud for their own personal
14 enrichment which involved filing false claims for dental services provided by contract
15 dentists (*i.e.*, the Prepetition Fraud). In November 2020, DHCS issued a temporary
16 suspension of payments for Medi-Cal services because of an ongoing fraud
17 investigation into the outside, contract dental program. There were no accusations of
18 any fraudulent acts associated with the in-house dental program or medical services.
19 During the pendency of the suspension by DHCS, the Debtor provided thousands of
20 services without compensation.

21 Following the participation in a formal administrative meet and confer process,
22 on February 26, 2021, the Debtor entered into a settlement agreement with DHCS,
23 pursuant to which DHCS agreed to lift the temporary suspension as it pertained to the
24 reimbursement of Medi-Cal medical services. The temporary payment suspension
25 remained in place through the Petition Date with respect to dental services.

26 The Debtor took strong corrective actions and fully cooperated with state and
27 federal investigators. Among other steps taken by the Debtor in the fall of 2020, the
28 Debtor (a) terminated individual executives and others suspected of involvement in
the apparent fraud; (b) removed any tainted members from the Board; (c) hired new
leadership and added new board members with a high level of integrity and
experience; (d) agreed to the appointment of a monitor, and fully cooperated with that
monitor; (e) diligently completed corrective action plans; (f) initiated lawsuits against
the bad actors; (g) created a corporate compliance department and instituted a robust
compliance program; and (h) engaged reputable legal, IT, accounting, and financial

1 consultants to guide it on its path to full responsibility and integrity.

2 The Debtor initiated an internal investigation to identify wrongdoing by former
3 associates, which led to the filing of pending litigation against the former trustees,
4 officers, and contract dentists. The schemes included selling useless assets to the
5 Debtor at inflated prices, entering into one-sided agreements with the Debtor to its
6 detriment, committing and/or covering up healthcare fraud through improper billing
7 of dental services, entering into leases with the Debtor that were many times fair
8 market rates and terms, paying themselves above-market salaries and benefits, and
9 hiring friends and family members to work for the Debtor and paying them above-

10 market salaries.
11 While there were no accusations of any fraudulent acts associated with the in-
12 house dental program, as set forth above, the Medi-Cal suspension on the Debtor's
13 in-house dental payments resulted in DHCS withholding more than \$7 million
14 otherwise payable to the Debtor.

15 The Debtor commenced this Chapter 11 Case as a result of the issues discussed
16 in this Section IV with the objective to maintain the Debtor's business operations; to
17 preserve value for the Debtor, its stakeholders, and parties in interest; and, most
18 importantly, to protect the health and wellbeing of the patients who are being treated
19 at the facilities operated by the Debtor and the employees of the Debtor.

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SECTION 5.
THE CHAPTER 11 CASE

The following is a brief description of certain material events that have occurred during the Chapter 11 Case.

5.1 ***Material First-Day Motions Filed on the Petition Date.***

a) **Emergency Motion to Pay the Debtor's Prepetition Priority Wages**

The Debtor filed an emergency motion [Docket No. 3] (the "Wage Motion") for authority to pay the Debtor's prepetition priority wages and related benefits in the ordinary course of business to avoid the disruption to the Debtor's business from failing to do so. The Bankruptcy Court granted the Wage Motion. [See Docket No. 20].

b) **Emergency Motion to Maintain Cash Management Systems**

The Debtor filed an emergency motion [Docket No. 4] (the "Cash Management")

1 Motion”) for authority to maintain their cash management systems, which was
2 imperative to avoid significant disruption to the Debtor’s business operations. The
3 Bankruptcy Court granted the Cash Management Motion. [*See* Docket No. 28].

4 c) Emergency Motion to Provide Adequate Assurance of Payment to
5 the Debtor’s Utilities

6 The Debtor filed an emergency motion [Docket No. 5] (the “Utilities Motion”)
7 for an order authorizing the Debtor to provide adequate assurance of future payment
8 to certain utility companies pursuant to § 366(c). The Bankruptcy Court granted the
9 Utilities Motion. [*See* Docket No. 22].

10 d) Emergency Motion to Maintain Insurance Programs

11 The Debtor filed an emergency motion [Docket No. 6] (the “Insurance
12 Motion”) for authority to maintain insurance programs, pay premiums and other
13 obligations in the ordinary course, and prevent insurance companies from enforcing
14 ipso facto provisions or otherwise terminating insurance policies without first seeking
15 relief from the automatic stay. The Bankruptcy Court granted the Insurance Motion.
16 [*See* Docket No. 21].

17 e) Emergency Motion to Set Insider Compensation

18 The Debtor filed an emergency motion [Docket No. 11] (the “Motion to Set
19 Insider Compensation”) for authority to pay insiders their pre-petition salaries as they
20 come due during the Chapter 11 Case. The Bankruptcy Court granted the Motion to
21 Set Insider Compensation on an interim basis [*see* Docket No. 24] and later on a final
22 basis [*see* Docket No. 90].

23 **5.2 *Motion for Entry of Order: Authorizing (I) Key Employee Retention***
24 ***Program and (II) Key Employee Incentive Program.***

25 On December 7, 2022, the Debtor filed a motion [Docket No. 279] (the
26 “KERP/KEIP Motion”) seeking authorization of (a) a key employee retention plan
27 and (b) a key employee incentive plan. The United States Trustee filed an objection
28 to the KERP/KEIP Motion [Docket No. 324] and the Bankruptcy Court later approved
the KERP/KEIP Motion on February 9, 2023 [Docket No. 436].

29 **5.3 *Estate Professionals, the Committee, and the Patient Care***
30 ***Ombudsman.***

31 On September 27, 2022, the Bankruptcy Court entered an order approving the

1 employment of Kurtzman Carson Consultants LLC, as claims and noticing agent to
2 the Debtor. [Docket No. 54]. On November 16, 2022, the Bankruptcy Court entered
3 an order approving the employment of Ankura Consulting Group, LLC, as financial
4 advisor to the Debtor. [Docket No. 176]. On November 18, 2022, the Bankruptcy
5 Court entered an order [Docket No. 198] approving the employment of Hooper,
6 Lundy & Bookman P.C., as special healthcare regulatory counsel. On December 13,
7 2022, the Bankruptcy Court entered an order [Docket No. 292] approving the
8 employment of Dentons US LLP, as counsel to the Debtor.

9 Additionally, on December 6, 2022, the Debtor filed a motion [Docket No. 271]
10 to employ various ordinary course professionals. On January 24, 2023, the
11 Bankruptcy Court entered an order [Docket No. 400] granting the motion. Since the
12 Petition Date, the Debtor has employed, pursuant to various filings, ordinary course
13 professionals that provide an array of important services to the Debtor in the ordinary
14 course of business, including legal, accounting, and consulting services.

15 On September 26, 2022, the U.S. Trustee appointed [Docket No. 49] an Official
16 Committee of Unsecured Creditors (the “Committee”) to represent the interests of
17 general unsecured creditors. The Committee comprises the following seven members:
18 (i) McKesson Corporation, (ii) Greenway Health, LLC, (iii) We Klean Inc., (iv)
19 Mustafa Bilal, DDS, Inc., (v) Vista Village Family Dentistry, (vi) Vitamin D Public
20 Relations, LLC, and (vii) Pourshirazi & Youssefi Dental Corporation. On December
21 9, 2022, the Bankruptcy Court entered an order [Docket No. 287] approving the
22 employment of Pachulski Stang Ziehl & Jones LLP, as counsel to the Committee. On
23 November 29, 2022, the Bankruptcy Court entered an order [Docket No. 242]
24 approving the employment of FTI Consulting, Inc., as financial advisor to the
25 Committee.

26 The U.S. Trustee appointed Dr. Jacob Nathan Rubin, MD, (the “Patient Care
27 Ombudsman”) to serve as the patient care ombudsman in this Chapter 11 Case,
28 pursuant to § 333(a). [Docket No. 25]. On October 18, 2022, the Bankruptcy Court
entered orders approving the employment of the following professionals to the Patient
Care Ombudsman: Levene, Neale, Bender, Yoo & Brill LLP, as bankruptcy counsel
[Docket No. 100]; and Dr. Tim Stacy DNP, ACNP-BC, as consultant [Docket No.
101]. The Patient Care Ombudsman has filed three reports in the Chapter 11 Case
[Docket Nos. 169, 348, 560].

29 5.4 *Administrative Matters, Reporting and Disclosures.*

30 The Debtor was required to address the various administrative matters attendant
31 to the commencement of this Chapter 11 Case, which required an extensive amount

1 of work by the Debtor’s employees and its professionals. These matters included the
2 preparation of the *Schedules of Assets and Liabilities* and *Statements of Financial*
3 *Affairs* for the Debtor’s Chapter 11 Case [see Docket Nos. 97, 98], and preparation of
4 the materials required by the U.S. Trustee, including, without limitation, the 7-Day
5 Package.

6 The Debtor has made every effort to comply with its duties under §§ 521, 1106
7 and 1107 and all applicable U.S. Trustee guidelines, including the filing of the
8 Debtor’s monthly operating reports with the U.S. Trustee. [Docket Nos. 172, 312,
9 432, 517.] The Debtor also attended its initial interview with the U.S. Trustee and the
10 meeting of creditors required under § 341(a).

11 5.5 *Adversary Proceeding against DHCS.*

12 On September 26, 2022, the Debtor filed the *Debtor’s Complaint for*
13 *Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the*
14 *Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Docket No.
15 1] (the “Complaint”), commencing an adversary proceeding (Adv. Pro. No. 22-
16 90056) against DHCS (the “Adversary Proceeding”). The Complaint sought, among
17 other things, (i) an order temporarily and permanently enjoining DHCS from
18 suspending the Debtor from the Medi-Cal program until and unless DHCS affords the
19 Debtor the rights to which it is entitled under federal law and under the Constitution
20 and (ii) a Writ of Mandate under Code of Civil Procedure 1085: (1) setting aside
21 DHCS’ suspension of the Debtor’s Medi-Cal payments; (2) ordering DHCS to rescind
22 any notices issued to third-parties, including but not limited to Medi-Cal health plans,
23 directing or otherwise compelling them to (x) block transfer patients already assigned
24 to the Debtor, and (y) assign patients that would otherwise be assigned to the Debtor
25 to other providers; and (3) compel the payment of approximately \$6.7 million that
26 was being withheld related to prior provision of in-house dental services to Medi-Cal
27 beneficiaries.

28 On September 27, 2022, the Debtor filed its *Emergency Motion: (I) to Enforce*
29 *the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively, (II) for Temporary*
30 *Restraining Order; Memorandum of Points and Authorities in Support Thereof; and*
31 *Declarations in Support Thereof* [Adv. Dkt. No. 3] (the “Motion to Enforce”) and
32 certain other supporting declarations. The Motion to Enforce sought (A) the entry of
33 an order enforcing the automatic stay to prevent DHCS from suspending all Medi-Cal
34 payments and taking other related acts; or, alternatively, (2) the entry of order
35 restraining and enjoining DHCS from causing immediate and irreparable harm to the
36 Debtor, its estate, and thousands of patients by suspending all Medi-Cal payments and
37 taking other related acts which would, inevitably, have caused the Debtor to close its

1 clinics and cease providing essential medical services to low income and rural patients
2 in Southern California. DHCS objected to the Motion to Enforce and filed, among
3 other things, *Defendant California Department of Health Care Services' Opposition*
4 *to Debtor's Emergency Motion: (1) to Enforce the Automatic Stay; or (2) for*
5 *Temporary Restraining Order* [Adv. Dkt. No. 30]. The Committee filed a statement
6 in support of the Motion to Enforce [Adv. Dkt. No. 37].

7 On October 26, 2022, the Bankruptcy Court issued its *Findings of Fact and*
8 *Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II)*
9 *Alternatively for Temporary Restraining Order* [Adv. Dkt. No. 65] (the "DHCS
10 Findings of Fact") and *Order on Emergency Motion to (I) Enforce the Automatic Stay*
11 *or (II) Alternatively for Temporary Restraining Order* [Adv. Dkt. No. 66] (the "DHCS
12 Order") granting, in part, the Motion to Enforce on the terms and conditions set forth
13 in the DHCS Order. DHCS filed a *Notice of Appeal and Statement of Election*. [Adv.
14 Dkt. No. 90] with respect to the DHCS Findings of Fact and DHCS Order, thereby
15 commencing Case No. 22-CV-01751-GPC-MSB (S.D. Cal.) (the "Appeal").

16 On October 26, 2022, DHCS filed its *Answer to Complaint for Declaratory*
17 *Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for*
18 *Writ of Mandate Under Code of Civil Procedure 1085* [Adv. Dkt. No. 67].

19 On November 4, 2022, the Debtor, the Committee and DHCS entered into a
20 stipulation (the "Stipulation") [Adv. Dkt. No. 73], to participate in a non-binding
21 mediation to resolve all active disputes between the parties. On November 7, 2022,
22 the Bankruptcy Court approved the Stipulation. [Adv. Dkt. No. 74].

23 On February 27, 2023, the Debtor filed a *Motion to Approve Compromise*
24 *Among Debtor, Official Committee of Unsecured Creditors and California*
25 *Department of Health Care Services Pursuant to Federal Rule of Bankruptcy*
26 *Procedure 9019* [Docket No. 510] (the "Settlement Motion"). The Bankruptcy Court
27 approved the Settlement Motion on March 7, 2023 [Docket No. 544] (the "DHCS
28 9019 Order"). The DHCS 9019 Order sets forth the treatment of the DHCS Claim and
provides for the allocation of the DAP Sale proceeds among DHCS and Holders of
other Allowed Claims.

On September 26, 2023, the Debtor filed the *Notice of Filing of Executed*
Settlement Agreement Among the Debtor, the Official Committee of Unsecured
Creditors, and the California Department of Health Care Services [Docket Nos. 510,
544] [Docket No. 923]. Pursuant to the DHCS 9019 Order, the Debtor, the
Committee, and DHCS prepared and executed a finalized settlement agreement.

1 On October 17, 2023, the Debtor, DHCS, and the Committee jointly filed the
2 *Stipulation Among the Debtor, the California Department of Health Care Services*
3 *and the Official Committee of Unsecured Creditors to (I) Vacate the (A) Findings of*
4 *Fact and Conclusions of Law re: Emergency Motion to Enforce the Automatic Stay*
5 *or Alternatively for Temporary Restraining Order [Docket No. 65] and (B) Order on*
6 *Emergency Motion to Enforce the Automatic Stay or Alternatively for Temporary*
7 *Restraining Order [Docket No. 66]; and (II) Dismiss the Adversary Proceeding [Adv.*
8 *Docket No. 133] (the “Vacatur Stipulation”) pursuant to the DHCS Settlement*
9 *Agreement. On October 18, 2023, the Bankruptcy Court entered an order approving*
10 *the Vacatur Stipulation [Adv. Docket No. 134] and (a) dismissing the Adversary*
11 *Proceeding with prejudice and (b) vacating the DHCS Findings of Fact and DHCS*
12 *Order.*

13 On November 6, 2023, the Debtor and DHCS filed the *Joint Stipulation to*
14 *Dismiss the Appeal [App. Docket No. 12] (the “Appeal Stipulation”) pursuant to the*
15 *DHCS Settlement Agreement. On November 7, 2023, the District Court entered an*
16 *order approving the Appeal Stipulation [App. Docket No. 13] and dismissing the*
17 *Appeal.*

18 5.6 *The Sale of Substantially All Assets.*

19 On November 10, 2022, the Debtor filed a motion [Docket No. 161] (the “Sale
20 Motion”) requesting entry of an order (i) authorizing the proposed sale of substantially
21 all of the Debtor’s assets, (ii) approving the form of the Asset Purchase Agreement
22 (the “APA”), (iii) approving certain procedures governing the sale process (the “Bid
23 Procedures”), and (iv) approving certain procedures governing assumption and
24 rejection of Executory Agreements in connection with the sale. On December 5, 2022,
25 the Debtor filed a supplement to the Sale Motion with revised Bid Procedures [Docket
26 No. 276]. On December 8, 2022, the Debtor filed a second supplement to the Sale
27 Motion, which attached a form APA [Docket No. 285].

28 On December 19, 2022, the Bankruptcy Court entered an order [Docket No.
321] approving the Bid Procedures. The order provided that all objections to the
proposed Bid Procedures were overruled and that remaining objections concerning
the proposed sale were premature.

On January 16, 2023, the Debtor filed a notice [Docket No. 389] to
counterparties of Executory Agreements that may be assumed and assigned in
connection with the sale. The Debtor filed a supplemental notice [Docket No. 409] on
January 27, 2023. Certain counterparties to executory agreements filed objections
(collectively, the “Cure Objections”) to the notices concerning assumption and

1 assignment. [See Docket Nos. 426, 431, 440, 441, 445, 447, 455, 458, 487].

2 On February 2, 2023, the Debtor filed a notice [Docket No. 418] that the Debtor
3 received Qualified Bids pursuant to the Bid Procedures and selected designated DAP
4 Health as the stalking horse bidder. The notice further provided that the Debtor would
5 conduct an auction on February 6, 2023.

6 On February 9, 2023, the Debtor filed a notice [Docket No. 438] that the Debtor
7 had adjourned the auction and requested final highest and best bids by February 10,
8 2023. The next day, on February 10, 2023, the Bankruptcy Court entered an order
9 vacating deadlines for objections to the sale [Docket No. 443].

10 On February 15, 2023, the Debtor filed a notice [Docket No. 465] that the
11 Debtor had selected (i) DAP Health as the winning bidder, and (ii) Altamed Health
12 Services Corporation as the back-up bidder.

13 On February 16, 2023, the Bankruptcy Court entered an order approving
14 modified deadlines and scheduling a hearing to approve the sale. [Docket No. 476].

15 On February 16, 2023, the Debtor filed a notice [Docket No. 478] to
16 counterparties to Executory Agreements designated by DAP Health for assumption
17 and assignment in connection with the sale.

18 On March 1, 2023, the Bankruptcy Court held a hearing to approve the DAP
19 Sale pursuant to the Sale Motion. At the hearing, the Bankruptcy Court considered
20 the Cure Objections as well as certain objections (collectively, the “Sale Objections”)
21 to the DAP Sale as well as any withdrawals thereof. [See Docket Nos. 270, 356, 489,
22 491]. As set forth in further detail below, the Bankruptcy Court overruled the Sale
23 Objections.

24 On March 13, 2023, the Bankruptcy Court entered an order [Docket No. 559]
25 granting the Sale Motion and approving the DAP Sale (the “Sale Order”). In
26 connection with the DAP Sale, the Debtor and DAP Health entered into that certain
27 Transition Services Agreement, wherein the parties agree to provide certain services
28 and support after the Closing of the Sale pending the approval of the CHOW by CMS.
Subsequent to approval of the CHOW, the Post-Effective Date Debtor will be
dissolved wherein the Debtor provides certain services to DAP Health.

On July 31, 2023, the Debtor filed the *Notice of Occurrence of Closing of Sale
to DAP Health, Inc.* [Docket No. 823], which informed the Bankruptcy Court and all
parties in interest of the occurrence of the Closing Date.

1
2 After the Effective Date and Closing of the Sale, the Post-Effective Date
3 Debtor, as described herein, will need to continue to operate until the CHOW
4 submitted, pursuant to 42 C.F.R § 489.18, by the Debtor and DAP Health is approved
5 by CMS, which will result in the transfer of the Debtor’s Medicare Identification
6 Number and Medicare Provider Agreement to DAP Health. After the Closing and
7 Effective Date, DAP Health and the Post-Effective Date Debtor will operate pursuant
8 to the Transition Services Agreement.

7 **5.7 *Claims Bar Date and Reconciliation.***

8 a) General Bar Date

9 On September 13, 2022, the Bankruptcy Court set a general claims bar date of
10 November 21, 2022, and March 13, 2023, as the deadline for governmental entities to
11 file claims [Docket No. 16]. A Notice of Bar Date was published on October 27, 2022,
12 and October 28, 2022, in the Los Angeles Times, the San Diego Union-Tribune, The
13 Desert Sun, The Press-Enterprise, the El Latino, the La Prensa Hispana Bilingual
14 News Paper, the San Bernadino County Sun, and the San Diego Union-Tribune
15 Español. [Docket No. 157].

14 b) Extended DHCS Bar Date

15 Pursuant to the DHCS Settlement Agreement, the Extended DHCS Bar Date is
16 set for December 29, 2023, which is the deadline by which DHCS must file a Proof
17 of Claim for any further General Unsecured Claims against the Debtor for Medi-Cal
18 overpayments, consistent with the definition in the DHCS Settlement Agreement.

19 c) Administrative Claims Bar Date

20
21 The Plan contemplates that a deadline will be set by the Bankruptcy Court by
22 which Holders of Administrative Claims, other than Administrative Claims arising in
23 the ordinary course of business for the Debtor or Professional Claims, must assert
24 Administrative Claims or be forever barred, which shall be (a) thirty (30) days after
25 the Effective Date for Administrative Claims other than Professional Claims, and (b)
26 sixty (60) days after the Effective Date for Professional Claims. Such requests for
27 payment may include estimates of amounts through the Effective Date of the Plan.
28

1 **SECTION 6.**
2 **CONFIRMATION AND VOTING PROCEDURES**

3 **6.1 *Confirmation Hearing.***

4 On [], the Bankruptcy Court entered the Conditional Approval and
5 Procedures Order. The Confirmation Hearing has been scheduled for January 17,
6 2024, at 10:00 a.m. (prevailing Pacific Time) to consider (a) final approval of the
7 Combined Plan and Disclosure Statement as providing adequate information pursuant
8 to § 1125 and (b) confirmation of the Combined Plan and Disclosure Statement
9 pursuant to § 1129. The Confirmation Hearing may be adjourned from time to time
10 by the Debtor without further notice, except for an announcement of the adjourned
11 date made at the Confirmation Hearing or by filing a notice with the Bankruptcy
12 Court.

13 **6.2 *Procedures for Objections.***

14 Any objection to final approval of the Combined Plan and Disclosure Statement
15 as providing adequate information pursuant to § 1125 and/or confirmation of the
16 Combined Plan and Disclosure Statement must be made in writing and filed with the
17 Bankruptcy Court by no later than January 8, 2024, at 4:00 p.m. (prevailing Pacific
18 Time) and be served in accordance with the Local Bankruptcy Rules of the
19 Bankruptcy Court on the following parties: (i) counsel to the Debtor: Dentons US
20 LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017 (Attn:
21 Samuel R. Maizel (samuel.maizel@dentons.com) and Tania M. Moyron
22 (tania.moyron@dentons.com)); (ii) financial advisor to the Debtor: Ankura, 2021
23 McKinney Avenue, Suite 340, Dallas, Texas 75201 (Attn: Charles Pease
24 (charles.pease@ankura.com)); (iii) the Office of the United States Trustee: 880 Front
25 Street, Room 3230, San Diego, California 92101 (Attn: Haeji Hong
26 (haeji.hong@usdoj.gov)); (iv) counsel to the Committee: Pachulski Stang Ziehl &
27 Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067
28 (Attn: Jeffrey N. Pomerantz (jpomerantz@pszjlaw.com) and Steven W. Golden
(sgolden@pszjlaw.com)); and (v) financial advisor to the Committee: FTI, 350 South
Grand Avenue, Suite 3000, Los Angeles, California 90071 (Attn: Cliff Zucker
(cliff.zucker@fticonsulting.com) and Narendra Ganti
(narendra.ganti@fticonsulting.com)). Unless an objection is timely filed and served,
it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

29 **6.3 *Requirements for Confirmation.***

30 The Bankruptcy Court will confirm the Combined Plan and Disclosure
Statement only if it meets all the applicable requirements of § 1129. Among the

1 requirements for confirmation in the Chapter 11 Case is that the Combined Plan and
2 Disclosure Statement be: (i) accepted by all Impaired Classes of Claims or, if rejected
3 by an Impaired Class, that the Combined Plan and Disclosure Statement “does not
4 discriminate unfairly” against, and is “fair and equitable” with respect to, such Class;

- 5 a. the Combined Plan and Disclosure Statement has classified Claims in
6 a permissible manner;
- 7 b. the Combined Plan and Disclosure Statement complies with the
8 requirements of Chapter 11 of the Bankruptcy Code; and
- 9 c. the Combined Plan and Disclosure Statement has been proposed in
10 good faith.

11 The Plan Proponents believe that the Combined Plan and Disclosure Statement
12 complies, or will comply, with all such requirements.

13 6.4 *Classification of Claims.*

14 Section 1123 provides that a plan must classify the claims of a debtor’s
15 creditors. In accordance with § 1123, the Combined Plan and Disclosure Statement
16 divides Claims into Classes and sets forth the treatment for each Class (other than
17 those claims which pursuant to § 1123(a)(1) need not be and have not been classified).

18 Section 1122 requires the Combined Plan and Disclosure Statement to place a
19 Claim in a particular Class only if such Claim is substantially similar to the other
20 Claims in such class. The Combined Plan and Disclosure Statement creates separate
21 Classes to deal respectively with Priority Non-Tax Claims, various Secured Claims,
22 General Unsecured Claims, and an Allowed DHCS Claim. The Plan Proponents
23 believe that the Combined Plan and Disclosure Statement’s classifications place
24 substantially similar Claims in the same Class and, thus, meet the requirements of §
25 1122.

26 The Bankruptcy Code also requires that a plan provide the same treatment for
27 each claim of a particular class unless the claim holder agrees to a less favorable
28 treatment of its claim. The Plan Proponents believe that the Combined Plan and
Disclosure Statement complies with such standard. If the Bankruptcy Court finds
otherwise, however, it could deny confirmation of the Combined Plan and Disclosure
Statement if the holders of Claims affected do not consent to the treatment afforded
them under the Combined Plan and Disclosure Statement.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1
2 A Claim is placed in a particular Class only to the extent that the Claim falls
3 within the description of that Class and is classified in other Classes to the extent that
4 any portion of the Claim falls within the description of such other Classes. A Claim
5 also is placed in a particular Class for the purpose of receiving distributions pursuant
6 to the Combined Plan and Disclosure Statement only to the extent that such Claim is
7 an Allowed Claim in that Class, and such Claim has not been paid, released, or
8 otherwise settled prior to the Effective Date.

9 The Plan Proponents believe that the Combined Plan and Disclosure Statement
10 has classified all Claims in compliance with the provisions of § 1122 and applicable
11 case law. It is possible that a holder of a Claim may challenge the Plan Proponents'
12 classification of Claims and that the Bankruptcy Court may find that a different
13 classification is required for the Combined Plan and Disclosure Statement to be
14 confirmed. If such a situation develops, the Plan Proponents intend, in accordance
15 with the terms of the Combined Plan and Disclosure Statement, to make such
16 permissible modifications to the Combined Plan and Disclosure Statement as may be
17 necessary to permit its confirmation. Any such reclassification could adversely affect
18 holders of Claims by changing the composition of one or more Classes and the vote
19 required of such Class or Classes for approval of the Combined Plan and Disclosure
20 Statement.

21 **EXCEPT AS SET FORTH IN THE COMBINED PLAN AND DISCLOSURE**
22 **STATEMENT, UNLESS SUCH MODIFICATION OF CLASSIFICATION**
23 **MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER**
24 **OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF**
25 **THE COMBINED PLAN AND DISCLOSURE STATEMENT BY ANY**
26 **HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE**
27 **DEEMED TO BE A CONSENT TO THE COMBINED PLAN AND**
28 **DISCLOSURE STATEMENT'S TREATMENT OF SUCH HOLDER OF A**
CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER
ULTIMATELY IS DEEMED TO BE A MEMBER.

29 The amount of any Impaired Claim that ultimately is Allowed by the
30 Bankruptcy Court may vary from any estimated Allowed amount of such Claim and,
31 accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court
32 with respect to each Impaired Class of Claims may also vary from any estimates
33 contained herein with respect to the aggregate Claims in any Impaired Class. Thus,
34 the actual recovery ultimately received by a particular holder of an Allowed Claim
35 may be adversely or favorably affected by the aggregate amount of Claims Allowed
36 in the applicable Class. Additionally, any changes to any of the assumptions

1 underlying the estimated Allowed amounts could result in material adjustments to
2 recovery estimates provided herein or the actual Distribution received by creditors.
3 The projected recoveries are based on information available to the Debtor as of the
4 date hereof and reflect the Debtor's view as of the date hereof only.

5 The classification of Claims and the nature of distributions to members of each
6 Class are summarized herein. The Plan Proponents believe that the consideration, if
7 any, provided under the Combined Plan and Disclosure Statement to holders of
8 Allowed Claims reflects an appropriate resolution of their Allowed Claims taking into
9 account the differing nature and priority of such Claims. The Bankruptcy Court must
10 find, however, that a number of statutory tests are met before it may confirm the
11 Combined Plan and Disclosure Statement. Many of these tests are designed to protect
12 the interests of holders of Claims who are not entitled to vote on the Combined Plan
13 and Disclosure Statement, or do not vote to accept the Combined Plan and Disclosure
14 Statement, but who will be bound by the provisions of the Combined Plan and
15 Disclosure Statement if it is confirmed by the Bankruptcy Court.

16 6.5 *Impaired Claims.*

17 Pursuant to § 1126, only the Holders of Claims in Classes Impaired by the
18 Combined Plan and Disclosure Statement and receiving a payment or Distribution
19 under the Combined Plan and Disclosure Statement may vote to accept or reject the
20 Combined Plan and Disclosure Statement. Pursuant to § 1124, a Class of Claims may
21 be Impaired if the Combined Plan and Disclosure Statement alters the legal, equitable,
22 or contractual rights of the holders of such Claims treated in such Class. The Holders
23 of Claims not Impaired by the Combined Plan and Disclosure Statement are deemed
24 to accept the Combined Plan and Disclosure Statement and do not have the right to
25 vote on the Combined Plan and Disclosure Statement. The Holders of Claims in any
26 Class which will not receive any payment or Distribution or retain any property
27 pursuant to the Combined Plan and Disclosure Statement are deemed to reject the
28 Combined Plan and Disclosure Statement and do not have the right to vote. Finally,
the Holders of Claims whose Claims are not classified under the Combined Plan and
Disclosure Statement are not entitled to vote on the Combined Plan and Disclosure
Statement.

Under the Combined Plan and Disclosure Statement, Holders of Claims in the
Voting Classes – Class 3 (General Unsecured Claims) and Class 4 (Allowed DHCS
Claim) – are Impaired and are entitled to vote to accept or reject the Combined Plan
and Disclosure Statement. Holders of Claims in Class 1 (Priority Non-Tax Claims)
and Class 2 (Secured Claims) are Unimpaired and, therefore, not entitled to vote on

1 the Combined Plan and Disclosure Statement and are deemed to accept the Combined
2 Plan and Disclosure Statement.

3 **ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION**
4 **OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING**
5 **PROVIDED ONLY TO HOLDERS OF CLAIMS IN THE VOTING CLASSES.**

6 **6.6 *Confirmation Without Necessary Acceptances; Cramdown.***

7 In the event that any impaired class of claims does not accept a plan, a debtor
8 nevertheless may move for confirmation of the plan. A plan may be confirmed, even
9 if it is not accepted by all impaired classes, if the plan has been accepted by at least
10 one impaired class of claims, determined without including any acceptance of the plan
11 by any insider holding a claim in that class, and the plan meets the “cramdown”
12 requirements set forth in § 1129(b). Section 1129(b) requires that a court find that a
13 plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect
14 to each non-accepting impaired class of claims. Here, the Plan Proponents believe that
15 such requirements are satisfied, as no holder of a Claim or Interest junior to those in
16 the Impaired Classes is entitled to receive any property under the Combined Plan and
17 Disclosure Statement.

18 The concept of “unfair discrimination” is not defined in the Bankruptcy Code,
19 but case law suggests it exists when a difference in a plan’s treatment of two classes
20 of equal priority results in a materially lower percentage recovery for the non-
21 accepting class. The Plan Proponents do not believe that the Plan unfairly
22 discriminates against any Class of Claims.

23 The Bankruptcy Code provides a nonexclusive definition of the phrase “fair
24 and equitable.” To determine whether a plan is “fair and equitable,” the Bankruptcy
25 Code establishes “cramdown” tests for secured creditors, unsecured creditors, and
26 equity holders, as follows:

- 27 a. ***Secured Creditors.*** Either (i) each impaired secured creditor retains
28 its liens securing its secured claim and receives on account of its
secured claim deferred Cash payments having a present value equal
to the amount of its allowed secured claim, (ii) each impaired secured
creditor realizes the “indubitable equivalent” of its allowed secured
claim or (iii) the property securing the claim is sold free and clear of
liens with such liens to attach to the proceeds of the sale and the
treatment of such liens on proceeds to be as provided in clause (i) or
(ii) above.

1 b. ***Unsecured Creditors.*** Either (i) each impaired unsecured creditor
2 receives or retains under the plan property of a value equal to the
3 amount of its allowed claim or (ii) the holders of claims that are junior
4 to the claims of the dissenting class will not receive any property
 under the plan.

5 As discussed above, the Plan Proponents believe that the distributions provided
6 under the Combined Plan and Disclosure Statement satisfy the absolute priority rule,
 where required.

7 **6.7 *Feasibility.***

8 Section 1129(a)(11) requires that confirmation of a plan not be likely to be
9 followed by the liquidation, or the need for further financial reorganization, of the
10 Debtor or any successor to the Debtor (unless such liquidation or reorganization is
11 proposed in the Combined Plan and Disclosure Statement). Based on the Debtor’s
12 analysis and subject to the financing contingency described below, the Liquidating
13 Trustee and Co-Liquidating Trustee will have sufficient assets to accomplish their
14 tasks under the Combined Plan and Disclosure Statement. Therefore, the Plan
 Proponents believe that the liquidation pursuant to the Combined Plan and Disclosure
 Statement will meet the feasibility requirements of the Bankruptcy Code.

15 **6.8 *Best Interests Test and Liquidation Analysis.***

16 Even if a plan is accepted by the holders of each class of claims, the Bankruptcy
17 Code requires the Bankruptcy Court to determine that such plan is in the best interests
18 of all holders of claims that are impaired by that plan and that have not accepted the
19 plan. The “best interests” test, as set forth in § 1129(a)(7), requires a court to find
20 either that all members of an impaired class of claims have accepted the plan or that
21 the plan will provide a member who has not accepted the plan with a recovery of
22 property of a value, as of the effective date of the plan, that is not less than the amount
 that such holder would recover if the debtor were liquidated under chapter 7 of the
 Bankruptcy Code.

23 To calculate the probable distribution to holders of each impaired class of
24 claims if the debtor was liquidated under chapter 7, a court must first determine the
25 aggregate dollar amount that would be generated from a debtor’s assets if its chapter
26 11 case was converted to a case under chapter 7 of the Bankruptcy Code. To determine
27 if a plan is in the best interests of each impaired class, the present value of the
28 distributions from the proceeds of a liquidation of the debtor’s unencumbered assets
 and properties, after subtracting the amounts attributable to the costs, expenses, and
 administrative claims associated with a chapter 7 liquidation, must be compared with

1 the value offered to such impaired classes under the plan. If the hypothetical
2 liquidation distribution to holders of claims in any impaired class is greater than the
3 distributions to be received by such parties under the plan, then such plan is not in the
best interests of the holders of claims in such impaired class.

4 The Debtor, with the assistance of its advisors, has prepared a liquidation
5 analysis that summarizes the Debtor's best estimate of recoveries by holders of
6 Claims if the Chapter 11 Case was converted to a case under chapter 7 (the
"Liquidation Analysis"), which is attached hereto as **Exhibit A**.

7 Based upon the Debtor's current projections, Holders of Allowed
8 Administrative Claims, Allowed Secured Claims, Allowed General Unsecured
9 Claims, and a portion of the Allowed DHCS Claim, will be paid in full on the
10 Effective Date or as soon as practicably thereafter. See **Exhibit A** (Liquidation
Analysis Supplement) attached hereto.

11 Based upon **Exhibit A** (Liquidation Analysis Supplement) attached hereto, the
12 Plan Proponents believe that creditors will receive at least as much or more under the
13 Plan than they would receive if the Chapter 11 Case was converted to a chapter 7 case.

14 **6.9 Eligibility to Vote on the Combined Plan and Disclosure Statement.**

15 Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed
16 Claims in the Voting Classes may vote on the Combined Plan and Disclosure
17 Statement. Further, subject to the tabulation procedures that were approved by the
18 Conditional Approval and Procedures Order, in order to vote on the Combined Plan
19 and Disclosure Statement, Creditors must hold an Allowed Claim in the Voting
20 Classes, or be the Holder of a Claim that has been temporarily Allowed for voting
purposes only pursuant to the approved tabulation procedures or under Bankruptcy
Rule 3018(a).

21 **6.10 Solicitation Package / Release Opt-Out Election Form.**

22 All Holders of Allowed Claims in the Voting Classes will receive a solicitation
23 package (the "Solicitation Package"). The Solicitation Packages will contain: (i) the
24 Combined Plan and Disclosure Statement; (ii) the Conditional Approval and
25 Procedures Order; (iii) notice of the Confirmation Hearing; (iv) a form of Ballot,
26 including Voting Instructions and a pre-addressed return envelope; (v) a Release Opt-
Out Election Form; and (vi) such other materials as the Bankruptcy Court may direct
or approve or that the Debtor deems appropriate.

1 All other Creditors and parties in interest not entitled to vote on the Combined
2 Plan and Disclosure Statement will receive only a copy of the notice of Confirmation
3 Hearing and a Release Opt-Out Election Form.

4 Copies of the Combined Plan and Disclosure Statement shall be available on
5 the Claims and Balloting Agent's website at <https://www.kccllc.net/BorregoHealth>.
6 Any creditor or party-in-interest can request a hard copy of the Combined Plan and
7 Disclosure Statement be sent to them by regular mail by calling the Claims and
8 Balloting Agent at (866) 967-0670 (U.S. & Canada) during regular business hours.

9 **IN ADDITION TO OTHER PARTIES WHO WILL BE CONSIDERED**
10 **RELEASING PARTIES, ANY HOLDER OF A CLAIM THAT DOES NOT**
11 **AFFIRMATIVELY OPT-OUT OF THE THIRD PARTY RELEASE**
12 **CONTAINED IN SECTION 17 HEREOF BY TIMELY AND PROPERLY**
13 **COMPLETING AND RETURNING A RELEASE OPT-OUT ELECTION**
14 **FORM WILL BE CONSIDERED A RELEASING PARTY IN RELATION TO**
15 **THE THIRD PARTY RELEASE UNDER THE COMBINED PLAN AND**
16 **DISCLOSURE STATEMENT.**

17 **6.11 *Voting Procedures, Voting Deadline, and Deadline to Submit the***
18 ***Release Opt-Out Election.***

19 The Voting Record Date for determining which Holders of Claims in the
20 Voting Classes may vote on the Combined Plan and Disclosure Statement is
21 November 28, 2023.

22 In order for a Creditor's Ballot to count, the Creditor must (1) complete, date,
23 and properly execute the Ballot and (2) properly deliver the Ballot to the Claims and
24 Balloting Agent by either (a) mailing the Ballot via First Class Mail to the Claims and
25 Balloting Agent at the following address: Borrego Health Ballot Processing c/o
26 Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El
27 Segundo, CA 90245; (b) overnight delivery; (c) hand delivery; or (d) submitting the
28 Ballot by electronically uploading the Ballot on the Claims and Balloting Agent's
online balloting platform at <https://www.kccllc.net/BorregoHealth>. Instructions for
casting a Ballot will be available on the Claims and Balloting Agent's website.

Ballots must be submitted electronically, or the Claims and Balloting Agent
must actually receive physical, original Ballots by mail, overnight, or hand delivery,
on or before the Voting Deadline, which is **January 8, 2024, at 4:00 p.m. (prevailing
Pacific Time)**. Subject to the tabulation procedures approved by the Conditional
Approval and Procedures Order, Creditors may not change their vote once a Ballot is
submitted electronically or the Claims and Balloting Agent receives their original

1 paper Ballot. Subject to the tabulation procedures approved by the Conditional
2 Approval and Procedures Order, any Ballot that is timely and properly submitted
3 electronically or received physically will be counted and will be deemed to be cast as
4 an acceptance, rejection, or abstention, as the case may be, of the Combined Plan and
Disclosure Statement.

5 In order to be effective, Release Opt-Out Election Form for Holders of Claims
6 entitled to opt out of being a Releasing Party in connection with the Third Party
7 Release contained in Section 17.2(b) must be received by the Claims and Balloting
8 Agent by the Voting Deadline, which is **January 8, 2024, at 4:00 p.m. (prevailing
Pacific Time)**. Each Release Opt-Out Election Form must be properly delivered to
9 the Claims and Balloting Agent by either (a) mailing via First Class mail the Release
10 Opt-Out Election Form to the Claims and Balloting Agent at the following address:
11 Borrego Health Ballot Processing c/o Kurtzman Carson Consultants LLC, 222 N.
12 Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (b) overnight courier; (c)
hand delivery; or (d) uploading the Release Opt-Out Election Form on the Claims and
Balloting Agent's online opt-out portal at <https://www.kccllc.net/BorregoHealth>.

13 **IF YOU ARE ENTITLED TO VOTE ON THE COMBINED PLAN AND**
14 **DISCLOSURE STATEMENT, YOU ARE URGED TO COMPLETE, DATE,**
15 **SIGN, AND PROMPTLY MAIL OR UPLOAD THE BALLOT YOU**
16 **RECEIVE. PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS**
17 **PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM**
18 **ENTITLED TO VOTE ON THE COMBINED PLAN AND DISCLOSURE**
19 **STATEMENT AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED**
20 **A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR IF YOU HAVE**
21 **ANY QUESTIONS CONCERNING THE COMBINED PLAN AND**
22 **DISCLOSURE STATEMENT OR PROCEDURES FOR VOTING ON THE**
23 **COMBINED PLAN AND DISCLOSURE STATEMENT, PLEASE CONTACT**
24 **THE CLAIMS AND BALLOTING AGENT BY (I) TELEPHONE AT (888) 647-**
25 **174 (U.S./CANADA) OR (II) EMAIL AT [BorregoHealthinfo@kccllc.com](mailto:borregohealthinfo@kccllc.com). THE**
26 **CLAIMS AND BALLOTING AGENT IS NOT AUTHORIZED TO, AND**
27 **WILL NOT, PROVIDE LEGAL ADVICE.**

28 **6.12 *Acceptance of the Combined Plan and Disclosure Statement.***

If you are a Holder of a Claim in one of the Voting Classes, your acceptance of
the Combined Plan and Disclosure Statement is important. In order for the Combined
Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a
majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Claims
voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and
Disclosure Statement. At least one Impaired Class of Creditors, excluding the votes

1 of insiders, must actually vote to accept the Combined Plan and Disclosure Statement.
2 The Debtor urges that you vote to accept the Combined Plan and Disclosure
3 Statement.

4 **SECTION 7.**
5 **CERTAIN RISK FACTORS, TAX CONSEQUENCES,**
6 **AND OTHER DISCLOSURES**

7 **7.1 *Certain Risk Factors to be Considered.***

8 THE COMBINED PLAN AND DISCLOSURE STATEMENT AND ITS
9 IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT
10 NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF
11 CLAIMS WHO ARE ENTITLED TO VOTE ON THE COMBINED PLAN AND
12 DISCLOSURE STATEMENT SHOULD READ AND CAREFULLY CONSIDER
13 THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH
14 IN THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE
15 DOCUMENTS DELIVERED TOGETHER HERewith OR REFERRED TO OR
16 INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER
17 TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND
18 DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT, HOWEVER,
19 BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN
20 CONNECTION WITH THE COMBINED PLAN AND DISCLOSURE
21 STATEMENT AND ITS IMPLEMENTATION.

22 **(a) *The Combined Plan and Disclosure Statement May Not Be***
23 ***Accepted.***

24 The Plan Proponents can make no assurances that the requisite acceptances of
25 the Combined Plan and Disclosure Statement will be received, and the Debtor may
26 need to obtain acceptances of an alternative plan for the Debtor, or otherwise, that
27 may not have the support of the creditors and/or may be required to liquidate the
28 Estate under chapter 7. There can be no assurance that the terms of any alternative
arrangement or plan would be similar to or as favorable to creditors as those proposed
in the Combined Plan and Disclosure Statement.

(b) *The Combined Plan and Disclosure Statement May Not Be*
Confirmed.

Even if the Plan Proponents receive the requisite acceptances, there is no
assurance that the Bankruptcy Court, which may exercise substantial discretion as a
court of equity, will confirm the Combined Plan and Disclosure Statement. Even if

1 the Bankruptcy Court determined that the Combined Plan and Disclosure Statement
2 and the balloting procedures and results were appropriate, the Bankruptcy Court could
3 still decline to confirm the Combined Plan and Disclosure Statement if it finds that
4 any of the statutory requirements for confirmation had not been met. As is described
5 in greater detail in Section 6.3, § 1129 sets forth the requirements for confirmation of
6 a chapter 11 plan. While, as more fully set forth Section 6, the Plan Proponents believe
7 that the Combined Plan and Disclosure Statement complies with or will comply with
8 all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

9 Moreover, there can be no assurance that modifications to the Combined Plan
10 and Disclosure Statement will not be required for Confirmation or that such
11 modifications would not necessitate the re-solicitation of votes. If the Combined Plan
12 and Disclosure Statement is not confirmed, it is unclear what distributions holders of
13 Claims ultimately would receive with respect to their Claims in a subsequent plan of
14 liquidation. If an alternative could not be agreed to, it is possible that the Debtor would
15 have to liquidate its remaining assets in chapter 7, in which case it is likely that the
16 Holders of Allowed Claims would receive substantially less favorable treatment than
17 they would receive under the Combined Plan and Disclosure Statement.

18 (c) **Distributions to Holders of Allowed Claims Under the Combined**
19 **Plan and Disclosure Statement May be Inconsistent with**
20 **Projections.**

21 Projected Distributions are based upon good faith estimates of the total amount
22 of Claims ultimately Allowed and the funds available for Distribution. There can be
23 no assurance that the estimated Claim amounts set forth in the Combined Plan and
24 Disclosure Statement are correct. These estimated amounts are based on certain
25 assumptions with respect to a variety of factors. Both the actual amount of Allowed
26 Claims in a particular Class and the funds available for distribution to such Class may
27 differ from the Debtor's estimates. If the total amount of Allowed Claims in a Class
28 is higher than the Debtor's estimates, or the funds available for distribution to such
Class are lower than the Debtor's estimates, the percentage recovery to Holders of
Allowed Claims in such Class will be less than projected.

(d) **Objections to Classification of Claims.**

Section 1122 provides that a plan may place a claim in a particular class only
if such claim is substantially similar to the other claims in such class. As is described
in greater detail in Section 6.4, the Plan Proponents believe that the classification of
Claims under the Combined Plan and Disclosure Statement complies with the
requirements set forth in the Bankruptcy Code. Nevertheless, there can be no
assurance the Bankruptcy Court will reach the same conclusion.

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 To the extent that the Bankruptcy Court finds that a different classification is
2 required for the Combined Plan and Disclosure Statement to be confirmed, the Plan
3 Proponents would seek to (i) modify the Combined Plan and Disclosure Statement to
4 provide for whatever classification might be required for Confirmation and (ii) use
5 the acceptances received from any Holder of Claims pursuant to this solicitation for
6 the purpose of obtaining the approval of the Class or Classes of which such holder
7 ultimately is deemed to be a member. Any such reclassification of Claims, although
8 subject to the notice and hearing requirements of the Bankruptcy Code, could
9 adversely affect the Class in which such Holder was initially a member, or any other
10 Class under the Combined Plan and Disclosure Statement, by changing the
11 composition of such Class and the vote required for approval of the Combined Plan
12 and Disclosure Statement. There can be no assurance that the Bankruptcy Court, after
13 finding that a classification was inappropriate and requiring a reclassification, would
14 approve the Combined Plan and Disclosure Statement based upon such
15 reclassification. Except to the extent that modification of classification in the
16 Combined Plan and Disclosure Statement requires re-solicitation, the Plan Proponents
17 will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a
18 determination by the Bankruptcy Court that acceptance of the Combined Plan and
19 Disclosure Statement by any Holder of Claims pursuant to this solicitation will
20 constitute a consent to the Combined Plan and Disclosure Statement's treatment of
21 such Holder, regardless of the Class as to which such holder is ultimately deemed to
22 be a member. The Plan Proponents believe that under the Bankruptcy Rules, they
23 would be required to resolicit votes for or against the Combined Plan and Disclosure
24 Statement only when a modification adversely affects the treatment of the Claim of
25 any Holder.

18 The Bankruptcy Code also requires that the Combined Plan and Disclosure
19 Statement provide the same treatment for each Claim of a particular Class unless the
20 Holder of a particular Claim agrees to a less favorable treatment of its Claim. The
21 Plan Proponents believe that the Combined Plan and Disclosure Statement complies
22 with the requirement of equal treatment. To the extent that the Bankruptcy Court finds
23 that the Combined Plan and Disclosure Statement does not satisfy such requirement,
24 the Bankruptcy Court could deny confirmation of the Combined Plan and Disclosure
25 Statement. Issues or disputes relating to classification and/or treatment could result in
a delay in the confirmation and consummation of the Combined Plan and Disclosure
Statement and could increase the risk that the Combined Plan and Disclosure
Statement will not be consummated.

26 (e) **Failure to Consummate the Combined Plan and Disclosure**
27 **Statement.**
28

1 Although the Plan Proponents believe that the Effective Date will occur and
2 may occur quickly after the Confirmation Date, there can be no assurance as to such
3 timing, or as to whether the Effective Date will, in fact, occur.

4 ***(f) The Releases May Not Be Approved.***

5 There can be no assurance that the releases, as provided in Section 17, will be
6 granted. Failure of the Bankruptcy Court to grant such relief may result in a plan that
7 differs from the Combined Plan and Disclosure Statement or the Plan not being
8 confirmed.

9 ***(g) Reductions to Estimated Creditor Recoveries.***

10 The Allowed amount of Claims in any Class could be greater than projected,
11 which, in turn, could cause the amount of Distributions to creditors in such Class to
12 be reduced substantially. The amount of cash realized from the monetization of the
13 Debtor's remaining assets could be less than anticipated, which could cause the
14 amount of Distributions to creditors to be reduced substantially.

15 **7.2 *Certain U.S. Federal Income Tax Consequences.***

16 The following discussion is a summary of certain material U.S. federal income
17 tax consequences of the Combined Plan and Disclosure Statement to the Debtor and
18 to certain Holders (which solely for purposes of this discussion means the beneficial
19 owner for U.S. federal income tax purposes) of Claims. The following summary does
20 not address the U.S. federal income tax consequences to holders of Claims not entitled
21 to vote on the Combined Plan and Disclosure Statement. This summary is based on
22 the Internal Revenue Code, Treasury Regulations promulgated and proposed
23 thereunder, judicial decisions, and published administrative rules and
24 pronouncements of the IRS, all as in effect on the date hereof and all of which are
25 subject to change or differing interpretations, possibly with retroactive effect. No legal
26 opinions have been requested or obtained from counsel with respect to any of the tax
27 aspects of the Combined Plan and Disclosure Statement and no rulings have been or
28 will be requested from the IRS with respect to the any of the issues discussed below.
The discussion below is not binding upon the IRS or the courts. No assurance can be
given that the IRS would not assert, or that a court would not sustain, a different
position than any position discussed herein.

This discussion does not purport to address all aspects of U.S. federal income
taxation that may be relevant to the Debtor or to certain holders of Claims in light of
their individual circumstances, nor does the discussion deal with tax issues with
respect to holders of Claims subject to special treatment under the U.S. federal income

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 tax laws (including, for example, insurance companies; banks or other financial
2 institutions; brokers, dealers, or traders in securities; real estate investment trusts;
3 governmental authorities or agencies; tax-exempt organizations; retirement plans;
4 individual retirement or other tax-deferred accounts; certain expatriates or former
5 long-term residents of the United States; small business investment companies;
6 regulated investment companies; S corporations, partnerships, or other pass-through
7 entities for U.S. federal income tax purposes and their owners; persons whose
8 functional currency is not the U.S. dollar; persons who use a mark-to-market method
9 of accounting; persons required to report income on an applicable financial statement;
10 persons holding Claims as part of a straddle, hedge, constructive sale, conversion
11 transaction, or other integrated transaction; and persons who are not U.S. holders (as
12 defined below)). Furthermore, this discussion assumes that a holder of a Claim holds
13 such claim as a “capital asset” within the meaning of section 1221 of the Internal
14 Revenue Code (generally property held for investment). This discussion does not
15 address any U.S. federal non-income (including estate or gift), state, local, or foreign
16 taxation, alternative minimum tax, or the Medicare tax on certain net investment
17 income.

18 If a partnership (or other entity or arrangement classified as a partnership for
19 U.S. federal income tax purposes) is a holder of Claims, the U.S. federal income tax
20 treatment of a partner in the partnership will generally depend on the status of the
21 partner and the activities of the partnership. A holder of a Claim that is a partnership
22 and the partners in such partnership should consult their tax advisors with regard to
23 the U.S. federal income tax consequences of the Combined Plan and Disclosure
24 Statement.

25 **THE FOLLOWING SUMMARY IS FOR INFORMATIONAL**
26 **PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX**
27 **PLANNING AND ADVICE BASED UPON THE INDIVIDUAL**
28 **CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. EACH**
HOLDER OF A CLAIM IS URGED TO CONSULT WITH SUCH HOLDER’S
TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL,
FOREIGN, AND OTHER TAX CONSEQUENCES OF THE COMBINED
PLAN AND DISCLOSURE STATEMENT.

29 *(a) Tax Consequences for U.S. Holders of Certain Claims.*

30 Generally, a Holder of a Claim should in most, but not all, circumstances
31 recognize gain or loss equal to the difference between the “amount realized” by such
32 Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim.
33 The “amount realized” is equal to the sum of the cash and the fair market value of any
34 other consideration received under a plan of reorganization in respect of a Holder’s

1 Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder's
2 cost therefor. To the extent applicable, the character of any recognized gain or loss
3 (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend
4 upon the status of the Holder, the nature of the Claim in the Holder's hands, the
5 purpose and circumstances of its acquisition, the Holder's holding period of the
6 Claim, and the extent to which the Holder previously claimed a deduction for the
7 worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset
8 in the Holder's hands, any gain or loss realized will generally be characterized as
9 capital gain or loss, and will constitute long-term capital gain or loss if the Holder has
10 held such Claim for more than one year.

11 A creditor who receives Cash in satisfaction of its Claims may recognize
12 ordinary income or loss to the extent that any portion of such consideration is
13 characterized as accrued interest. A creditor who did not previously include in income
14 accrued but unpaid interest attributable to its Claim, and who receives a distribution
15 on account of its Claim pursuant to the Plan, will be treated as having received interest
16 income to the extent that any consideration received is characterized for U.S. federal
17 income tax purposes as interest, regardless of whether such creditor realizes an overall
18 gain or loss as a result of surrendering its Claim. A creditor who previously included
19 in its income accrued but unpaid interest attributable to its Claim should recognize an
20 ordinary loss to the extent that such accrued but unpaid interest is not satisfied,
21 regardless of whether such creditor realizes an overall gain or loss as a result of the
22 distribution it may receive under the Plan on account of its Claim.

23 Under the Plan, the Holders of certain Claims, including General Unsecured
24 Claims in Class 3, will likely receive only a partial distribution of their Allowed
25 Claims. Whether the applicable Holder of such Claims will recognize a loss or any
26 other tax treatment will depend upon facts and circumstances that are specific to the
27 nature of the Holder and its Claims. Creditors should consult their own tax advisors.

28 ***(b) Tax Consequences in Relation to Liquidating Trust.***

As of the Effective Date, the Liquidating Trust will be established for the
benefit of the holders of certain Allowed Claims. The tax consequences of the Plan in
relation to the Liquidating Trust and the Beneficiaries thereof are subject to
uncertainties due to the complexity of the Plan and the lack of interpretative authority
regarding certain changes in the tax law.

Allocations of taxable income of the Liquidating Trust (other than taxable
income allocable to the Liquidating Trust's claims reserves) among Holders of Claims
will be determined by reference to the manner in which an amount of cash equal to
such taxable income would be distributed (were such cash permitted to be distributed

1 at such time) if, immediately prior to such deemed distribution, the Liquidating Trust
2 had distributed all of its assets (valued at their tax book value) to the holders of the
3 beneficial interests in the Liquidating Trust, adjusted for prior taxable income and loss
4 and taking into account all prior and concurrent distributions from the Liquidating
5 Trust. Similarly, taxable loss of the Liquidating Trust will be allocated by reference
6 to the manner in which an economic loss would be borne immediately after a
7 liquidating distribution of the remaining trust assets.

8 The tax book value of the trust assets for this purpose will equal their fair
9 market value on the Effective Date, adjusted in accordance with tax accounting
10 principles prescribed by the Tax Code, applicable Treasury Regulations, and other
11 applicable administrative and judicial authorities and pronouncements. Uncertainties
12 with regard to federal income tax consequences of the Plan may arise due to the
13 inherent nature of estimates of value that will impact tax liability determinations.

14 Subject to definitive guidance from the IRS or a court of competent jurisdiction
15 to the contrary (including the receipt of an IRS private letter ruling if the Liquidating
16 Trustee so requests one, or the receipt of an adverse determination by the IRS upon
17 audit if not contested by the Liquidating Trustee), the Liquidating Trustee may (a)
18 elect to treat any trust assets allocable to, or retained on account of, Disputed Claims
19 (the “Trust Claims Reserve”) as a “disputed ownership fund” governed by Treasury
20 Regulation section 1.468B-9, and (b) to the extent permitted by applicable law, report
21 consistently with the foregoing for state and local income tax purposes. Accordingly,
22 any Trust Claims Reserve will be subject to tax annually on a separate entity basis on
23 any net income earned with respect to the trust assets in such reserves, and all
24 distributions from such reserves will be treated as received by holders in respect of
25 their Claims as if distributed by the Debtor. All parties (including, without limitation,
26 the Liquidating Trustee and the holders of beneficial interests in the Liquidating
27 Trust) will be required to report for tax purposes consistently with the foregoing.

28 The Liquidating Trust is intended to qualify as a liquidating trust for federal
income tax purposes. In general, a liquidating trust is not a separate taxable entity but
rather is treated for federal income tax purposes as a “grantor” trust (i.e., a pass-
through entity). The IRS, in Revenue Procedure 94-45, 1994.28 I.R.B. 124, set forth
the general criteria for obtaining an IRS ruling as to the grantor trust status of a
liquidating trust under a chapter 11 plan. The Liquidating Trust has been structured
with the intention of complying with such general criteria. Pursuant to the Plan and
Liquidating Trust Agreement, and in conformity with Revenue Procedure 94-45,
supra, all parties (including the Liquidating Trustee and the holders of beneficial
interests in the Liquidating Trust) are required to treat for federal income tax purposes,
the Liquidating Trust as a grantor trust of which the holders of the applicable Allowed

1 Claims are the owners and grantors. While the following discussion assumes that the
2 Liquidating Trust would be so treated for federal income tax purposes, no ruling has
3 been requested from the IRS concerning the tax status of the Liquidating Trust as a
4 grantor trust. Accordingly, there can be no assurance that the IRS would not take a
5 contrary position to the classification of the Liquidating Trust as a grantor trust. If the
6 IRS were to challenge successfully such classification, the federal income tax
consequences to the Liquidating Trust and the Beneficiaries thereof could materially
vary from those discussed herein.

7 In general, each creditor who is a Liquidating Trust Beneficiary will recognize
8 gain or loss in an amount equal to the difference between (i) the “amount realized” by
9 such Liquidating Trust Beneficiary in satisfaction of its applicable Allowed Claim,
10 and (ii) such Liquidating Trust Beneficiary’s adjusted tax basis in such Claim. The
11 “amount realized” by a Liquidating Trust Beneficiary will equal the sum of cash and
12 the aggregate fair market value of the property received by such party pursuant to the
13 Plan (such as a Liquidating Trust Beneficiary’s undivided beneficial interest in the
14 assets transferred to the Liquidating Trust). Where gain or loss is recognized by a
15 Liquidating Trust Beneficiary in respect of its Allowed Claim, the character of such
16 gain or loss (*i.e.*, long-term or short-term capital, or ordinary income) will be
17 determined by a number of factors including the tax status of the party, whether the
18 Claim constituted a capital asset in the hands of the party and how long it had been
19 held, whether the Claim was originally issued at a discount or acquired at a market
20 discount and whether and to what extent the party had previously claimed a bad debt
21 deduction in respect of the Claim.

22 After the Effective Date, any amount that a creditor receives as a Distribution
23 from the Liquidating Trust in respect of its beneficial interest in the Liquidating Trust
24 should not be included, for federal income tax purposes, in the party’s amount realized
25 in respect of its Allowed Claim, but should be separately treated as a distribution
26 received in respect of such party’s beneficial interest in the Liquidating Trust.

27 In general, a Liquidating Trust Beneficiary’s aggregate tax basis in its
28 undivided beneficial interest in the assets transferred to the Liquidating Trust will
equal the fair market value of such undivided beneficial interest as of the Effective
Date and the Liquidating Trust Beneficiary’s holding period in such assets will begin
the day following the Effective Date. Distributions to any Liquidating Trust
Beneficiary will be allocated first to the original principal portion of the Liquidating
Trust Beneficiary’s Allowed Claim as determined for federal tax purposes, and then,
to the extent the consideration exceeds such amount, to the remainder of such Claim.
However, there is no assurance that the IRS will respect such allocation for federal
income tax purposes.

1 For all federal income tax purposes, all parties (including the Liquidating
2 Trustee and the holders of beneficial interests in the Liquidating Trust) will treat the
3 transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan
4 and Liquidating Trust Agreement, as a transfer of those assets directly to the holders
5 of the applicable Allowed Claims followed by the transfer of such assets by such
6 Holders to the Liquidating Trust. Consistent therewith, all parties will treat the
7 Liquidating Trust as a grantor trust of which such holders are to be owners and
8 grantors. Thus, such holders (and any subsequent holders of interests in the
9 Liquidating Trust) will be treated as the direct owners of an undivided beneficial
10 interest in the assets of the Liquidating Trust for all federal income tax purposes.
11 Accordingly, each holder of a beneficial interest in the Liquidating Trust will be
12 required to report on its federal income tax return(s) the holder's allocable share of all
13 income, gain, loss, deduction, or credit recognized or incurred by the Liquidating
14 Trust.

11 The Liquidating Trust's taxable income will be allocated to the holders of
12 beneficial interests in the Liquidating Trust in accordance with each such holder's pro
13 rata share. The character of items of income, deduction and credit to any holder and
14 the ability of such holder to benefit from any deductions or losses may depend on the
15 particular situation of such holder.

15 The federal income tax reporting obligation of a holder of a beneficial interest
16 in the Liquidating Trust is not dependent upon the Liquidating Trust distributing any
17 cash or other proceeds. Therefore, a holder of a beneficial interest in the Liquidating
18 Trust may incur a federal income tax liability regardless of the fact that the
19 Liquidating Trust has not made, or will not make, any concurrent or subsequent
20 distributions to the holder. If a holder incurs a federal tax liability but does not receive
21 distributions commensurate with the taxable income allocated to it in respect of its
22 beneficial interests in the Liquidating Trust it holds, the holder may be allowed a
23 subsequent or offsetting loss.

21 The Liquidating Trustee will file with the IRS returns for the Liquidating Trust
22 as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The
23 Liquidating Trust will also send to each holder of a beneficial interest in the
24 Liquidating Trust a separate statement setting forth the holder's share of items of
25 income, gain, loss, deduction, or credit and will instruct the holder to report such items
26 on its federal income tax return.

26 Events subsequent to the date of this Disclosure Statement, such as the
27 enactment of additional tax legislation, could also change the federal income tax
28 consequences of the Plan and the transactions contemplated thereunder.

1 (c) Information Reporting and Withholding.

2 In connection with the Combined Plan and Disclosure Statement, the Debtor
3 will comply with all applicable withholding and information reporting requirements
4 imposed by U.S. federal, state, local, and foreign taxing authorities, and all
5 Distributions under the Combined Plan and Disclosure Statement will be subject to
6 those withholding and information reporting requirements. Holders of Claims may be
7 required to provide certain tax information as a condition to receiving Distributions
8 pursuant to the Combined Plan and Disclosure Statement.

9 In general, information reporting requirements may apply to Distributions
10 pursuant to the Combined Plan and Disclosure Statement. Additionally, under the
11 backup withholding rules, a holder may be subject to backup withholding with respect
12 to Distributions made pursuant to the Combined Plan and Disclosure Statement,
13 unless a U.S. holder provides the applicable withholding agent with a taxpayer
14 identification number, certified under penalties of perjury, as well as certain other
15 information, or otherwise establish an exemption from backup withholding. Backup
16 withholding is not an additional tax. Any amounts withheld under the backup
17 withholding rules will be allowed as a credit against a U.S. holder's U.S. federal
18 income tax liability, if any, and may entitle a U.S. holder to a refund, provided the
19 required information is timely furnished to the IRS.

20 In addition, from an information reporting perspective, Treasury Regulations
21 generally require disclosure by a taxpayer on its U.S. federal income tax return of
22 certain types of transactions in which the taxpayer participated, including, among
23 other types of transactions, certain transactions that result in the taxpayer's claiming
24 a loss in excess of specified thresholds. Holders of Claims are urged to consult their
25 tax advisors regarding these regulations and whether the transactions contemplated
26 by the Combined Plan and Disclosure Statement would be subject to these regulations
27 and require disclosure on the holder's tax returns.

28 **THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE
COMBINED PLAN AND DISCLOSURE STATEMENT ARE COMPLEX.
THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF
U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A
PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S
CIRCUMSTANCES. EACH HOLDER OF A CLAIM IS URGED TO
CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE
U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX
CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE
STATEMENT.**

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 7.3 *Releases, Exculpations, and Injunctions.*

2 This Combined Plan and Disclosure Statement contains certain releases,
3 exculpations, and injunction language. Parties are urged to read these provisions
4 carefully to understand how Confirmation and consummation of the Plan will affect
5 any Claim, interest, right, or action with regard to the Debtor and certain third parties.

6 **THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL**
7 **BIND ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR TO THE**
8 **FULLEST EXTENT AUTHORIZED OR PROVIDED UNDER THE**
9 **APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND ALL**
10 **OTHER APPLICABLE LAW.**

11 7.4 *Alternatives to the Combined Plan and Disclosure Statement.*

12 If the requisite acceptances are not received or the Combined Plan and
13 Disclosure Statement is not confirmed and consummated, the theoretical alternatives
14 to the Combined Plan and Disclosure Statement would be (a) formulation of an
15 alternative chapter 11 plan, (b) conversion of the Chapter 11 Case to a case under
16 chapter 7 of the Bankruptcy Code, or (c) dismissal of the Chapter 11 Case. As
17 discussed below, the Plan Proponents do not believe that any of these alternatives,
18 even if viable, would afford holders of Claims a greater recovery than what is
19 provided by the Combined Plan and Disclosure Statement.

20 If the Combined Plan and Disclosure Statement is not confirmed, then the
21 Debtor or any other party in interest could attempt to formulate a different plan. The
22 additional costs, including, among other amounts, additional professional fees, all of
23 which would constitute Administrative Claims (subject to allowance thereof),
24 however, may be so significant that one or more parties in interest could request that
25 the Chapter 11 Case be converted to chapter 7. At this time, the Plan Proponents do
26 not believe that there are viable alternative plans available to the Debtor.

27 If the Combined Plan and Disclosure Statement is not confirmed, the Chapter
28 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant
29 to which a trustee would be elected or appointed to liquidate and distribute the
30 Debtor's remaining assets in accordance with the priorities established by the
31 Bankruptcy Code. As discussed above and indicated in the Liquidation Analysis, the
32 Plan Proponents believe that the Combined Plan and Disclosure Statement provides a
33 better outcome for holders of Claims than a chapter 7 liquidation would provide.

34 If the Combined Plan and Disclosure Statement is not confirmed, the Chapter
35 11 Case also could be dismissed. Among other effects, dismissal would result in the

1 termination of the automatic stay, thus permitting creditors to assert state-law rights
2 and remedies against the Debtor and its assets, likely to the detriment of other
3 creditors. While it is impossible to predict precisely what would happen in the event
4 the Chapter 11 Case is dismissed, it is unlikely that dismissal would result in a ratable
5 distribution of the Debtor's assets among creditors as provided in the Combined Plan
6 and Disclosure Statement. Thus, the vast majority of creditors could expect to receive
7 less in the dismissal scenario than they would receive under the Combined Plan and
8 Disclosure Statement.

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SECTION 8.
UNCLASSIFIED CLAIMS

9 In accordance with § 1123(a)(1), the following Claims are not classified and
10 are excluded from the Classes set forth in Section 9 hereof and shall receive the
11 treatment discussed below:

12 8.1 *Administrative Claims.*

13 Except to the extent that the Debtor (or the Liquidating Trust) and the Holder
14 of an Allowed Administrative Claim agree to less favorable treatment, a Holder of an
15 Allowed Administrative Claim (other than a Professional Claim, which shall be
16 subject to Section 8.2 or Statutory Fees, which shall be subject to Section 8.3) shall
17 receive, in full satisfaction, settlement, release, and discharge of, and in exchange for,
18 such Administrative Claim, Cash equal to the unpaid portion of such Allowed
19 Administrative Claim either (a) on the Effective Date, (b) if the Allowed
20 Administrative Claim is based on liabilities incurred by the Debtor in the ordinary
21 course of their businesses after the Petition Date, in the ordinary course of business in
22 accordance with the terms and conditions of the particular transaction giving rise to
23 such Allowed Administrative Claim, without any further action by the Holder of such
24 Allowed Administrative Claim, (c) on such other date as agreed between the Debtor
25 (or the Post-Effective Date Debtor) and such Holder of an Allowed Administrative
26 Claim, or (d) to the extent the Allowed Administrative Claim had not yet been
27 Allowed on the Effective Date, from the Administrative Claims Reserve pursuant to
28 Section 20.2 hereof.

24 Holders of Administrative Claims (including, without limitation, Professionals
25 requesting compensation or reimbursement of such expenses pursuant to §§ 327, 328,
26 330, 331, 503(b), or 1103) that do not file such requests by the applicable deadline
27 provided for herein may be subject to objection for untimeliness and may be
28 prohibited by order of the Bankruptcy Court from asserting such claims against the
Debtor, the Post-Effective Date Debtor, the Estate, the Liquidating Trust, or their

1 successors or assigns, or their property. Any objection to Professional Fee Claims
2 shall be filed on or before the objection deadline specified in the application for final
3 compensation or order of the Bankruptcy Court.

4 **8.2 Professional Claims.**

5 All Professionals seeking an award by the Bankruptcy Court of a Professional
6 Claim (other than the Ordinary Course Professionals) shall file their respective final
7 applications for allowance of compensation for services rendered and reimbursement
8 of expenses incurred by the date that is forty-five (45) days after the Effective Date,
9 and shall receive, in full satisfaction of such Claim, Cash in an amount equal to 100%
10 of such Allowed Professional Claim promptly after entry of an order of the
11 Bankruptcy Court allowing such Claim or upon such other terms as may be mutually
12 agreed-upon between the Holder of such Professional Claim and the Debtor, which
13 Cash shall be paid out of the Effective Date Professional Claim Reserve. Objections
14 to any final applications covering Professional Claims must be filed and served on the
15 Post-Effective Date Debtor, the Liquidating Trustee, and the requesting Professional
16 no later than ninety (90) days after the Effective Date (unless otherwise agreed by the
17 requesting Professional).

18 On the Effective Date, or as soon as practicable thereafter, the Liquidating
19 Trustee shall establish the Effective Date Professional Claim Reserves based upon
20 estimates of anticipated fees provided by Professionals for services rendered and
21 expenses incurred prior to the Effective Date, including estimated fees for services
22 rendered, and actual and necessary costs incurred, in connection with the filing,
23 service and prosecution of any applications for allowance of Professional Fees
24 pending on the Effective Date or filed and/or served after the Effective Date. The
25 Liquidating Trustee shall supplement the Effective Date Professional Claim Reserves
26 if the amount originally established is insufficient to pay Allowed Professional Fee
27 Claims.

28 Upon approval of the fee applications by the Bankruptcy Court, the Liquidating
Trustee shall pay Professionals from the Effective Date Professional Claim Reserves
all of their respective Allowed Professional Fee Claims.

8.3 Statutory Fees.

Statutory Fees shall be paid by the Liquidating Trustee in the ordinary course
of business until the closing, dismissal or conversion of the Chapter 11 Case to another
chapter of the Bankruptcy Code. Any unpaid Statutory Fees that accrued before the
Effective Date shall be paid no later than thirty (30) days after the Effective Date. For
the avoidance of doubt, if the Chapter 11 Case is reopened, the Liquidating Trustee

1 shall pay any Statutory Fees in the ordinary course of business until the closing,
2 dismissal, or conversion of the Chapter 11 Case to another chapter of the Bankruptcy
3 Code.

4 **8.4 *Priority Tax Claims.***

5 Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to
6 less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive,
7 in full and final satisfaction of such Allowed Priority Tax Claim, at the option of the
8 Liquidating Trustee: (a) Cash in an amount equal to such Allowed Priority Tax Claim
9 on, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date,
10 to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, and
11 (ii) the first Business Day after the date that is thirty (30) days after the date such
12 Priority Tax Claim becomes an Allowed Priority Tax Claim; or (b) equal annual Cash
13 payments in an aggregate amount equal to the amount of such Allowed Priority Tax
14 Claim, together with interest at the applicable rate pursuant to § 511, over a period
15 not exceeding five (5) years from and after the Petition Date; *provided, however*, the
16 Post-Effective Date Debtor and Liquidating Trustee, as applicable, reserve the right
17 to prepay all or a portion of any such amounts at any time under this option at the
18 discretion of the Post-Effective Date Debtor and the Liquidating Trustee.

19 **SECTION 9.**
20 **CLASSIFICATION OF CLAIMS AND VOTING**

21 **9.1 *Classification in General.***

22 A Claim is placed in a particular Class for all purposes, including voting,
23 confirmation, and distribution under the Plan and under §§ 1122 and 1123(a)(1);
24 *provided, that* a Claim is placed in a particular Class for the purpose of receiving
25 Distributions pursuant to the Plan only to the extent that such Claim is an Allowed
26 Claim in that Class and such Allowed Claim has not been satisfied, released, or
27 otherwise settled prior to the Effective Date.

28 **9.2 *Summary of Classification.***

The following table designates the Classes of Claims against the Debtor and
specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by the
Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126.
In accordance with § 1123(a)(1), Administrative Claims, Professional Claims,
Statutory Fees, and Priority Tax Claims, have not been classified. All of the potential
Classes for the Debtor are set forth herein. If, ultimately, the Debtor does not have

1 Holders of Claims in a particular Class or Classes, such Classes shall be treated as set
2 forth in Section 9.4.

3 Class	Designation	Impairment	Entitled to Vote
4 1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
5 2	Secured Claims	Not Impaired	No (deemed to accept)
6 3	General Unsecured Claims	Impaired	Yes
7 4	Allowed DHCS Claim	Impaired	Yes

8 **9.3 *Special Provision Governing Unimpaired Claims.***

9
10 Except as otherwise provided in the Plan, nothing under the Plan shall affect
11 the rights of the Debtor or the Liquidating Trust with respect to Unimpaired Claims,
12 including all legal and equitable defenses to, or setoffs or recoupments against, any
13 such Unimpaired Claims.

14 **9.4 *Elimination of Vacant Classes.***

15 Any Class of Claims, as of the commencement of the Confirmation Hearing,
16 that does not have at least one (1) Holder of a Claim in an amount greater than zero
17 for voting purposes shall be considered vacant, deemed eliminated from the Plan for
18 purposes of voting to accept or reject the Plan, and disregarded for purposes of
19 determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

20 **9.5 *Voting; Presumptions; Solicitation in Good Faith.***

21 Only Holders of Allowed Claims in Class 3 and Class 4 are entitled to vote to
22 accept or reject this Plan. Holders of Claims in a Voting Class will receive Ballots
23 containing detailed voting instructions.

24 The Plan Proponents will solicit votes on the Plan from the Voting Classes in
25 good faith and in compliance with the applicable provisions of the Bankruptcy Code.
26 Accordingly, the Plan Proponents and each of their Related Persons shall be entitled
27 to, and upon the Confirmation Date, will be granted the protections of § 1125(e).

28 **9.6 *Cramdown.***

If any Class of Claims is deemed and/or presumed to reject this Plan or is
entitled to vote on this Plan and does not vote to accept this Plan, the Plan Proponents
intend to (i) seek confirmation of this Plan under § 1129(b), or (ii) amend or modify
this Plan in accordance with the terms hereof and the Bankruptcy Code. If a

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 controversy arises as to whether any Claims, or any Class of Claims, are Impaired,
2 the Bankruptcy Court shall, after notice and a hearing, determine such controversy on
3 or before the Confirmation Date.

4 **SECTION 10.**
5 **TREATMENT OF CLAIMS**

6 In full and final satisfaction of all of the Claims against the Debtor (except with
7 respect to Unclassified Claims that are satisfied in accordance with Section 8 above),
8 the Claims shall receive the treatment described below. Except to the extent expressly
9 provided in this Section 10, the timing of Distributions is addressed in Section 11
10 hereof.

11 **10.1 *Class 1: Priority Non-Tax Claims.***

- 12 a) **Classification.** Class 1 consists of Priority Non-Tax Claims.
- 13 b) **Treatment.** Except to the extent that a Holder of an Priority Non-Tax
14 Claim agrees to a less favorable treatment of such Claim, each such
15 Holder shall receive payment in Cash in an amount equal to the
16 amount of such Allowed Claim, payable on the later of (i) the Effective
17 Date; and (ii) after the date on which such Priority Non-Tax Claim
18 becomes an Allowed Priority Non-Tax Claim, in each case, or as soon
19 as reasonably practicable thereafter in accordance with the priority
20 scheme set forth in the Bankruptcy Code.
- 21 c) **Voting.** Class 1 is Unimpaired. Holders of Priority Non-Tax Claims
22 are deemed to have accepted the Plan, pursuant to § 1126(f), and are
23 not entitled to vote to accept or reject the Plan.

24 **10.2 *Class 2: Secured Claims.***

- 25 a) **Classification. Class 2 consists of Secured Claims.**
- 26 b) **Treatment.** The legal, equitable, and contractual rights of Holders of
27 Allowed Secured Claims are unaltered by the Plan, except as altered pursuant to the
28 Sale Order, and the Liens of the Holders of the Secured Claims will continue to attach
to their respective collateral, provided, that, all such Claims shall remain subject to
any and all defenses, challenges, counterclaims, and setoff or recoupment rights with
respect thereto. Except to the extent that a Holder of an Allowed Secured Claim agrees
to a less favorable treatment of such Claim, each such Holder shall, at the option of
the Post-Effective Date Debtor and Liquidating Trustee, as applicable, receive one of

1 the following treatments: (i) the Holder of such Secured Claim shall retain its Lien on
2 its collateral until such collateral is sold, and the proceeds of such sale, less costs and
3 expenses of disposing of such collateral, shall be paid to such Holder in full
4 satisfaction of such Secured Claim; (ii) on or as soon as practicable after the later of
5 (A) the Effective Date; or (B) the date upon which the Bankruptcy Court enters a Final
6 Order determining or allowing such Secured Claim, the Holder of such Secured Claim
7 will receive a Cash payment equal to the amount of its Secured Claim in full and final
8 satisfaction of such Secured Claim; or (iii) the collateral securing the Secured Claim
9 shall be abandoned to such Holder, in full and final satisfaction of such Secured
10 Claim. receive payment in Cash in an amount equal to the amount of such Allowed
11 Claim.

12 The Bankruptcy Court shall retain jurisdiction and power to determine the
13 amount necessary to satisfy any Allowed Secured Claim. Upon receipt of Cash in an
14 amount equal to the amount of such Allowed Secured Claim, the Holder of such
15 Allowed Secured Claim shall release (by the Confirmation Order shall be deemed to
16 release) all Liens against any Liquidating Trust Assets.

17 c) **Voting. Class 2 is Unimpaired.** Holders of Secured Claims are
18 deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote
19 to accept or reject the Plan.

20 10.3 ***Class 3: General Unsecured Claims.***

21 a) **Classification.** Class 3 consists of the General Unsecured Claims
22 against the Debtor.

23 b) **Treatment.** As soon as practicable after the Effective Date, each
24 Holder of an Allowed General Unsecured Claim shall receive in full satisfaction,
25 settlement, discharge, and release of, and in exchange for such Allowed General
26 Unsecured Claim, its Pro Rata share of the Class A Trust Beneficial Interests.

27 c) **Voting. Class 3 is Impaired.** Holders of General Unsecured Claims
28 are entitled to vote to accept or reject the Plan.

10.4 ***Class 4: Allowed DHCS Claim.***

a) **Classification.** Class 4 consists of the Allowed DHCS Claim.

b) **Treatment.** As soon as practicable after the Effective Date, DHCS as
holder of the Allowed DHCS Claim, shall receive in full satisfaction, settlement,
discharge, and release of, and in exchange for, such Allowed DHCS Claim: (i) the
application of the DHCS Allowed Offset Amount to the Allowed DHCS Claim by

1 DHCS; (ii) distribution of the DHCS Sales Proceeds Recovery by the Liquidating
2 Trustee; and (iii) distribution of its Pro Rata share of the Class B Trust Beneficial
3 Interests.

4 c) **Voting. Class 4 is Impaired.** The Holder of the DHCS Claim is
5 entitled to vote to accept or reject the Plan.

6 **SECTION 11.**
7 **DISTRIBUTIONS**

8 11.1 ***Party Responsible for Making Distributions.*** Subject to the prior
9 payment of the amounts required to be paid by the Debtor in Cash on the Effective
10 Date pursuant to this Plan, all Plan Distributions shall be made by the Liquidating
11 Trustee (or by the Disbursing Agent, to the extent directed by the Liquidating
12 Trustee), or, with respect to Distributions made to Holders of Class A Trust Beneficial
13 Interests, by the Co-Liquidating Trustee (or by the Disbursing Agent, to the extent
14 directed by the Co-Liquidating Trustee).

15 Neither the Liquidating Trustee nor the Co-Liquidating Trustee shall be
16 required to give any bond or surety or other security for the performance of their duties
17 unless otherwise ordered by the Bankruptcy Court. The Liquidating Trustee, Co-
18 Liquidating Trustee, or Disbursing Agent, as applicable, shall be empowered to (a)
19 effect all actions and execute all agreements, instruments, and other documents
20 necessary to perform their duties under the Plan; (b) make all Distributions
21 contemplated hereby; (c) employ transfer agents and registrars to represent them with
22 respect to their responsibilities; and (d) exercise such other powers as may be vested
23 in the Liquidating Trustee or Co-Liquidating Trustee by order of the Bankruptcy
24 Court, pursuant to the Plan, the Liquidating Trust Agreement, or as deemed by the
25 Liquidating Trustee or the Co-Liquidating Trustee, applicable, to be necessary and
26 proper to implement the provisions hereof.

27 11.2 ***Appointment of Disbursing Agent.*** A Disbursing Agent may be
28 appointed either pursuant to the Confirmation Order or by the Liquidating Trustee.

11.3 ***Timing of Distributions.***

a) Distributions on Account of All Claims Other Than the DHCS
Claim. Subject to Section 11.1 of this Plan, on the Effective Date (or if a Claim is not
an Allowed Claim on the Effective Date, on the date that such Claim becomes an
Allowed Claim), or as soon as reasonably practicable thereafter, each Holder of an
Allowed Claim (except for the Allowed DHCS Claim) against the Debtor shall
receive full amount of the Distributions that the Plan provides for Allowed Claims in

1 the applicable Class and in the manner provided herein. If and to the extent there are
2 Disputed Claims, Distributions on account of any such Disputed Claims shall be made
3 pursuant to the provisions provided in the Plan. Except as otherwise provided in the
4 Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the
5 Distributions provided for therein, regardless of whether Distributions are delivered
6 on or at any time after the Effective Date.

7 Upon the Effective Date, all debts of the Debtor shall be deemed fixed and
8 adjusted pursuant to the Plan and the Debtor and the Liquidating Trust shall have no
9 liability on account of any Claims except as set forth in the Plan and in the
10 Confirmation Order. All payments and all Distributions made by the Liquidating
11 Trustee, the Co-Liquidating Trustee, or the Disbursing Agent under the Plan shall be
12 in full and final satisfaction, settlement, and release of all Claims against the Debtor.

13 b) Distributions on Account of the Allowed DHCS Claim.
14 Distributions on account of the Allowed DHCS Claim shall be made in accordance
15 with Section 10.4 hereof, provided, however, that Distributions on account of the
16 Allowed DHCS Balance Claim (i.e., to the Holder of Class B Trust Beneficial
17 Interests) need not be made to the extent there is no Cash in the Trust Assets Accounts
18 to distribute.

19 **11.4 Manner of Cash Payments Under the Plan and Liquidating Trust**
20 **Agreement.**

21 Cash payments made pursuant to the Plan and Liquidating Trust Agreement,
22 shall be in United States dollars by checks drawn on a domestic bank selected by the
23 Liquidating Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable, or
24 by wire or ACH transfer from a domestic bank, at the option of the Liquidating
25 Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable.

26 **11.5 Distribution Procedures.**

27 a) **Distribution Dates.** The Liquidating Trustee and Co-Liquidating
28 Trustee, as applicable, shall make Distributions to Holders of Claims as provided in
Section 11 of the Plan.

b) **Subsequent Distributions.** Any Distribution not made on the
Initial Distribution Date or a Subsequent Distribution Date because the Claim relating
to such Distribution had not been Allowed on that Distribution Date shall be held by
the Liquidating Trust for Distribution on any Subsequent Distribution Date after such
Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any
Distribution.

1 c) **Distribution Record Date.** Except as otherwise provided in a
2 Final Order of the Bankruptcy Court, the transferees of Claims that are transferred
3 pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be
4 treated as the Holders of those Claims for all purposes, notwithstanding that any
5 period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have
6 expired by the Distribution Record Date. Neither the Liquidating Trustee nor the Co-
7 Liquidating Trustee shall have any obligation to recognize any transfer of any Claim
8 occurring after the Distribution Record Date. In making any Distribution with respect
9 to any Claim, the Liquidating Trustee and Co-Liquidating Trustee shall be entitled
10 instead to recognize and deal with, for all purposes hereunder, only the Entity that is
11 listed on the proof of claim filed with respect thereto or on the Schedules as the Holder
12 thereof as of the close of business on the Distribution Record Date and upon such
13 other evidence or record of transfer or assignment that is known to the Liquidating
14 Trustee or Co-Liquidating Trustee as of the Distribution Record Date.

11 d) **Time Bar to Cash Payments by Check.** Checks issued by the
12 Liquidating Trustee or Co-Liquidating Trustee, as applicable, on account of Allowed
13 Claims shall be null and void if not negotiated within ninety (90) days after the date
14 of issuance thereof. Requests for the reissuance of any check that becomes null and
15 void pursuant to this Article shall be made directly to the Liquidating Trustee or Co-
16 Liquidating Trustee, as applicable, by the Holder of the Allowed Claim to which the
17 check was originally issued. Any Claim in respect of such voided check shall be made
18 in writing on or before the later of six months from the Effective Date or 30 days after
19 the date on which such check is voided. After that date, all Claims in respect of voided
20 checks shall be disallowed and forever barred and the proceeds of those checks shall
21 revert in and become the property of the Liquidating Trust as unclaimed property in
22 accordance with § 347(b).

20 11.6 **Withholding of Distributions.** In connection with making Distributions
21 under this Plan, to the extent applicable, the Liquidating Trustee and Co-Liquidating
22 Trustee shall comply with all tax withholding and reporting requirements imposed on
23 them by any Governmental Unit, and all Distributions pursuant to this Plan shall be
24 subject to such withholding and all related agreements shall be subject to any
25 applicable withholding and reporting requirements. The Liquidating Trustee or Co-
26 Liquidating Trustee, as applicable, may withhold the entire Distribution to any Holder
27 of an Allowed Claim until such time as such Holder provides the necessary
28 information to comply with any withholding requirements of any Governmental Unit.
Any property so withheld will then be paid by the Liquidating Trustee or the Co-
Liquidating Trustee, as applicable, to the appropriate authority. If the Holder of an
Allowed Claim fails to provide the information to comply with any withholding
requirements of any Governmental Unit within three months after the date of first

1 notification to the Holder of the need for such information for the Cash necessary to
2 comply with any applicable withholding requirements, then such Holders'
3 Distribution shall be treated in accordance with Section 11.6 of the Plan.

4 **11.7 *Delivery of Distributions and Undeliverable Distributions.*** Subject to
5 Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the
6 Holders of Allowed Claims shall be made by the Liquidating Trustee or Co-
7 Liquidating Trustee, as applicable, at (a) the address of each Claimant as set forth in
8 the Schedules, unless superseded by the address set forth on proof(s) of claim filed by
9 such Claimant, or (b) the last known address of such Claimant if no proof of claim is
10 filed or the Debtor, Post-Effective Date Debtor, Liquidating Trustee, or Co-
11 Liquidating Trustee has been notified in writing of a change of address. If any
12 Distribution is returned as undeliverable, the Liquidating Trustee or Co-Liquidating
13 Trustee may, in its discretion, make reasonable efforts to determine the current
14 address of the Holder of the Claim with respect to which the Distribution was made
15 as the Liquidating Trustee or Co-Liquidating Trustee deems appropriate, but no
16 Distribution to any such Holder shall be made unless and until the Liquidating Trustee
17 or Co-Liquidating Trustee has determined the then-current address of such Holder, at
18 which time the Distribution to such Holder shall be made without interest. Amounts
19 in respect of any undeliverable Distributions shall be returned to, and held in trust by,
20 the Liquidating Trustee or Co-Liquidating Trustee until the Distributions are claimed
21 or are deemed to be unclaimed property under § 347(b), as set forth in Section 11.7
22 of the Plan. The Liquidating Trustee or Co-Liquidating Trustee shall have the
23 discretion to determine how to make Distributions in the most efficient and cost-
24 effective manner possible; provided, however, that its discretion may not be exercised
25 in a manner inconsistent with any express requirements of the Plan or Liquidating
26 Trust Agreement.

27 Except with respect to property not distributed because it is being held in the
28 Disputed Claim Reserve, Distributions that are not claimed by the later of ninety (90)
days from the Effective Date or ninety (90) days after the date of a Distribution shall
be deemed to be unclaimed property under § 347(b) and shall vest or re-vest in the
Liquidating Trust, and the Claims with respect to which those Distributions are made
shall be automatically cancelled. Nothing contained in the Plan shall require the
Debtor or the Liquidating Trust to attempt to locate any Holder of an Allowed Claim.
All funds or other property that vest or re-vest in the Liquidating Trust pursuant to this
Section shall be distributed to the other Holders of Allowed Claims in accordance
with the provisions of the Plan and the Liquidating Trust Agreement.

11.8 *Setoffs and Recoupments.* The Liquidating Trustee or Co-Liquidating
Trustee may, to the extent permitted under applicable law, setoff or recoup against

1 any Allowed Claim and any distributions to be made pursuant to the Plan on account
2 of such Allowed Claim, the claims, rights, and Causes of Action of any nature that
3 the Debtor or the Liquidating Trust may hold against the Holder of such Allowed
4 Claim that are not otherwise waived, released, or compromised in accordance with
5 the Plan; *provided, however*, that neither such a setoff, recoupment, nor the allowance
6 of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee
7 or Co-Liquidating Trustee of any such claims, rights, and Causes of Action that the
8 Debtor or the Liquidating Trust possesses against such Holder; *provided, further*, that
9 neither the failure to effect such a setoff or recoupment nor the allowance of any Claim
10 hereunder shall constitute a waiver or release by the Liquidating Trustee or the Co-
11 Liquidating Trustee of any such Claims, rights, or Causes of Action that the Debtor,
12 the Estate, or the Liquidating Trust possess against such Holder. Any Holder of an
13 Allowed Claim subject to such setoff or recoupment reserves the right to challenge
14 any such setoff or recoupment in the Bankruptcy Court or any other court with
15 jurisdiction with respect to such challenge.

11.9 ***De Minimis Distributions.*** No Distribution is required to be made to a
12 Holder of an Allowed Claim if the amount of Cash to be distributed on any
13 Distribution Date under the Plan on account of such Claim is \$50 or less. Any Holder
14 of an Allowed Claim on account of which the amount of Cash to be distributed is \$50
15 or less will have its Claim for such Distribution discharged and will be forever barred
16 from asserting any such Claim against each Released Party, the Post-Effective Date
17 Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, and the Liquidating
18 Trust. Any Cash not distributed pursuant to this Section will, in the Liquidating
19 Trustee's discretion, be included in the Trust Assets Accounts, free of any restrictions
20 thereon, and will be distributed in accordance with the Plan.

11.10 ***Allocation of Plan Distribution Between Principal and Interest.*** All
21 Distributions by the Liquidating Trustee with respect to any Allowed Claim shall be
22 allocated first to the principal amount of such Allowed Claim, as determined for
23 federal income tax purposes, and thereafter, to the remaining portion of such Allowed
24 Claim (including the interest portion of the Allowed Claim), if any.

11.11 ***Entry of Final Decree in Chapter 11 Case.*** After all the Disputed Claims
25 have become Allowed Claims or have been disallowed by Final Order, and all
26 Distributions in respect of Allowed Claims have been made in accordance with this
27 Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the
28 Liquidating Trustee (i) shall seek authority from the Bankruptcy Court for entry of
the Final Decree closing the Chapter 11 Case in accordance with the Bankruptcy Code
and the Bankruptcy Rules and (ii) shall be authorized under the Plan to take any
necessary corporate action with respect to the Debtor's continued existence without

1 the necessity for approvals or notices under any applicable state or other law,
2 including under the Nonprofit Laws. Notwithstanding the foregoing, actions with
3 respect to the Post-Effective Date Debtor shall be taken by the Liquidating Trustee.
4 The entry of Final Decree closing this Chapter 11 Case shall not affect the Nonprofit
5 Status of the Post-Effective Date Debtor to the extent it has not dissolved in
6 accordance with the Plan.

7
8 11.12 ***Distribution Cap.*** In no event shall any Holder of an Allowed Claim
9 receive Distribution(s) of an aggregate value exceeding one hundred percent (100%)
10 of the amount of such Holder's Allowed Claim.

11 11.13 ***Distributions Free and Clear.*** Except as otherwise provided herein, any
12 Distributions under the Plan shall be free and clear of any Liens, Claims, and
13 encumbrances, and no Entity, including the Debtor, shall have any interest (legal,
14 beneficial, or otherwise) in any property of the Estate distributed pursuant to the Plan.

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SECTION 12.
**PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

12.1 ***No Distributions Pending Allowance.***

Notwithstanding any other provision of the Plan, the Debtor, the Liquidating
Trustee or the Co-Liquidating Trustee, as applicable, shall not distribute any Cash or
other property on account of any Disputed Claim unless and until such Claim becomes
Allowed. Nothing contained herein, however, shall be construed to prohibit or require
payment or Distribution on account of any undisputed portion of a Claim.

12.2 ***Resolution of Disputed Claims.***

a) **General Unsecured Claims.** From and after the Confirmation Date, all
objections with respect to Disputed General Unsecured Claims shall be litigated to a
Final Order by the Co-Liquidating Trustee, (i) except to the extent that the Co-
Liquidating Trustee elects to withdraw any such objection or the Co-Liquidating
Trustee and the Claimant elects to compromise, settle, or otherwise resolve any such
objection, in which event they may settle, compromise or otherwise resolve any
Disputed General Unsecured Claim without approval of the Bankruptcy Court; or (ii)
as otherwise provided in the Liquidating Trust Agreement. The costs of pursuing
objections to General Unsecured Claims shall be borne by the Liquidating Trust.

b) **Other Claims.** From and after the Confirmation Date, all objections with
respect to Disputed Claims (other than Disputed General Unsecured Claims) shall be
litigated to a Final Order by the Liquidating Trustee, except to the extent the

1 Liquidating Trustee elects to withdraw any such objection or the Liquidating Trustee
2 and the Claimant elect to compromise, settle, or otherwise resolve any such objection,
3 in which event they may settle, compromise, or otherwise resolve any Disputed Claim
4 (other than Disputed General Unsecured Claims) without approval of the Bankruptcy
5 Court. The costs of pursuing the objections to Claims (other than General Unsecured
6 Claims) shall be borne by the Liquidating Trust.

7
8 **12.3 *Objection Deadline.*** All objections to Claims shall be filed and served
9 upon the Claimant not later than the Claims Objection Deadline, as such may be
10 extended by order of the Bankruptcy Court.

11
12 **12.4 *Allowance and Estimation of Claims.*** Following the date on which a
13 Disputed Claim becomes an Allowed Claim after the Distribution Date, the
14 Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall pay directly to the
15 Holder of such Allowed Claim, as soon as reasonably practicable, the amount
16 provided for under the Plan, as applicable, and in accordance therewith.

17
18 a) **Allowance of Claims.** Notwithstanding anything to the contrary
19 herein, after the Effective Date and subject to the other provisions of the Plan, the
20 Liquidating Trustee or Co-Liquidating Trustee, as applicable, will have and will retain
21 any and all rights and defenses under bankruptcy or nonbankruptcy law that the
22 Debtor or its Estate had with respect to any Claim immediately before the Effective
23 Date, except with respect to any Claim deemed Allowed under the Plan or by orders
24 of the Bankruptcy Court. Except as expressly provided in the Plan or in any order
25 entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation
26 Order), no Claim will become an Allowed Claim unless and until such Claim is
27 deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has
28 entered a Final Order, including the Confirmation Order, in the Chapter 11 Case
allowing such Claim.

b) **Prosecution of Objections to Claims.** From and after the
Effective Date, unless otherwise provided in the Plan, the Confirmation Order, or the
Liquidating Trust Agreement, (i) the Liquidating Trustee will have the sole authority
to file objections to Claims (other than General Unsecured Claims) and settle,
compromise, withdraw, or litigate to judgment objections to any and all Claims (other
than General Unsecured Claims), regardless of whether such Claims are in an
Unimpaired Class or otherwise; and (ii) the Co-Liquidating Trustee will have the sole
authority to file objections to general Unsecured Claims and settle, compromise,
withdraw, or litigate to judgment objections to any and all General Unsecured Claims.
From and after the Effective Date, the Liquidating Trustee may settle or compromise
any Disputed Claim without any further notice to or action, order, or approval of the
Bankruptcy Court. The Liquidating Trustee will have the sole authority to administer

1 and adjust the Claims Register to reflect any such settlements or compromises without
2 any further notice to or action, order, or approval of the Bankruptcy Court; provided,
3 however, that with respect to General Unsecured Claims, the Co-Liquidating Trustee
4 shall have the sole authority to administer and adjust the Claims Register to reflect
5 any compromises or settlements of General Unsecured Claims without any further
6 notice to or action, order, or approval of the Bankruptcy Court.

7 c) **Estimation of Claims.** At any time, (a) prior to the Effective Date,
8 the Debtor, and (b) after the Effective Date, the Liquidating Trustee or, solely with
9 respect to General Unsecured Claims, the Co-Liquidating Trustee may request that
10 the Bankruptcy Court estimate any contingent or unliquidated Claim to the extent
11 permitted by § 502(c) regardless of whether the Debtor or the Liquidating Trust has
12 previously objected to such Claim or whether the Bankruptcy Court has ruled on any
13 such objection, and the Bankruptcy Court shall have jurisdiction to estimate any
14 Claim at any time to any such objection. If the Bankruptcy Court estimates any
15 contingent or unliquidated Claim, that estimated amount shall constitute either the
16 Allowed amount of such Claim or a maximum limitation on the Claim, as determined
17 by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation
18 on the Claim, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, may
19 elect to pursue supplemental proceedings to object to the ultimate allowance of the
20 Claim.

12.5 *Disallowance of Claims.*

21 a) Except as otherwise agreed, any and all proofs of claim filed after
22 the Bar Date are Disputed, and Holders of such Claims will not receive any
23 Distributions thereon unless and until such Claim is Allowed.

24 b) Subject to and in accordance with this Plan, any Claims held by
25 Entities from which property is recoverable under §§ 542, 543, 550, or 553 or Entities
26 that are transferees of transfers avoidable under §§ 522(f), 522(h), 544, 545, 547, 548,
27 549, or 724(a), provided, that, such Cause of Action is retained by the Liquidating
28 Trust, shall be deemed disallowed pursuant to § 502(d), and Holders of such Claims
may not receive any Distributions on account of such Claims until such time as such
Causes of Action the Debtor holds or may hold against any Entity have been resolved
or a Bankruptcy Court order with respect thereto has been entered and all sums due,
if any, to the Estate by that Entity have been turned over or paid to the Debtor or
Liquidating Trust.

12.6 *Adjustment Without Objection.* Any Claim that has been paid or
satisfied, or any Claim that has been amended or superseded, may be adjusted or
expunged from the claims register at the direction of the Debtor, the Liquidating

1 Trustee, or the Co-Liquidating Trustee, as applicable, without an objection filed and
2 without further notice to or action, order, or approval of the Bankruptcy Court.

3 **12.7 Reserve Provisions for Disputed Claims.**

4 a) **Establishment of Disputed Reserves.** On or prior to each
5 Distribution Date, the Liquidating Trustee shall each reserve Cash required for
6 Distribution on Disputed Claims as if such Claims were Allowed as filed with any
7 Disputed Claims that are unliquidated or contingent being reserved in an amount
8 reasonably determined by the Liquidating Trustee, as applicable (the “Disputed Claim
9 Reserve”). On each Distribution Date after the Effective Date in which the
10 Liquidating Trustee or Co-Liquidating Trustee makes Distributions to Holders of
11 Allowed Claims, the Liquidating Trustee shall retain on account of Disputed Claims
12 an amount the Liquidating Trustee estimates would be necessary to fund the Pro Rata
Share of such Distributions to Holders of Disputed Claims is such Claims were
Allowed, with any Disputed Claims that are unliquidated or contingent being reserved
in an amount reasonably determined by the Liquidating Trustee or Co-Liquidating
Trustee, as applicable.

13 b) **Maintenance of Disputed Reserves.** The Liquidating Trustee
14 shall hold property in the Disputed Claim Reserve in trust for the benefit of the
15 Holders of the applicable Disputed Claims that are ultimately determined to be
16 Allowed. The Disputed Claim Reserve shall be closed (or deemed closed) by the
17 Liquidating Trust when all Distributions and other dispositions of Cash of other
18 property required to be made hereunder will have been made in accordance with the
19 terms of the Plan. Upon closure of the Disputed Claim Reserve, all Cash or other
20 property held in that Disputed Claim Reserve shall revert in and become unrestricted
21 property of the Liquidating Trust to be distributed in accordance with the Plan and the
22 Liquidating Trust Agreement.

23 c) **Limitation on Funding Disputed Claim Reserves.** Except as
24 expressly set forth in the Plan, neither the Debtor nor the Liquidating Trustee shall
25 have any duty to fund the Disputed Claim Reserve except from the Liquidating Trust
26 Assets.

27 **12.8 Rounding.** Whenever any payment of a fraction of a cent would
28 otherwise be called for, the actual Distribution shall reflect a rounding of such fraction
down to the nearest cent.

12.9 Cumulative Effect. All the objection, estimation, and resolution
procedures set forth in this Section are intended to be cumulative (where possible)
and not exclusive of one another.

SECTION 13.
LIQUIDATING TRUST BENEFICIARIES

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3 13.1 *Identification of Liquidating Trust Beneficiaries.* Each of the
4 Liquidating Trust Beneficiaries shall be recorded and set forth in a schedule
5 maintained by the Liquidating Trustee expressly for such purpose based upon its
6 Allowed Claim in Class 3 or Class 4.

7 13.2 *Beneficial Interests Only.* The ownership of Trust Beneficial Interests
8 shall not entitle any Trust Beneficiary to any title in or to the Liquidating Trust Assets
9 or to any right to call for a partition or division of such Liquidating Trust Assets or to
10 require an accounting, except as may be specifically provided herein.

11 13.3 *Evidence of Beneficial Interests.* Ownership of a Trust Beneficial
12 Interest (a) shall be noted in the books and records of the Liquidating Trust and (b)
13 shall not be evidenced by any certificate, note, or receipt or in any other form or
14 manner whatsoever, except as maintained on the books and records of the Liquidating
15 Trust by the Liquidating Trustee, including the Schedules.

16 13.4 *Conflicting Claims.* Except as otherwise provided in the Liquidating
17 Trust Agreement, if any conflicting claims or demands are made or asserted with
18 respect to a Trust Beneficial Interest, the Liquidating Trustee shall be entitled, at its
19 sole election, to refuse to comply with any such conflicting claims or demands. In so
20 refusing, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, may elect
21 to make no payment or Distribution with respect to the beneficial interest represented
22 by the claims or demands involved, or any part thereof, and the Liquidating Trustee
23 or Co-Liquidating Trustee, as applicable, shall refer such conflicting claims or
24 demands to the Bankruptcy Court, which shall have exclusive jurisdiction over
25 resolution of such conflicting claims or demands and file a motion with the
26 Bankruptcy Court to adjudicate any such conflicting claims or demands. In so doing,
27 the Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall not be or
28 become liable to any party for his/her refusal to comply with any of such conflicting
claims or demands. The Liquidating Trustee or Co-Liquidating Trustee, as applicable,
shall be entitled to refuse to act until either (a) the rights of the adverse claimants have
been adjudicated by a Final Order or (b) all differences have been resolved by a
written agreement among all of such parties and the Liquidating Trustee or Co-
Liquidating Trustee, as applicable, which agreement shall include a complete release
of the Liquidating Trust and the Liquidating Trustee (the occurrence of either (a) or
(b) being referred to as a “Dispute Resolution” in this Section). Until a Dispute
Resolution is reached with respect to such conflicting claims or demands, the
Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall hold in a
segregated interest-bearing account with a United States financial institution any

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1 payments or Distributions from the Liquidating Trust as applicable, to be made with
2 respect to the Beneficial Interest at issue. Promptly after a Dispute Resolution is
3 reached, the Liquidating Trustee shall Transfer the payments and Distributions, if any,
4 held in the segregated account, together with any interest and income generated
thereon, in accordance with the terms of such Dispute Resolution.

5 13.5 *Limitation on Transferability.* As set forth in more detail in the
6 Liquidating Trust Agreement, the Trust Beneficial Interests may not be transferred,
7 sold, assigned, hypothecated, or pledged, except as they may be assigned or
transferred by will, intestate succession, or operation of law.

8
9 **SECTION 14.**
EXECUTORY AGREEMENTS

10 14.1 *General Treatment.* On the Effective Date, all Executory Agreements to
11 which the Debtor is a party shall be deemed rejected as of the Effective Date, except
12 for those Executory Agreements that (a) have been assumed or rejected pursuant to a
13 Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are
14 the subject of a separate motion to assume, assume and assign, or reject filed under §
15 365 on or before the Effective Date, (c) are specifically designated as a contract or
16 lease to be assumed pursuant to the DAP Sale and no timely objection to the proposed
17 assumption was filed; or (d) are specifically designated as a contract or lease to be
18 assumed on the Schedule of Assumed Contracts and no timely objection to the
19 proposed assumption has been filed. If the party to an Executory Agreement listed to
20 be assumed in the Schedule of Assumed Contracts wishes to object to the proposed
21 assumption (including with respect to the cure amounts), it shall do so within thirty
22 (30) days from the service of the Schedule of Assumed Contracts. However, nothing
23 in this Section shall cause the rejection, breach, or termination of any contract of
insurance benefiting the Debtor and the Estate, the Debtor's officers, managers and
24 directors and/or the Liquidating Trust. The Confirmation Order shall constitute an
25 order of the Bankruptcy Court approving such assumptions and rejections, as
26 applicable, pursuant to § 365, as of the Effective Date. Nothing in this Section shall
27 be construed as an acknowledgement that a particular contract or agreement is
28 executory or is properly characterized as a lease.

The non-Debtor parties to any rejected personal property leases shall be
responsible for taking all steps necessary to retrieve the personal property that is the
subject of such executory contracts and leases, and neither the Debtor nor the
Liquidating Trust shall bear any liability for costs associated with such matters.

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1 14.2 **Rejection Bar Date.** Claims arising out of the rejection of an Executory
2 Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as
3 otherwise provided for in the Debtor’s notice of rejection) no later than thirty (30)
4 days after the Effective Date. Any Claims not filed within such time period will be
5 forever barred from assertion against the Debtor, the Liquidating Trustee, and the
Liquidating Trust Assets. All such Claims for which Proofs of Claim are timely and
properly filed and ultimately Allowed will be treated as General Unsecured Claims.

6 14.3 **Insurance Policies.** For the avoidance of doubt, the Debtor’s rights with
7 respect to all Insurance Policies under which the Debtor may be an insured beneficiary
8 or assignee (including all Insurance Policies that may have expired prior to the
9 Petition Date, all Insurance Policies in existence on the Petition Date, all Insurance
10 Policies entered into by the Debtor after the Petition Date, and all Insurance Policies
under which the Debtor holds rights to make, amend, prosecute, and benefit from
11 claims) shall be Transferred to the Liquidating Trust (including, without limitation,
12 for the Liquidating Trustee to pursue and prosecute any Causes of Action) on the
Effective Date, unless any such Insurance Policy is otherwise cancelled by the
13 Liquidating Trustee in its discretion. Notwithstanding any provision providing for the
rejection of Executory Agreements, any Insurance Policy that is deemed to be an
14 Executory Agreement shall neither be rejected nor assumed by operation of this Plan
and shall be the subject of a specific motion by the Liquidating Trust, which shall
15 retain the right to assume or reject any such Executory Agreements pursuant to and
subject to the provisions of § 365 following the Effective Date, with all rights of the
16 Insurers to object or otherwise contest such assumption or rejection being expressly
reserved provided, that, the Liquidating Trustee may not reject (a) any extended
17 reporting period (tail) coverage purchased by the Debtor and (b) any Insurance
Policies assumed by the Debtor pursuant to an order of the Bankruptcy Court.
18

19 The Confirmation Order shall constitute a determination that no default by the
20 Debtor exists with respect to any of the Insurance Policies requiring a cure payment
21 and that nothing in the Sale Order, any underlying agreements or this Plan shall be
construed or applied to modify, impair, or otherwise affect the enforceability of the
22 Insurance Policies or any coverage thereunder with regard to any Claims or Causes
23 of Action.

24 Notwithstanding anything to the contrary in the Confirmation Order or the Plan
25 (including any other provision that purports to be preemptory or supervening),
nothing shall in any way operate to impair, or have the effect of impairing the Insurers’
26 legal, equitable or contractual rights, if any, in respect of any Claims (as defined by §
101(5)), and the rights of Insurers shall be determined under the Insurance Policies
27 and under applicable nonbankruptcy law; *provided, that*, any Claim by an Insurer
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1 against the Debtor or the Liquidating Trust shall also be determined under applicable
2 bankruptcy law, and Plan and Confirmation Order provisions.

3 Nothing in the Plan or in the Confirmation Order shall preclude any Person
4 from asserting in any proceeding any and all Claims, defenses, rights or causes of
5 action that it has or may have under or in connection with any Insurance Policy, and
6 nothing in the Plan or the Confirmation Order shall be deemed to waive any claims,
7 defenses, rights or causes of action that any Person (including any Insurer) has or may
8 have under the provisions, terms, conditions, defenses and/or exclusions contained in
9 the subject Insurance Policies; *provided, that*, any Claims by an Insurer against the
10 Debtor or the Liquidating Trust shall also be determined under applicable bankruptcy
11 law, and Plan and Confirmation Order provisions. Nothing in this Plan shall diminish,
12 impair or otherwise affect payments from the proceeds or the enforceability of any
13 Insurance Policies that may cover (a) Claims by the Debtor, or (b) Claims against the
14 Debtor or covered Persons.

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SECTION 15.
MEANS FOR IMPLEMENTATION OF THE PLAN

15.1 ***General Settlement of Claims.*** The Liquidating Trustee and Co-
Liquidating Trustee are authorized and directed to make Distributions of the
distributable Assets pursuant to and in accordance with the Plan. All Plan
Distributions made to Holders of Allowed Claims in any Class are intended to be and
shall be final. For the avoidance of doubt, the Plan itself shall not be deemed to be a
settlement.

15.2 ***Sale Transaction.*** On March 13, 2023, the Bankruptcy Court entered the
Sale Order authorizing and approving the DAP Sale, pursuant to § 363. Pursuant to
the DAP Sale, the Debtor sold the Purchased Assets to DAP Health pursuant to the
terms in the Asset Purchase Agreement.

a) ***Cooperation During Transition Period.*** Between the entry of
the Sale Order and the Closing of the DAP Sale, the Debtor and DAP Health
cooperated pursuant to the Management Services Support Agreement. On July 31,
2023, the DAP Sale Closed and the Management Services Support Agreement
terminated on its terms and that to the extent the Debtor or DAP Health may have
claims, rights, or ongoing obligations to each other under the Management Services
Support Agreement that survive the termination, such claims, rights, or ongoing
obligations shall cease to exist on the Effective Date, and that the Post-Effective Date
Debtor shall not inherit any claims, rights, benefits, or Causes of Action arising under,

1 relating to, or in connection with the Asset Purchase Agreement, the Management
2 Services Support Agreement, or any other agreement relating to the foregoing.

3 b) **No Effect on Sale Order.** Nothing in the Plan is intended to, nor
4 shall be construed to, alter any of the terms and conditions upon which the DAP Sale
5 was approved as set forth in the Asset Purchase Agreement. Neither the Plan nor the
6 Confirmation Order shall limit or otherwise affect any of the Bankruptcy Court's
7 findings, conclusions, orders, and judgments as set forth in the Sale Order, and insofar
8 as any of the protections afforded DAP Health by the Sale Order conflict with or
9 contradict certain terms and conditions in the Plan or any findings, conclusions,
10 orders, or judgments in the Confirmation Order, the Sale Order shall govern and
11 control with respect to DAP Health.

12 c) **No Claims against DAP Health.** Notwithstanding anything that
13 may suggest otherwise in the Plan, the Plan Supplement, or any Schedule or Exhibit
14 to either of the foregoing, or any other document executed in connection with
15 Confirmation or this Chapter 11 Case, neither the Post-Effective Date Debtor nor any
16 Holder of any Claim shall have any claim, cause of action, right, or recourse against
17 DAP Health or the Purchased Assets on account of or in connection with the DAP
18 Sale, the Asset Purchase Agreement, the Master Services Support Agreement, or any
19 other agreement or document executed in connection with the consummation of the
20 DAP Sale.

21 15.3 **DHCS Settlement Agreement.** On March 7, 2023, the Bankruptcy Court
22 entered the DHCS 9019 Order authorizing and approving the DHCS Settlement
23 among the Debtor, the Committee, and DHCS, which resolved the various disputes
24 between the Debtor, the Committee, and DHCS. The DHCS Settlement Agreement
25 sets forth the treatment of the DHCS Claim and provides for the allocation of the DAP
26 Sale proceeds among DHCS and Holders of other Allowed Claims. DHCS will apply
27 the DHCS Offset Amount to the DHCS Claim as set forth in the DHCS Settlement
28 Agreement. Pursuant to the DHCS Settlement Agreement, the DHCS Claim will be
reduced dollar for dollar by the DHCS' receipt of Specified Litigation Recoveries,
which will be allocated as set forth therein. Finally, the DHCS Settlement Agreement
provides for the Extended DHCS Bar Date in order for DHCS to file an additional
Proof of Claim for Medi-Cal overpayments not included within the DHCS Claim as
a General Unsecured Claim.

Nothing in the Plan is intended to, nor shall be construed to, alter any of the
terms and conditions upon which the DHCS Settlement Agreement was approved as
set forth therein. Neither the Plan nor the Confirmation Order shall limit or otherwise
affect any of the Bankruptcy Court's findings, conclusions, orders, and judgments as
set forth in the DHCS 9019 Order, and insofar as any of the protections afforded

1 DHCS by the DHCS 9019 Order conflict with or contradict certain terms and
2 conditions in the Plan or any findings, conclusions, orders, or judgments in the
3 Confirmation Order, the DHCS 9019 Order shall govern and control with respect to
4 DHCS

4 15.4 **Plan Funding.** This Plan will be funded from the following sources: (i)
5 the Remaining Estate Funds; (ii) the Remaining Cash; (iii) Net Cash Proceeds; (iv)
6 any refunds, deposits, or other monies owing to the Debtor which were not sold to
7 DAP Health; (v) the Litigation Recoveries; (vi) any other monetary recoveries
8 obtained by the Debtor prior to the Effective Date; and (vii) any other monetary
9 recoveries obtained by the Liquidating Trustee after the Effective Date that do not
10 constitute Purchased Assets.

9 15.5 **Post-Effective Date Governance**.

10 a) **Post-Effective Date Debtor.**

11 i. **Continued Limited Existence.** On and after the Effective Date,
12 the Post-Effective Date Debtor shall continue in existence for the
13 purposes set forth herein, and retain its Nonprofit Status to the
14 same extent as such status existed immediately prior to the
15 Petition Date. No party shall take any action to interfere with,
16 alter, terminate, or otherwise adversely affect the Nonprofit
17 Status of the Post-Effective Date Debtor. Specifically, the Post-
18 Effective Date Debtor shall continue in existence (i) to maintain
19 the Provider Agreements for Medi-Cal and Medicare, and
20 participate in the Medi-Cal and Medicare programs, until the
21 CHOW is approved, and (ii) to collect or otherwise liquidate all
22 amounts owing under the Provider Agreements until all
23 payments due under such agreements have been received by the
24 Post-Effective Date Debtor and, if appropriate, Transferred to
25 the Liquidating Trust.

22 ii. **No Further Approvals Required.** In performance of its duties
23 hereunder, the Post-Effective Date Debtor shall have the rights
24 and powers of a debtor in possession under § 1107, and such
25 other rights, powers, and duties necessary, appropriate, advisable
26 or convenient to effectuate the provisions of the Plan. Except to
27 the extent provided in this Plan or the Confirmation Order, on
28 and after the Effective Date, the Post-Effective Date Debtor shall
not be required to obtain any approvals from the Bankruptcy
Court, any court or Governmental Unit and/or provide any

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notices under the Nonprofit Laws to implement the terms of the Plan.

iii. **The Post-Effective Date Debtor's Books and Records.** The Debtor shall Transfer dominion and control over all of its books and records, in whatever form, manner or media, to the Liquidating Trustee on or as soon as reasonably practicable after the Effective Date.

iv. **Dissolution.** The Liquidating Trustee will cause the Post-Effective Date Debtor to be dissolved for all purposes under applicable non-bankruptcy law after (i) the CHOW is approved and (ii) the receipt of all payments related to Medi-Cal and Medicare. The Liquidating Trustee may dissolve the Post-Effective Date Debtor, earlier than as set forth herein, if it determines that the continued existence of the Post-Effective Date Debtor is not necessary to satisfy the foregoing conditions. Such dissolution shall occur without the necessity for any other or further actions to be taken by or on behalf of the Post-Effective Debtor, or payment of any fees, charges, penalties or other amounts required by applicable non-bankruptcy law; provided, however, that the Liquidating Trustee may in its discretion file any certificates of cancellation as may be appropriate in connection with dissolution of the Post-Effective Date Debtor.

b) Post-Effective Date Board of Directors.

i. **Duties and Obligations.** The Post-Effective Date Board of Directors shall (i) fulfill its duties and obligations under the Post-Effective Date Debtor's bylaws and state and federal law, and (ii) oversee the Liquidating Trustee solely in his/her capacity as president of the Post-Effective Date Debtor consistent with the terms of this Plan.

ii. **Resignation.** Any member of the Post-Effective Date Board of Directors may resign at any time upon not less than thirty (30) days' written notice to the Liquidating Trustee; provided, that, the Liquidating Trustee may waive such notice period.

iii. **Replacement.** Notwithstanding anything in the bylaws to the contrary, in the event that a director serving on the Post-Effective

1 Date Board of Directors resigns or is duly removed for cause, or
2 in the event of the death of any such director or other occurrence
3 rendering such director incapacitated or unavailable for a period
4 of thirty (30) consecutive days, a replacement director shall be
5 designated by the remaining members of the Post-Effective Date
6 Board of Directors in consultation with the Liquidating Trustee.
7 If a replacement director cannot be designated pursuant to this
8 Plan, the Liquidating Trustee may file a motion with the
9 Bankruptcy Court seeking appointment of a replacement
10 director.

11 iv. **Termination.** The terms of the Post-Effective Date Board of
12 Directors shall expire upon the date they are no longer required
13 under state law as to the Debtor, as applicable.

14 v. **Limitation of Liability of the Post-Effective Date Board of**
15 **Directors.** The liability of the Post-Effective Date Board of
16 Directors shall be limited to the maximum extent permitted by
17 law, including any exculpations under the articles of
18 incorporation or bylaws of the Post-Effective Date Debtor.

19 vi. **Operating Accounts for the Post-Effective Date Debtor.** On the
20 Effective Date, or as soon thereafter as is practical and subject to
21 the prior payment of the amounts required to be paid or reserved
22 by the Post-Effective Date Debtor in cash on the Effective Date
23 on account of Claims pursuant to this Plan, the Post-Effective
24 Date Debtor shall establish and fund deposit accounts to serve as
25 Operating Accounts for the Post-Effective Date Debtor for use
26 in accordance with the Wind-down Budget, provided, however,
27 the Post-Effective Date Debtor may, with the written consent of
28 the Liquidating Trustee, utilize previously established deposit
accounts for such purpose. The Liquidating Trustee shall be
authorized to use the funds in the Operating Accounts as needed
to preserve, administer, and continue the Operations for the Post-
Effective Date Debtor, including paying all related costs and
expenses associated, and collection of any amounts due to the
Post-Effective Date Debtor under the Transition Services
Agreement, each in accordance with the Wind-down Budget.
After the Effective Date, all Cash or other proceeds generated by
the Purchased Assets solely to the extent required to fund the
Operating Accounts in accordance with the Wind-down Budget

1 during the Transition Period shall be excluded from the
2 definition of the Remaining Cash.

3 **15.6 Liquidating Trust.**

4 a) **Formation of the Liquidating Trust.** On the Effective Date, the
5 Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement
6 for the purpose of, inter alia, (a) administering the Liquidating Trust Assets including
7 the Distributions and payments contemplated under the Plan, (b) prosecuting and/or
8 resolving all Disputed Claims, (c) investigating and pursuing any Causes of Action
9 the Debtor holds or may hold against any Entity, and (d) making all Distributions to
10 the Beneficiaries provided for under the Plan. The Liquidating Trust is intended to
11 qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d), with no
12 objective to continue or engage in the conduct of the trade or business, except to the
13 extent reasonably necessary to, and consistent with, the liquidating purpose of the
14 Liquidating Trust. Accordingly, the Liquidating Trustee shall, in an expeditious but
15 orderly manner, make distribution to Holders of Allowed Claims subject to the terms
16 of this Plan, liquidate and convert to Cash the remaining Liquidating Trust Assets,
17 and make timely Distributions to the Beneficiaries of the proceeds thereof, and not
18 unduly prolong the duration of the Liquidating Trust. Neither the Liquidating Trust
19 nor the Liquidating Trustee or Co-Liquidating Trustee shall be or shall be deemed a
20 successor-in-interest of the Debtor for any purpose other than as specifically set forth
21 herein or in the Liquidating Trust Agreement.

22 b) **Funding of the Liquidating Trust.** On the Effective Date, the
23 Liquidating Trust Assets shall vest automatically in the Liquidating Trust. The Plan
24 shall be considered a motion pursuant to §§ 105, 363, and 365 for such relief. The
25 transfer of the Liquidating Trust Assets to the Liquidating Trust shall be made for the
26 benefit and on behalf of the Liquidating Trust Beneficiaries. The assets comprising
27 the Liquidating Trust Assets will be treated for tax purposes as being transferred by
28 the Debtor to the Liquidating Trust Beneficiaries pursuant to the Plan in exchange for
their Allowed Claims and then by the Liquidating Trust Beneficiaries to the
Liquidating Trust in exchange for the beneficial interests in the Liquidating Trust. The
Liquidating Trust Beneficiaries shall be treated as the grantors and owners of the
Liquidating Trust. Upon the transfer of the Liquidating Trust Assets, the Liquidating
Trust shall succeed to all of the Debtor's rights, title and interest in the Liquidating
Trust Assets, and the Debtor will have no further interest in or with respect to the
Liquidating Trust Assets.

Except to the extent definitive guidance from the IRS or a court of competent
jurisdiction (including the issuance of applicable Treasury Regulations or the receipt
by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so

1 requests one) indicates that such valuation is not necessary to maintain the treatment
2 of the Liquidating Trust as a liquidating trust for purposes of the Internal Revenue
3 Code and applicable Treasury Regulations, as soon as possible after the Effective
4 Date, the Liquidating Trustee shall make a good-faith valuation of the Liquidation
5 Trust Assets. The valuation shall be used consistently by all parties (including,
without limitation, the Debtor, the Liquidating Trust, and the Liquidating Trust
Beneficiaries) for all federal income tax purposes.

6 **15.7 *Appointment of the Liquidating Trustee and Co-Liquidating Trustee.***

7 The Liquidating Trustee shall be selected by the Debtor with the consent of the
8 Committee, such consent not to be unreasonably withheld. The initial Liquidating
9 Trustee shall be a representative from Ankura Consulting Group, LLC. The Co-
10 Liquidating Trustee shall be selected by the Committee with the consent of the
11 Debtor, such consent not to be unreasonably withheld. The initial Co-Liquidating
12 Trustee shall be a representative from FTI Consulting, Inc. The Liquidating Trustee
13 and Co-Liquidating Trustee shall be deemed appointed on the Effective Date, without
application, notice, hearing or other order of the Bankruptcy Court. The appointment,
duties, rights, and powers of the Liquidating Trustee and the Co-Liquidating Trustee
are as set forth in the Liquidating Trust Agreement.

14 **15.8 *Rights and Powers of Liquidating Trustee and Co-Liquidating Trustee.***

15 a) **Liquidating Trustee.** The Liquidating Trustee shall be deemed
16 the Estate's representative in accordance with § 1123 and shall have all the rights and
17 powers set forth in the Liquidating Trust Agreement, including, without limitation,
18 the powers of a trustee under §§ 704 and 1106 and Bankruptcy Rule 2004 to act on
19 behalf of the Liquidating Trust. Without limiting the foregoing, and except as
20 provided for below with respect to the Co-Liquidating Trustee, the Liquidating
21 Trustee will have the right to, among other things, (1) effect all actions and execute
22 all agreements, instruments and other documents necessary to implement the
23 provisions of the Plan and the Liquidating Trust Agreement; (2) liquidate the
24 Liquidating Trust Assets; (3) investigate, prosecute, settle, abandon or compromise
25 any Causes of Action the Debtor holds or may hold against any Entity; (4) make
26 Distributions as contemplated hereby, (5) establish and administer any necessary
27 reserves for Disputed Claims that may be required; (6) object to the Disputed Claims
28 and prosecute, settle, compromise, withdraw or resolve in any manner approved by
the Bankruptcy Court such objections; (7) assert or waive any attorney-client privilege
on behalf of the Debtor and Estate with regard to acts or events during time periods
prior to the Petition Date; and (8) employ and compensate professionals and other
agents, including, without limitation, existing Professionals employed by the Debtor
in accordance with the Liquidating Trust Agreement or the Plan, provided, however,

1 that any such compensation shall be made only out of the Liquidating Trust Assets,
2 to the extent not inconsistent with the status of the Liquidating Trust as a liquidating
3 trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax
4 purposes.

4 **b) Co-Liquidating Trustee.** The Co-Liquidating Trustee shall have
5 all the rights and powers set forth in the Liquidating Trust Agreement. To ensure
6 expeditious resolution of any Disputed General Unsecured Claims and distributions
7 to Holders of Allowed General Unsecured Claims, the Co-Liquidating Trustee will
8 have the right to, in consultation with the Liquidating Trustee, to: (1) make
9 Distributions to Holders of Allowed General Unsecured Claims; (2) object to the
10 Disputed General Unsecured Claims and prosecute (or continue the prosecution of),
11 settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy
12 Court such objections; and (3) employ and compensate professionals and other agents,
13 including, without limitation, existing Professionals employed by the Debtor or
14 Committee in accordance with the Liquidating Trust Agreement or the Plan, provided,
15 however, that any such compensation shall be made only out of the Liquidating Trust
16 Assets. The Co-Liquidating Trustee will resign (by written submission, email being
17 sufficient to the Liquidating Trustee) upon (i) fully adjudicating all Disputed General
18 Unsecured Claims except any Disputed General Unsecured Claims against Specified
19 Litigation Defendants, and (ii) making the Final Distribution to the Holders of General
20 Unsecured Claims except Specified Litigation Defendants.

16 **15.9 Fees and Expenses.** Subject to payment in full of all Allowed
17 Administrative Claims, and except as otherwise ordered by the Bankruptcy Court,
18 expenses incurred by the Liquidating Trust on or after the Effective Date shall be paid
19 in accordance with the Liquidating Trust Agreement without further order of the
20 Bankruptcy Court.

20 **15.10 Transfer of Beneficial Interests in the Liquidating Trust.** Liquidating
21 Trust Interests shall not be transferable except upon death of the interest holder or by
22 operation of law. The Liquidating Trust shall not have any obligation to recognize
23 any transfer of Claims occurring after the Distribution Record Date.

23 **15.11 Litigation of Debtor's Causes of Action.** Except as otherwise provided
24 in this Plan, all Causes of Action are retained, vested in the Liquidating Trust, and
25 preserved pursuant to § 1123(b). From and after the Effective Date, all Causes of
26 Action will be prosecuted or settled by the Liquidating Trustee. Except as otherwise
27 provided in this Plan, to the extent any Causes of Action are already pending on the
28 Effective Date, the Liquidating Trustee, as successor to the Debtor (in any derivative
capacity or as an intervening party), will continue the prosecution of such Causes of
Action and shall be substituted as plaintiff, defendant, or in any other capacity for the

1 Debtor pursuant to this Plan and the Confirmation Order on the Effective Date without
2 need for any further motion practice or notice in any case, action, or matter.

3 **15.12 *Full and Final Satisfaction.*** Commencing upon the Effective Date,
4 subject to the terms of this Plan and the Liquidating Trust Agreement, the Liquidating
5 Trustee and Co-Liquidating Trustee, as applicable, shall be authorized and directed to
6 distribute the amounts required under the Plan to the Holders of Allowed Claims
7 according to the provisions of the Plan. Upon the Effective Date, all Debts of the
8 Debtor shall be deemed fixed and adjusted pursuant to this Plan, and the Liquidating
9 Trust shall have no liability on account of any Claims except as set forth in this Plan
10 and in the Liquidating Trust Agreement. All payments and all distributions made by
11 the Liquidating Trustee or Co-Liquidating Trustee under the Plan shall be in full and
12 final satisfaction of all Claims against the Liquidating Trust; provided, however, that
13 nothing contained in this Article 9 of the Plan, or in any other provision of this Plan,
14 shall be deemed to constitute or result in a discharge of the Debtor under § 1141(d).

15 **15.13 *Employment and Compensation of Professionals.*** In accordance with
16 the Liquidating Trust Agreement, the Liquidating Trust may employ such counsel,
17 advisors, and other professionals selected by the Liquidating Trustee or Co-
18 Liquidating Trustee (which may be the same professionals employed by the Post-
19 Effective Date Debtor or the Committee) that the Liquidating Trustee and Co-
20 Liquidating Trustee reasonably require to perform its responsibilities under the Plan
21 without further order from the Bankruptcy Court.

22 **15.14 *No Further Court Authorization.*** Except as provided herein or the
23 Confirmation Order, the Liquidating Trustee and Co-Liquidating Trustee will
24 continue the orderly administration of the Liquidating Trust Assets and otherwise
25 implement the provisions of this Plan without necessity of any further order of the
26 Bankruptcy Court or approval or consent of any Governmental Unit, including under
27 the Nonprofit Laws. Further, except as provided herein or the Confirmation Order,
28 the Liquidating Trustee and Co-Liquidating Trustee will continue their oversight and
related responsibilities pursuant to the Plan and Liquidating Trust Agreement without
necessity of any further order of the Bankruptcy Court or other Governmental Unit,
including under the Nonprofit Laws.

15.15 *Dissolution of the Committee.* On the Effective Date, the Committee
will dissolve, and the members of the Committee and the Committee's Professionals
will cease to have any role arising from or relating to the Chapter 11 Case, except in
connection with final fee applications of Professionals for services rendered prior to
the Effective Date (including the right to object thereto). The Professionals retained
by the Committee and the members thereof will not be entitled to assert any fee claims
for any services rendered to the Committee or expenses incurred in the service of the

1 Committee after the Effective Date, except for reasonable fees for services rendered,
2 and actual and necessary costs incurred, in connection with any applications for
3 allowance of Professional Fees pending on the Effective Date or filed and served after
4 the Effective Date. Nothing in the Plan shall prohibit or limit the ability of the
5 Debtor's or Committee's Professionals to represent the Liquidating Trustee or to be
6 compensated or reimbursed per the Plan and the Liquidating Trust Agreement in
7 connection with such representation.

6 **15.16 *Coordination Between Post-Effective Date Debtor and the Liquidating***
7 ***Trust.*** Notwithstanding anything herein to the contrary, in furtherance of the purposes
8 of the Liquidating Trust, at the request of the Liquidating Trustee or Co-Liquidating
9 Trustee, as applicable, the Post-Effective Date Debtor (including, without limitation,
10 the Post-Effective Date Debtor's employees, agents and/or professionals) shall be
11 authorized to provide assistance and services to, or otherwise act on behalf of, the
12 Liquidating Trustee or Co-Liquidating Trustee, as applicable, in the performance of
13 the Liquidating Trustee's or Co-Liquidating Trustee's duties, as applicable, under the
14 Plan and the Liquidating Trust. Without limitation on the foregoing, the Post-
15 Effective Date Debtor shall be authorized to assist in the reconciliation and
16 administration of Claims, and assist in the liquidation and/or collection of Liquidating
17 Trust Assets (including, without limitation, litigation claims). The Liquidating
18 Trustee shall oversee all such services provided on behalf of the Liquidating Trust.

15 **15.17 *Destruction and Abandonment of Books and Records.*** Except as
16 otherwise provided in this subsection or the Liquidating Trust Agreement, on or after
17 the Effective Date, pursuant to § 554(a), the Liquidating Trustee is authorized, from
18 time to time, without further application to the Bankruptcy Court or notice to any
19 party, to abandon or otherwise destroy documents and records (whether in electronic
20 or paper format) that he or she determines, in his/her reasonable business judgment,
21 are no longer necessary to the administration of either the Chapter 11 Case or the Plan,
22 notwithstanding any federal, state, or local law or requirement requiring the retention
23 of the applicable documents or records; provided, that, sixty (60) days prior to any
24 abandonment or destruction, the Liquidating Trustee will give notice to any Insurer
25 requesting notice prior to the Confirmation Date and a general description of the
26 documents to be abandoned or destroyed, and the Insurer shall have thirty (30) days
27 thereafter to request, at its sole expense, copies of the documents relevant to the
28 defense or indemnity claims covered by that Insurer. The Insurer and the Liquidating

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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1 Trustee shall cooperate in limiting the request to documents relevant to defense or
2 indemnity of claims covered by that Insurer.

3 15.18 ***Mutuality Preserved.*** Unless specifically agreed in writing by the
4 Debtor, the Liquidating Trustee, or Co-Liquidating Trustee, as applicable, nothing in
5 the Plan constitutes a waiver of the requirements for setoff under § 553.

6 **SECTION 16.**
7 **EFFECT OF CONFIRMATION**

8 16.1 ***Binding Effect of the Plan.*** The provisions of the confirmed Plan shall
9 bind the Debtor, the Liquidating Trust, the Liquidating Trustee, the Co-Liquidating
10 Trustee, any Entity acquiring property under the Plan, any Beneficiary, and any
11 Creditor, whether or not such Creditor has filed a Proof of Claim in the Chapter 11
12 Case, whether or not the Claim of such Creditor is impaired under the Plan, and
13 whether or not such Creditor has accepted or rejected the Plan. All Claims and Debts
14 shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing
15 authority, recorder of deeds, or similar official for any county, state, or Governmental
16 Unit or parish in which any instrument related to under the Plan or related to any
17 transaction contemplated under the Plan is to be recorded with respect to any taxes of
18 the kind specified in § 1146(a).

19 16.2 ***Vesting of Assets.*** Upon the Effective Date, title to all property of the
20 Estate of the Debtor in the Chapter 11 Case shall vest in the Liquidating Trust and
21 shall be retained by the Liquidating Trust for the purposes contemplated under this
22 Plan pursuant to the Liquidating Trust Agreement. Without limiting the generality of
23 the foregoing, all Causes of Action the Debtor holds or may hold against any Entity,
24 recoveries from any Causes of Action, and all resulting Liquidating Trust Assets shall
25 vest in the Liquidating Trust upon the Effective Date and shall no longer constitute
26 property of the Estate.

27 16.3 ***No Discharge. Pursuant to § 1141(d), the Debtor will not receive a***
28 ***discharge under this Plan.***

16.5 ***Property Free and Clear.*** Except as otherwise provided in the Plan or
the Confirmation Order, all property that shall vest in the Liquidating Trust shall be
free and clear of all Claims, Liens, charges, or other encumbrances of Creditors, and
in relevant documents, agreements, and instruments contained in the Plan
Supplement. Following the Effective Date, the Liquidating Trustee may Transfer and
dispose of any such property free of any restrictions imposed by the Bankruptcy Code
or the Bankruptcy Rules and without further approval of the Bankruptcy Court or

1 notice to Creditors, except as may otherwise be required under the Plan or the
2 Confirmation Order.

3
4 **SECTION 17.**
EXCULPATIONS, INJUNCTIONS, AND RELEASES

5 17.1 *Extension of Existing Injunctions and Stays.* Unless otherwise
6 provided herein, all injunctions or stays arising under §§ 105 or 362, any order entered
7 during the Chapter 11 Case under §§ 105 or 362 or otherwise, and in existence on the
8 Effective Date, shall remain in full force and effect until the closing of the Chapter 11
Case.

9 17.2 *Releases.*

10 a) **Debtor Release.** Pursuant to § 1123(b), and except as otherwise
11 specifically provided in the Plan, for good and valuable consideration, on and after
12 and subject to the occurrence of the Effective Date, the Debtor and its estate shall
13 release each Released Party, and each Released Party is deemed released by the
14 Debtor and the estate from any and all claims, obligations, rights, suits, damages,
15 Causes of Action, remedies, and liabilities whatsoever, including any derivative
16 claims, asserted or assertable on behalf of any of the Debtor or its estate, as applicable,
17 whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued
18 or unaccrued, matured or unmatured, determined or indeterminable, disputed or
19 undisputed, liquidated or unliquidated, or due or to become due, existing or
20 hereinafter arising, in law, equity, or otherwise, that the Debtor or the estate would
21 have been legally entitled to assert in its own right, or on behalf of the Holder of any
22 Claim or other entity, based on or relating to, or in any manner arising from, in whole
23 or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, the purchase,
24 sale, transfer of any security, asset, right, or interest of the Debtor, the DAP Sale, the
25 subject matter of, or the transactions or events giving rise to, any Claim that is treated
26 in the Plan, the business or contractual arrangements between any Debtor and any
27 Released Party, the treatment of Claims prior to or in the Chapter 11 Case, the
28 negotiation, formulation, or preparation of the Plan or related agreements,
instruments, or other documents, any other act or omission, transaction, agreement,
event, or other occurrence taking place on and before the Petition Date, other than
claims or liabilities arising out of or relating to any act or omission of a Released Party
that constitutes fraud, willful misconduct, or gross negligence; provided, that, the
foregoing Debtor Release shall not operate to waive or release any obligations of any
party under the Plan or any other document, instrument, or agreement executed to
implement the Plan. For avoidance of doubt, the foregoing Debtor Release does not

1 release any of the Debtor’s claims, obligations, rights, suits, damages, Causes of
2 Action, remedies, and liabilities with respect thereto.

3 Entry of the Confirmation Order shall constitute the Bankruptcy Court’s
4 approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes
5 by reference each of the related provisions and definitions contained herein, and
6 further, shall constitute the Bankruptcy Court’s finding that the Debtor Release is: (a)
7 in exchange for the good and valuable consideration provided by the Released Parties;
8 (b) a good faith settlement and compromise of the Claims released by the Debtor
9 Release; (c) in the best interests of the Debtor and all Holders of Claims; (d) fair,
equitable and reasonable; (e) given and made after due notice and opportunity for
hearing; and (f) a bar to the Debtor or its estate asserting any Claim or Cause of Action
released pursuant to the Debtor Release.

10 b) **Third Party Release.** On, and as of, the Effective Date and for
11 good and valuable consideration, the receipt and sufficiency of which are
12 acknowledged, the Released Parties shall be forever released (the “Third Party
13 Release”) from any and all claims, obligations, actions, suits, rights, debts, accounts,
14 causes of action, remedies, avoidance actions, agreements, promises, damages,
15 judgments, demands, defenses, and liabilities throughout the world under any law or
16 court ruling through the Effective Date (including all claims based on or arising out
17 of factors or circumstances that existed as of or prior to the Effective Date, including
18 claims based on negligence or strict liability, and further including any derivative
19 claims asserted on behalf of the Debtor, whether known or unknown, foreseen or
20 unforeseen, existing or hereinafter arising, in law, equity, or otherwise) which the
21 Debtor, its estate, Creditors, or other persons receiving or who are entitled to receive
22 distributions under the Plan may have against any of them in any way related to this
23 Chapter 11 Case, the negotiation, formulation, or preparation of the Plan or related
24 agreements, instruments, or other documents, any other act or omission, transaction,
25 agreement, event, or other occurrence taking place on and before the Petition Date,
26 and related to the Debtor (or its predecessors), its business and/or its assets; provided,
27 however, that the foregoing releases are granted only by (a) Creditors who returned a
Ballot; and (b) Creditors who were sent a Solicitation Package or a Release Opt-Out
Election Form, but either (i) did not vote; or (ii) did not return a Release Opt-Out
Election Form; provided, however, that the release provided in this section shall not
apply to (A) any Creditor whose Claim is not Allowed either in whole or in part; or
(B) any Creditor in category (b) above if the Solicitation Package or Release Opt-Out
Election Form was returned to the Debtor as undelivered and that such Creditor did
not otherwise submit a Ballot; and provided further, however, that the release
provided in this Section shall not extend to any claims by any Governmental Unit

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

1 with respect to criminal liability under applicable law, willful misconduct or bad faith
2 under applicable law, ultra vires acts under applicable law.

3 c) **Limitation of Claims Against the Liquidating Trust.** As of the
4 Effective Date, except as provided in this Plan or the Confirmation Order, all Persons
5 shall be precluded from asserting against the Liquidating Trust any other or further
6 Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of
7 action, and liabilities whatsoever, relating to the Debtor based upon any acts,
omissions, liabilities, transactions, occurrences, or other activity of any nature that

8 d) **WAIVER OF LIMITATIONS ON RELEASES.** THE LAWS
9 OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542)
10 PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES
11 NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT
12 KNOW OR SUSPECT TO EXIST IN HIS/HER/ITS FAVOR AT THE TIME OF
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY THE RELEASING
14 PARTY MUST HAVE MATERIALLY AFFECTED THE RELEASING PARTY'S
15 DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS 17.2(a)-
(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY
MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY OTHER
STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

16 17.3 *Injunctions.*

17 a) **General Injunction.** Except as otherwise expressly provided
18 herein, all Persons who have held, currently hold or may hold a Claim against the
19 Debtor are permanently enjoined on and after the Effective Date from taking any
20 action in furtherance of such Claim or any other Cause of Action released and
21 discharged under the Plan, including, without limitation, the following actions against
22 any Released Party: (a) commencing, conducting or continuing in any manner,
23 directly or indirectly, any action or other proceeding with respect to a Claim;
24 (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or
25 by any means, whether directly or indirectly, any judgment, award, decree or order
26 with respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly
27 or indirectly, any lien or encumbrance of any kind with respect to a Claim; (d)
28 asserting any setoff, right of subrogation or recoupment of any kind, directly or
indirectly, against any debt, liability or obligation due to the Debtor, the Post-
Effective Date Debtor or the Liquidating Trust with respect to a Claim; or (e)
commencing, conducting or continuing any proceeding that does not conform to or
comply with or is contradictory to the provisions of this Plan; provided, however, that
nothing in this injunction shall preclude the Holders of Claims against the Debtor

1 from enforcing any obligations of the Debtor, the Post-Effective Date Debtor, the
2 Liquidating Trust, the Liquidating Trustee, or Co-Liquidating Trustee under this Plan
3 and the contracts, instruments, releases and other agreements delivered in connection
4 herewith, including, without limitation, the Confirmation Order, or any other order of
5 the Bankruptcy Court in the Chapter 11 Case. By accepting a Distribution made
6 pursuant to this Plan, each Holder of an Allowed Claim shall be deemed to have
7 specifically consented to the injunctions set forth in this Section.

6 **b) Other Injunctions.** The Post-Effective Date Debtor, the
7 Liquidating Trustee, the Co-Liquidating Trustee, the Post-Effective Date Board of
8 Directors, or the Liquidating Trust and their respective members, directors, officers,
9 agents, attorneys, advisors or employees shall not be liable for actions taken or
10 omitted in its or their capacity as, or on behalf of, the Post-Effective Date Debtor, the
11 Post-Effective Date Board of Directors, the Liquidating Trustee, the Co-Liquidating
12 Trustee, or the Liquidating Trust (as applicable), except those acts found by Final
13 Order to arise out of its or their willful misconduct, gross negligence, fraud, and/or
14 criminal conduct, and each shall be entitled to indemnification and reimbursement for
15 fees and expenses in defending any and all of its or their actions or inactions in its or
16 their capacity as, or on behalf of the Post-Effective Date Board of Directors, the Post-
17 Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, or the
18 Liquidating Trust (as applicable), except for any actions or inactions found by Final
19 Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct.
20 Any indemnification claim of the Post-Effective Date Debtor, the Post-Effective Date
21 Board of Directors, the Liquidating Trustee, the Co-Liquidating Trustee, and the other
22 parties entitled to indemnification under this subsection shall be satisfied from the
23 Liquidating Trust Assets. The parties subject to this Section shall be entitled to rely,
24 in good faith, on the advice of retained professionals, if any.

20 **17.4 Exculpation.** To the maximum extent permitted by applicable law, each
21 Exculpated Party shall not have or incur any liability for any act or omission in
22 connection with, related to, or arising out of the Chapter 11 Case (including, without
23 limitation, the filing of the Chapter 11 Case), the marketing and the DAP Sale, the
24 Plan and any related documents (including, without limitation, the negotiation and
25 consummation of the Plan, the pursuit of the Effective Date, the administration of the
26 Plan, or the property to be distributed under the Plan), or each Exculpated Party's
27 exercise or discharge of any powers and duties set forth in the Plan, except with
28 respect to the actions found by Final Order to constitute willful misconduct, gross
negligence, fraud, or criminal conduct, and, in all respects, each Exculpated Party
shall be entitled to rely upon the advice of counsel with respect to their duties and
responsibilities under the Plan. Without limitation of the foregoing, each such
Exculpated Party shall be released and exculpated from any and all Causes of Action

1 that any Person is entitled to assert in his/her/their own right or on behalf of any other
2 Person, based in whole or in part upon any act or omission, transaction, agreement,
3 event or other occurrence in any way relating to the subject matter of this Section.

4 17.5 **No Recourse.** If a Claim is Allowed in an amount for which after
5 application of the payment priorities established by this Plan (including, without
6 limitation, in Sections 8 and 10 hereof) there is insufficient value to provide a recovery
7 equal to that received by other Holders of Allowed Claims in the respective Class, no
8 Claim Holder shall have recourse for any such deficiency against any of the Released
9 Parties, the Post-Effective Date Debtor, the Post-Effective Date Board of Directors,
10 the Liquidating Trustee, the Co-Liquidating Trustee, or the Liquidating Trust.
11 However, except as specifically stated otherwise in this Plan, nothing in this Plan shall
12 modify any right of a Holder of a Claim under § 502(j). The obligations under this
13 Plan of the Debtor's Estate shall (i) be contractual only and shall not create any
14 fiduciary relationship and (ii) be obligations of the Debtor's Estate only and no
15 individual acting on behalf of the Debtor, the Committee, the Post-Effective Date
16 Debtor, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Co-
17 Liquidating Trustee, the Oversight Committee, or otherwise, shall have any personal
18 or direct liability for these obligations. Approval of the Plan by the Confirmation
19 Order shall not in any way limit the foregoing.

20 17.6 **Post-Confirmation Liability of Liquidating Trustee and the Co-**
21 **Liquidating Trustee.** The Liquidating Trustee and the Co-Liquidating Trustee,
22 together with their respective consultants, agents, advisors, attorneys, accountants,
23 financial advisors, other representatives and the professionals engaged by the
24 foregoing (collectively, the "**Indemnified Parties**") shall not be liable for any and all
25 liabilities, losses, damages, claims, causes of action, costs and expenses, including but
26 not limited to attorneys' fees arising out of or due to their actions or omissions, or
27 consequences of such actions or omissions, to the Holders of Claims for any action or
28 inaction taken in good faith in connection with the performance or discharge of their
duties under this Plan, except the Indemnified Parties will be liable for actions or
inactions that are grossly negligent, fraudulent, or which constitute willful misconduct
(in each case, liability shall be subject to determination by final order of a court of
competent jurisdiction). However, any act or omission taken with the approval of the
Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to
constitute gross negligence, fraud or willful misconduct. In addition, the Liquidating
Trust and the Estate shall, to the fullest extent permitted by the laws of the State of
California, indemnify and hold harmless the Indemnified Parties from and against and
with respect to any and all liabilities, losses, damages, claims, costs and expenses,
including but not limited to attorneys' fees arising out of or due to their actions or
omissions, or consequences of such actions or omissions, with respect to the

1 Liquidating Trust and the Estate or the implementation or administration of the Plan
2 if the Indemnified Party acted in good faith and in a manner reasonably believed to
3 be in or not opposed to the best interest of the Liquidating Trust and the Estate. To
4 the extent the Liquidating Trust indemnifies and holds harmless the Indemnified
5 Parties as provided above, the legal fees and related costs incurred by counsel to the
6 Liquidating Trustee or the Co-Liquidating Trustee in monitoring and participating in
7 the defense of such claims giving rise to the right of indemnification shall be paid as
8 expenses of the Liquidating Trust. All rights of the Persons exculpated and
9 indemnified pursuant hereto shall survive confirmation of the Plan.

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17.7 Preservation of Rights of Action.

a) **Vesting of Causes of Action.** Except as otherwise provided in the Plan or Confirmation Order, including any Cause of Action that is expressly waived, relinquished, exculpated, released, settled, or compromised under the Plan or Confirmation Order (including, without limitation, pursuant to the Debtor/Estate Release), (i) in accordance with § 1123(b)(3), any Causes of Action that the Debtor holds or may hold against any Entity shall vest upon the Effective Date in the Liquidating Trust; (ii) after the Effective Date, the Liquidating Trustee shall have the exclusive right to institute, prosecute, abandon, settle, or compromise any Causes of Action the Estate holds or may hold against any Entity constituting Liquidating Trust Assets, in accordance with the terms of the Plan and the Liquidating Trust Agreement, as applicable, and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case; and (iii) Causes of Action and recoveries therefrom shall remain the sole property of the Liquidating Trust, and Holders of Claims shall have no direct right or interest in to any such Causes of Action or recoveries.

b) **Preservation of All Causes of Action Not Expressly Settled or Released.** Unless a Cause of Action against a Holder of a Claim or other Entity is expressly waived, relinquished, released, compromised, or settled in the Plan (including, without limitation, pursuant to the Debtor/Estate Release) and/or or any Final Order (including the Confirmation Order), the Debtor and the Liquidating Trustee expressly reserve such retained Cause of Action (collectively, the “Retained Causes of Action”) for later adjudication by the Liquidating Trustee (including, without limitation, Causes of Action not specifically identified or described in the Plan Supplement or elsewhere, or of which the Debtor may be presently unaware, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time, or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue

1 preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or
2 laches shall apply to such Retained Causes of Action upon or after the entry of the
3 Confirmation Order or Effective Date based on the Plan or Confirmation Order,
4 except where such Causes of Action have been released or otherwise resolved by a
5 Final Order (including the Confirmation Order). In addition, the Debtor and
6 Liquidating Trustee expressly reserve the right to pursue or adopt claims alleged in
any lawsuit in which a Debtor is a defendant or interested party against any Entity,
including, without limitation, the plaintiffs or co-defendants in such lawsuits.

- 7 i. The Retained Causes of Action preserved hereunder include,
8 without limitation, the following claims, rights, or other causes
9 of action:
- 10 ii. Against the Excluded Parties and/or any other party not
11 expressly released pursuant to this Plan;
- 12 iii. that constitute Avoidance Actions;
- 13 iv. relating to pending litigation, including, without limitation, the
14 suits, administrative proceedings, executions, garnishments,
15 and attachments listed in the Debtor's Schedules;
- 16 v. against vendors, suppliers of goods or services (including
17 attorneys, accountants, consultants, or other professional
18 service providers), utilities, contract counterparties, and other
19 parties for, including but not limited to: (A) services rendered;
20 (B) over- and under-payments, back charges, duplicate
21 payments, improper holdbacks, deposits, warranties,
22 guarantees, indemnities, setoff, or recoupment; (C) failure to
23 fully perform or to condition performance on additional
24 requirements under contracts with any one or more of the
25 Debtors; (D) wrongful or improper termination, suspension of
26 services, or supply of goods, or failure to meet other
27 contractual or regulatory obligations; (E) indemnification
28 and/or warranty claims; or (F) turnover Causes of Action
arising under §§ 542 or 543;
- vi. against health plans, payors, and other related providers;
- vii. against landlords or lessors, including, without limitation, for
erroneous charges, overpayments, returns of security deposits,
indemnification, or for environmental claims;

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601 SOUTH FIGUEROA STREET, SUITE 2500
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213 623 9300

- 1 viii. arising against current or former tenants or lessees, including,
2 without limitation, for non-payment of rent, damages, and
3 holdover proceedings;
- 4 ix. arising from damage to any of the Debtor’s property;
- 5 x. relating to claims, rights, or other Causes of Action the Debtor
6 may have to interplead third parties in actions commenced
7 against the Debtor;
- 8 xi. for collection of a debt or other amount owed to the Debtor;
- 9 xii. against insurance carriers, reinsurance carriers, underwriters,
10 surety bond issuers or other related or similar parties relating
11 to coverage, indemnity, contribution, reimbursement, or other
12 matters; and
- 13 xiii. arising under or relating to the Asset Purchase Agreement and
14 related documents including, but not limited to, enforcement of
15 such agreements by the Debtor’s Estate and/or breaches of any
16 and/or all of such agreements by the applicable non-Debtor
17 parties.

16 c) **Transactions Subject to Review by Liquidating Trustee or Co-**
17 **Liquidating Trustee.** Subject to the immediately preceding paragraph, any Entity to
18 which the Debtor has incurred an obligation (whether on account of services, the
19 purchase or sale of goods, or otherwise), or that has received services from the Debtor
20 or a Transfer of money or property of the Debtor, or that has received services from
21 the Debtor or a Transfer of money or property of the Debtor, or that has transacted
22 business with the Debtor, or that has leased property from the Debtor, should assume
23 and is hereby advised that any such obligation, Transfer, or transaction may be
24 reviewed by the Liquidating Trustee or Co-Liquidating Trustee, as applicable,
25 subsequent to the Effective Date and may be the subject of an action after the Effective
26 Date, regardless of whether (i) such Entity has filed a Proof of Claim against the
27 Debtor in the Chapter 11 Case; (ii) the Debtor, the Committee, the Liquidating
28 Trustee, or Co-Liquidating Trustee have objected to any such Entity’s Proof of Claim;
 (iii) any such Entity’s Claim was included in the Schedules; (iv) the Debtor, the
 Committee, the Liquidating Trustee, or Co-Liquidating Trustee have objected to any
 such Entity’s Scheduled Claim; (v) any such Entity’s Scheduled Claim has been
 identified by the Debtor, the Committee, the Liquidating Trustee, or Co-Liquidating
 Trustee as disputed, contingent, or unliquidated; or (vi) the Debtor, the Liquidating

1 Trustee, or Co-Liquidating Trustee have identified any potential claim or Cause of
2 Action against such Entity herein.

3 17.8 ***Termination of Responsibilities of the Patient Care Ombudsman.*** On
4 the Closing Date, the duties and responsibilities of the Patient Care Ombudsman were
5 terminated and the Patient Care Ombudsman was discharged from his duties as
6 Patient Care Ombudsman and is not required to file any further reports or perform
7 any additional duties as Patient Care Ombudsman. No person or entity may seek
8 discovery in any form, including but not limited to by motion, subpoena, notice of
9 deposition or request or demand for production of documents, from the Patient Care
10 Ombudsman or his agents, professionals, employees, other representatives, designees
11 or assigns (collectively, with the Patient Care Ombudsman, the “***Ombudsman***
12 ***Parties***”) with respect to any matters arising from or relating in any way to the
13 performance of the duties of the Patient Care Ombudsman in this Chapter 11 Case,
14 including, but not limited to, pleadings, reports or other writings filed by the Patient
15 Care Ombudsman in connection with this Chapter 11 Case. Nothing herein shall in
16 any way limit or otherwise affect the obligations of the Patient Care Ombudsman
17 under confidentiality agreements, if any, between the Patient Care Ombudsman and
18 any other person or entity or shall in any way limit or otherwise affect the Patient Care
19 Ombudsman’s obligation, under § 333(c)(1) or other applicable law or Bankruptcy
20 Court Orders, to maintain patient information, including patient records, as
21 confidential, and no such information shall be released by the Patient Care
22 Ombudsman without further order of the Bankruptcy Court.

23 **SECTION 18.**

24 **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

25 18.1 ***Conditions Precedent to Confirmation of Plan.*** The confirmation of the
26 Plan shall be conditioned upon the Bankruptcy Court entering the Confirmation Order
27 in form and substance satisfactory to the Plan Proponents.

28 18.2 ***Conditions to Effective Date.*** The following are conditions precedent to
the Effective Date:

- a) ***The Confirmation Order shall have been entered by this Court in form and substance acceptable to the Plan Proponents, which Confirmation Order shall not have been terminated, suspended, vacated or stayed, and shall not have been amended or modified after entry without the consent of the Plan Proponents;***

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- b) *The Liquidating Trustee shall have accepted the terms of the Liquidating Trustee’s service and compensation, and such terms and compensation shall have been approved by the Court in the Confirmation Order;*
- c) *The Co-Liquidating Trustee shall have accepted the terms of the Co-Liquidating Trustee’s service and compensation, and such terms and compensation shall have been approved by the Court in the Confirmation Order;*
- d) *With respect to all other documents and agreements necessary to implement the Plan: (1) all conditions precedent to such documents and agreements (other than any conditions precedent related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements; (2) such documents and agreements shall have been tendered for delivery to the required parties and have been approved by any required parties and, to the extent required, filed with and approved by the applicable authorities in the relevant jurisdiction; and (3) such documents and agreements shall have been effected or executed; and*
- e) *All other actions, authorizations, consents, and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected, or executed in a manner acceptable to the Plan Proponents or, if waivable, waived by the Person or Persons (or Entity or Entities) entitled to the benefit thereof.*

18.3 **Waiver of Condition.** The Plan Proponents may waive the conditions to effectiveness of this Plan, set forth in Section 18.2 hereof, without leave of the Bankruptcy Court and without any formal action, other than proceeding with confirmation of this Plan and filing a notice of confirmation with the Bankruptcy Court. To the extent that the Debtor believes that it is unable to comply with the conditions to the effectiveness of this Plan, set forth in Section 18.2 hereof, the Plan Proponents reserve the right to amend the Plan at such time (in accordance with the terms hereof) to address such inability.

SECTION 19.
RETENTION OF JURISDICTION

1
2
3 19.1 **Bankruptcy Court Jurisdiction.** Unless otherwise provided herein or in
4 the Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall
5 retain jurisdiction over all matters arising in, arising under, or related to the Chapter
6 11 Case. Without limiting the foregoing, the Bankruptcy Court shall retain
7 jurisdiction to:

- 8 (a) allow, disallow determine, liquidate, classify, estimate, or
9 establish the priority or secured or unsecured status of any Claim,
10 including the resolution of any request for payment of any
11 Administrative Claim or Professional Claim and the resolution of
12 any objections to the allowance or priority of Claims, and the
13 resolution of any claim objections brought by the Debtor and/or
14 the Committee, by the Liquidating Trustee and Co-Liquidating
15 Trustee on behalf of the Liquidating Trust;
- 16 (b) resolve any matters related to the assumption, assumption and
17 assignment, or rejection of any Executory Agreement to which the
18 Debtor is a party and to hear, determine and, if necessary,
19 liquidate, any Claims arising from, or cure amounts related to,
20 such assumption or rejection;
- 21 (c) determine any motion, adversary proceeding, application,
22 contested matter, and other litigated matter pending on or
23 commenced after the Effective Date, including, without limitation,
24 any and all Causes of Action preserved under the Plan commenced
25 prior to, on, or after the Effective Date;
- 26 (d) ensure that Distributions to Holders of Allowed Claims are
27 accomplished in accordance with the Plan;
- 28 (e) hear and determine matters relating to claims with respect to the
Debtor's director and officer insurance;
- (f) enter, implement or enforce such orders as may be appropriate in
the event that the Confirmation Order is for any reason stayed,
reversed, revoked, modified, or vacated;
- (g) issue injunctions, enter and implement other orders, and take such
other actions as may be necessary or appropriate to restrain
interference by any Person with the consummation,

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implementation or enforcement of this Plan, the Confirmation Order or any other order of the Bankruptcy Court, including, without limitation, any actions relating to the Nonprofit Status of the Post-Effective Date Debtor;

- (h) resolve a dispute with respect to and/or otherwise appoint a replacement of the Liquidating Trustee or Co-Liquidating Trustee;
- (i) hear and determine any application to modify this Plan in accordance with § 1127, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, any contract, instrument, release, or other agreement or document created in connection therewith, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;
- (j) hear and determine all applications under §§ 330, 331, and 503(b) for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;
- (k) hear and determine disputes arising in connection with the interpretation, implementation, obligation or enforcement of this Plan, the Confirmation Order, any transactions or payments contemplated in the Plan, or any agreement, instrument, or other document governing or relating to any of the foregoing;
- (l) take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate this Plan, including all contracts, instruments, releases, and other agreements or documents created in connection therewith, or to maintain the integrity of this Plan following consummation;
- (m) determine such other matters and for such other purposes as may be provided in the Plan and/or the Confirmation Order;
- (n) hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146, including without limitation, (i) any requests for expedited determinations under § 505(b) filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Petition Date through, and including, the date of Final Distribution under the Plan, and (ii)

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- any other matters relating to the Nonprofit Status of the Post-Effective Date Debtor;
- (o) hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and Title 28 of the United States Code;
- (p) authorize recovery of all assets of any of the Debtor and property of the Debtor’s Estate, wherever located;
- (q) consider any and all claims against each Released Party involving or relating to the administration of the Chapter 11 Case, any rulings, orders, or decisions in the Chapter 11 Case, or any aspects of the Debtor’s Chapter 11 Case and the events leading up to the commencement of the Chapter 11 Case, including the decision to commence the Chapter 11 Case, the development and implementation of the Plan, the decisions and actions taken prior to or during the Chapter 11 Case and any asserted claims based upon or related to prepetition obligations of the Debtor for the purpose of determining whether such claims belong to the Estate or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by the Bankruptcy Court to abstain and consider whether such litigation should more appropriately proceed in another forum;
- (r) hear and resolve any disputes regarding the reserves required hereunder, including without limitation, disputes regarding the amounts of such reserves or the amount, allocation and timing of any releases of such reserved funds; and
- (s) enter the Final Decree closing the Chapter 11 Case.

SECTION 20.
MISCELLANEOUS PROVISIONS

20.1 *Termination of All Employee, Retiree and Workers’ Compensation Benefits.* All existing employee benefits (including, without limitation, workers’ compensation benefits, health care plans, disability plans, severance benefit plans, incentive plans, and life insurance plans) and retiree benefits (as such term is defined

1 under § 1114(a)) not previously terminated by the Debtor, or assumed by the Debtor
2 in the Schedule of Assumed Contracts, shall be terminated on or before the Effective
Date.

3
4 **20.2 *Administrative Claims Bar Date.*** All Requests for Payment of an
5 Administrative Claim must be filed with the Bankruptcy Court and served on the
6 Debtor no later than the Administrative Claims Bar Date. Such Requests for Payment
7 may include estimates of amounts through the Effective Date. The Administrative
8 Claims Reserve shall be established on the Effective Date in an amount determined
9 by the Bankruptcy Court in order to satisfy all Administrative Claims that have not
10 been Allowed as of the Effective Date and all Allowed Administrative Claims that
11 will be paid after the Effective Date. In the event that the Debtor, the Liquidating
12 Trustee objects to an Administrative Claim, the Bankruptcy Court shall determine the
13 Allowed amount of such Administrative Claim. Notwithstanding the foregoing: (a)
14 no Request for Payment need be filed with respect to an undisputed postpetition
15 obligation which was paid or is payable by the Debtor in the ordinary course of
16 business; provided, however, that in no event shall a postpetition obligation that is
17 contingent or disputed and subject to liquidation through pending or prospective
18 litigation, including, but not limited to, alleged obligations arising from personal
19 injury, property damage, products liability, consumer complaints, employment law
20 (excluding claims arising under workers' compensation law), secondary payor
21 liability, or any other disputed legal or equitable claim based on tort, statute, contract,
equity, or common law, be considered to be an obligation which is payable in the
ordinary course of business; and (b) no Request for Payment need be filed with respect
to fees payable pursuant to 28 U.S.C. § 1930. All Administrative Claims that become
Allowed after the Effective Date shall be paid solely from the Administrative Claims
Reserve, and shall not constitute a claim against the Liquidating Trust, the Liquidating
Trustee, or any of the Liquidating Trust Assets. No Holder of an Administrative Claim
shall have recourse for any deficiency in the payment of its Administrative Claim
against any of the Released Parties, the Post-Effective Date Debtor, the Post-Effective
Date Board of Directors, the Liquidating Trustee, or the Liquidating Trust.

22 **20.3 *Exemption from Transfer Taxes.*** Pursuant to § 1146(c), the assignment
23 or surrender of any lease or sublease, or the delivery of any deed or other instrument
24 of transfer under, in furtherance of, or in connection with, this Plan, including any
25 deeds, bills of sale or assignments executed in connection with any disposition of
assets contemplated by this Plan, whether real or personal property, shall not be

1 subject to any stamp, real estate transfer, mortgage recording, sales, use or other
2 similar tax.

3 20.4 **Amendments.** The Plan Proponents reserve the right, in accordance with
4 the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan at any
5 time prior to the entry of the Confirmation Order. After the entry of the Confirmation
6 Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or
7 modify this Plan, in accordance with § 1127(b), or remedy any defect or omission or
8 reconcile any inconsistency in this Plan in such manner as may be necessary to carry
9 out the purpose and intent of this Plan. A Holder of an Allowed Claim that is deemed
to have accepted this Plan shall be deemed to have accepted this Plan as modified if
the proposed modification does not materially and adversely change the treatment of
the Claim of such Holder.

10 20.5 **Revocation or Withdrawal of Plan.** The Plan Proponents may withdraw
11 or revoke this Plan at any time prior to the Effective Date. If the Plan Proponents
12 revoke or withdraw this Plan prior to the Effective Date, or if the Effective Date does
13 not occur, then this Plan shall be deemed null and void. In such event, nothing
14 contained herein shall be deemed to constitute a waiver or release of any Claim by or
against the Debtor or any other Person or to prejudice in any manner the rights of the
Debtor or any other Person in any further proceedings involving the Debtor.

15 20.6 **Severability.** In the event that the Bankruptcy Court determines, prior to
16 the Effective Date, that any provision of this Plan is invalid, void or unenforceable,
17 the Bankruptcy Court shall, with the consent of the Plan Proponents, have the power
18 to alter and interpret such term or provision to make it valid or enforceable to the
19 maximum extent practicable, consistently with the original purpose of the term or
20 provision held to be invalid, void or unenforceable, and such term or provision shall
21 then be applicable as altered or interpreted. Notwithstanding any such holding,
22 alteration or interpretation, the remainder of the terms and provisions of this Plan shall
23 remain in full force and effect and shall in no way be affected, impaired or invalidated
24 by such holding, alteration or interpretation. The Confirmation Order shall constitute
25 a judicial determination and shall provide that each term and provision of this Plan,
26 as it may have been altered or interpreted in accordance with the foregoing, is valid
27 and enforceable pursuant to its terms.

28 20.7 **Request for Expedited Determination of Taxes.** The Plan Proponents or
the Liquidating Trustee, as applicable, shall have the right to request an expedited
determination under § 505(b) with respect to tax returns filed, or to be filed, for any

1 and all taxable periods ending after the Petition Date through and including the date
2 of Final Distribution under the Plan.

3 20.8 **Securities Exemption.** To the extent the Trust Beneficial Interests are
4 deemed or asserted to constitute securities, the Trust Beneficial Interests and the
5 issuance and distribution thereof shall be exempt from Section 5 of the Securities Act,
6 if applicable, and from any state or federal securities laws requiring registration for
7 offer or sale of a security or registration or licensing of an issuer of, underwriter of,
8 or broker or dealer in, a security, and shall otherwise enjoy all exemptions available
9 for distributions of securities under a plan of reorganization in accordance with all
10 applicable law, including without limitation, § 1145.

11 20.9 **U.S. Trustee Quarterly Fees and Post-Confirmation Status Reports.**
12 All fees payable under 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor in the
13 amounts and at the times such fees may become due up to and including the Effective
14 Date. The Liquidating Trust shall pay all fees payable by the Debtor under 28 U.S.C.
15 § 1930(a)(6) until the Chapter 11 Case is closed, dismissed or converted. After the
16 Effective Date, the Liquidating Trust and Post-Effective Date Debtor shall file and
17 serve the quarterly status reports required by § 1106(a)(7), Bankruptcy Rule
18 2015(a)(5), and 28 C.F.R. § 58.8.

19 20.10 **Courts of Competent Jurisdiction.** If the Bankruptcy Court abstains
20 from exercising, or declines to exercise, jurisdiction or is otherwise without
21 jurisdiction over any matter arising out of this Plan, such abstention, refusal or failure
22 of jurisdiction shall have no effect upon and shall not control, prohibit or limit the
23 exercise of jurisdiction by any other court having competent jurisdiction with respect
24 to such matter.

25 20.11 **Governing Law.** Except to the extent that the Bankruptcy Code or
26 Bankruptcy Rules are applicable, the rights, duties and obligations arising under this
27 Plan shall be governed by, and construed and enforced in accordance with, the laws
28 of the State of California, without giving effect to the principles of conflict of laws
thereof.

29 20.12 **Continuing Effect of the Bankruptcy Court Orders and Settlement**
30 **Stipulations.** Unless otherwise set forth in the Plan or the Confirmation Order or
31 otherwise ordered by the Bankruptcy Court, the orders of the Bankruptcy Court and
32 any other settlement stipulations entered into by the Debtor (including without
33 limitation, the DHCS 9019 Order, the DHCS Settlement Agreement, agreements to
34 lift the automatic stay, resolve litigation claims and limit recoveries to available
35 insurance proceeds) shall not be modified, limited or amended by the Plan and shall
36 remain in full force and effect. To the extent of any direct conflict between the terms

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1 of this Plan and any settlement agreements, the conflicting provisions of such
2 settlement agreements shall govern with respect to the treatment of Allowed Claims
3 as provided for therein.

4 20.13 **Substantial Consummation.** On the Effective Date, the Plan shall be
5 deemed substantially consummated under §§ 1101 and 1127(b).

6 20.14 **Waiver of Fourteen-Day Stay.** The Plan Proponents request as part of
7 the Confirmation Order a waiver from the Bankruptcy Court of the 14-day stay of
8 Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the 14-day stay of
9 Bankruptcy Rule 6004(g).

10 20.15 **Reservation of Rights.** Neither the filing of the Plan nor any statement
11 or provision contained in the Plan, nor the taking by any party in interest of any action
12 with respect to the Plan, shall: (a) be or be deemed to be an admission against interest
13 and (b) until the Effective Date, be or be deemed to be a waiver of any rights any party
14 in interest may have (i) against any other party in interest, or (ii) in or to any of the
15 assets of any other party in interest, and, until the Effective Date, all such rights are
16 specifically reserved. In the event that the Plan is not confirmed or fails to become
17 effective, neither the Plan nor any statement contained in the Plan may be used or
18 relied upon in any manner in any suit, action, proceeding, or controversy within or
19 without the Chapter 11 Case involving the Debtor, except with respect to
20 Confirmation of the Plan.

21 20.16 **Successors and Assigns.** The rights, benefits, and obligations of any
22 Entity named or referred to in the Plan shall be binding on, and shall inure to the
23 benefit of, the heirs, executors, administrators, successors, and/or assigns of such
24 Entity.

25 20.17 **Time.** In computing any period of time prescribed or allowed by this
26 Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the
27 provisions of Bankruptcy Rule 9006 shall apply. Any reference to “day” or “days”
28 shall mean calendar days, unless otherwise specified herein.

 20.18 **Business Day Transactions.** In the event that any payment or act under
this Plan is required to be made or performed on a date that is not a Business Day,
then the making of such payment or the performance of such act may be completed

1 on or as soon as reasonably practicable on the next succeeding Business Day, but shall
2 be deemed to have been completed as of the initial due date.

3 20.19 **Headings.** Headings are used in this Plan for convenience and reference
4 only and shall not constitute a part of this Plan for any other purpose.

5 20.20 **Exhibits.** Exhibit A, any schedules to this Plan, and the Plan Supplement
6 are incorporated into and are a part of this Plan as if set forth in full herein.

7 20.21 **Notices.** Any notices to or requests by parties in interest under or in
8 connection with this Plan shall be in writing and served either by (i) certified mail,
9 return receipt requested, postage prepaid, (ii) hand delivery or (iii) reputable overnight
10 delivery service, all charges prepaid, and shall be deemed to have been given when
11 received by the following parties:

12 If to the Debtor:

13 Borrego Community Health Foundation
14 587 Palm Canyon Dr.
15 Suite 208
16 Borrego Springs, California 92004
17 Attn: Doug Habig

18 with copies to:

19 Dentons US LLP
20 Attorneys for the Debtor and Debtor-In-Possession
21 601 South Figueroa Street, Suite 2500
22 Los Angeles, California 90017
23 1 213 623 9300
24 Attn: Samuel R. Maizel
25 Tania M. Moyron
26 Rebecca M. Wicks

27 If to the Committee:

28 Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
1 310 227 6910
Attn: Jeffrey N. Pomerantz
Steven W. Golden

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2 If to the Liquidating Trustee:

3 Ankura Consulting Group, LLC
4 2000 K Street NW, 12th Floor
5 Washington, DC 20006
6 1 202 507 5499
7 Attn: Isaac Lee

8 If to the Co-Liquidating Trustee:

9 FTI Consulting, Inc.
10 8251 Greensboro Drive, Suite 400
11 McLean, VA 22101
12 1 202 262 4778
13 Attn: Narendra Ganti

14 20.22 ***Post-Effective Date Notices.*** Following the Effective Date, except as
15 otherwise provided herein, notices shall only be served on the Post-Effective Date
16 Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, the U.S. Trustee, and
17 those Persons who file with the Court and serve upon the Liquidating Trust a request,
18 which includes such Person's name, contact person, address, telephone number,
19 facsimile number, and email, that such Person receive notice of post-Effective Date
20 matters. Persons who had previously filed with the Court requests for special notice
21 of the proceedings and other filings in the Chapter 11 Case shall not receive notice of
22 post-Effective Date matters unless such Persons File a new request in accordance with
23 this Section.

24 20.23 ***Conflict of Terms.*** In the event of a conflict between the terms of this
25 Plan and the Disclosure Statement, the terms of this Plan shall control.

26 20.24 ***Entire Agreement.*** On the Effective Date, the Plan and the Confirmation
27 Order shall supersede all previous and contemporaneous negotiations, promises,
28 covenants, agreements, understandings, and representations on such subjects, all of
which have become merged and integrated into the Plan.

Dated: San Diego, California
As of December 4, 2023

Exhibit A

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1 **Exhibit A²**
2 Liquidation Analysis

3 **Background**

4 Section 1129(a)(7) of the Bankruptcy Code, which is often referred to as the “best
5 interests of creditors” test, requires that as a condition to confirmation of the Plan,
6 each holder of a Claim in each Impaired Class must either (i) accept the Plan, or (ii)
7 receive or retain under the Plan property of value that is not less than the amount the
8 Holder of an Impaired Class Claim would receive or retain in a hypothetical
liquidation under chapter 7 of the Bankruptcy Code (the “*Liquidation Analysis*”).

9 The Debtor prepared this Liquidation Analysis to include: (i) estimated cash proceeds
10 that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted
11 to a chapter 7 case and the assets of the Debtor’s Estate were liquidated; (ii) estimated
12 distribution that each Holder of a Claim would receive from the liquidation proceeds;
13 and (iii) compared each Holder’s estimated distribution and recovery under a chapter
7 liquidation to the projected distribution and recovery under the Plan.

14 The Liquidation Analysis is based upon certain assumptions, and, as such, certain
15 aspects may be different from those represented in the Plan. The Liquidation Analysis
16 should be read in conjunction with the *Joint Combined Disclosure Statement and*
17 *Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket
No. 1091].

18 THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OR WARRANTIES
19 REGARDING THE ACCURACY OF THESE ESTIMATES AND ASSUMPTIONS
20 CONTAINED HEREIN, OR A CHAPTER 7 TRUSTEE’S ABILITY TO ACHIEVE
21 THE PROJECTED RESULTS. IN THE EVENT THAT THE CHAPTER 11 CASE
22 IS CONVERTED TO A CHAPTER 7 LIQUIDATION, ACTUAL RESULTS MAY
VARY MATERIALLY FROM THE ESTIMATES AND PROJECTIONS SET
FORTH IN THIS LIQUIDATION ANALYSIS.

23 **Presentation**

24 The Liquidation Analysis has been prepared assuming the Debtor converted its
25

26 _____
27 ² Capitalized terms not otherwise defined herein shall have the meanings described to them in the
28 *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community
Health Foundation* [Docket No. 1091].

1 Chapter 11 Case to chapter 7 of the Bankruptcy Code on or about January 19, 2024
2 (the “*Liquidation Date*”).³

3 On the Liquidation Date, it is assumed the Bankruptcy Court would appoint a chapter
4 7 trustee to liquidate the Debtor’s remaining assets, wind down the Debtor and the
5 Estate, and provide distributions to creditors considering the DHCS Settlement
6 Agreement. The distributable value is assumed to be applied in the following order:
7 (i) payment of the Allowed Secured Claims and the DHCS Sales Proceeds Recovery;
8 (ii) chapter 7 administrative costs, including trustee fees, professional fees, and wind-
9 down expenses; (iii) Allowed Chapter 11 Administrative Claims and Priority Claims;
10 (iv) Allowed General Unsecured Claims; and (v) the Allowed DHCS Claim. The
11 treatment of creditors in the context of a chapter 7 liquidation would be the same as
12 they are under the Plan, but the distribution to those creditors would be significantly
13 less.

14 The Liquidation Analysis assumes the Liquidating Trust under the Plan would employ
15 existing Debtor and/or Committee professionals. Under the chapter 7 scenario, a
16 chapter 7 trustee would be appointed to administer the Debtor’s assets. A chapter 7
17 trustee would be completely unfamiliar with the complexities of this Chapter 11 Case.
18 Following the appointment of a chapter 7 trustee, the chapter 7 trustee would
19 presumably hire new professionals who are equally unfamiliar with the complexities
20 of this Chapter 11 Case. For example, there is significant litigation pending where the
21 Debtor is a plaintiff, and those cases could eventually represent a meaningful source
22 of recoveries for the Debtor’s Estate. The Debtor’s professionals are intimately
23 familiar with that litigation. The result of a chapter 7 trustee’s employment of a
24 substantial number of professionals unfamiliar with this complex Chapter 11 Case
25 would be the incurrence of an extraordinary amount of additional professional fees.
26 By contrast, the Debtor’s and the Committee’s professionals are skilled and already
27 intimately familiar with the Chapter 11 Case.

21 ³ The “Best Interest Test” requires a liquidation analysis that demonstrates that, if a claimant or
22 interest holder is in an impaired class and that claimant or interest holder does not vote to accept the
23 Plan, than that claimant or interest holder must receive or retain under the plan property of a value
24 not less than the amount that such holder would receive or retain if the Debtor were forced to
25 liquidate under chapter 7 of the Bankruptcy Code. It is not at all clear that this test applies in the
26 bankruptcy of a nonprofit company. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy
27 Code and state law may preclude or restrict the forced sale of a nonprofit’s assets. 11 U.S.C. §§
28 1112(c), 303. By way of example, under § 1112(c), a nonprofit’s creditors cannot force a nonprofit
to convert its chapter 11 case to a chapter 7, nor under § 303 can they file an involuntary petition
against a nonprofit. Similarly, state statutes impose stringent requirements on the transfer or sale of
a nonprofit debtor’s assets, *see, e.g.*, CAL. CORP. CODE §§ 5913, 7913, 9633.5, and the involuntary
dissolution of a nonprofit, *see, e.g.*, CAL. CORP. CODE §§ 6510-6519, 8510-8519, 9680.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

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2 Additionally, a chapter 7 trustee(s) would be under a statutory duty to liquidate the
3 Debtor’s assets as expeditiously as possible. *See* 11 U.S.C. § 704(a)(1). However, the
4 Debtor must remain extant, with operating management and a board of directors until
5 DAP Health obtains its own Medicare and Medi-Cal provider agreements, among
6 other things. Since the Bankruptcy Code does not automatically authorize the chapter
7 trustee to operate the Debtor’s businesses following a conversion to chapter 7, the
8 chapter 7 trustee would be required to seek authority to continue operating the Debtor
9 after obtaining approval from the U.S. Trustee to make such request. *See, e.g.*, 11
10 U.S.C. § 721 (“The court may authorize the trustee to operate the business of the
11 debtor for a limited period, if such operation is in the best interest of the estate and
12 consistent with the orderly liquidation of the estate.”); Executive Office for the United
13 States Trustee, U.S. Dept. of Justice *Handbook for Chapter 7 Trustees* (Oct. 1, 2012),
14 at 4-31 (“The trustee must consult with the United States Trustee prior to seeking
15 authority to operate the business[.]”). The chapter 7 trustee’s discretion to move for
16 an operating order under § 721, and the willingness of the U.S. Trustee and Court to
17 grant such request, presents significant potential risks to creditor recoveries in chapter
18 7 for several important reasons. The Debtor must be in a position to monitor DAP
19 Health’s operations for as long as DAP Health does not have its own provider
20 agreements. Failure to allow DAP Health continued access to Medi-Cal receivables
would imperil the continued viability of the Debtor’s former clinics and breach the
agreement between the Debtor and DAP Health. Thus, the risk that the Debtor would
not continue to operate in a hypothetical chapter 7 case represents a substantial risk
to creditor recoveries in comparison with the Plan. Additionally, the chapter 7 trustee
and/or their professionals would have to have health care industry operational
experience and experience collecting health care receivables, in general, and FQHC
operational experience specifically, to provide the necessary oversight and ensure
sufficient liquidation of Estate assets. Retaining this expertise will result in greatly
increasing the cost to the chapter 7 trustee and the Estate.

21 The advantages of finishing a liquidation in chapter 11 are not just “common
22 knowledge” among professionals. Experts have also concluded that conversion to
23 chapter 7 offers few advantages over liquidation in chapter 11: cases converted from
24 chapter 11 to chapter 7 take significantly longer to resolve than a “pure” chapter 11
25 liquidation, and such cases require similar, if not greater, fees, and in the end provide
26 creditors with statistically lower recovery rates than a comparable chapter 11
27 procedure. *See* Arturo Bris, Ivo Welch and Ning Zhu, *The Costs of Bankruptcy:
Chapter 7 Liquidation versus Chapter 11 Reorganization*, J. OF FINANCE, vol. 61(3),
June 2006, at 1253.

28 **Conclusion**

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The Plan demonstrates the Allowed DHCS Claim will receive a substantial recovery under the Plan. However, under a chapter 7 liquidation, the remaining value available for the Allowed DHCS Claim would be materially less compared to the remaining value available under the proposed Plan. Through the significant cost savings of the confirmed Plan as compared to conversion to chapter 7, holders of allowed claims will receive more under the Plan than they would receive in a converted chapter 7 bankruptcy (and certainly at least as much as under the Plan).

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 213 623 9300

Borrego Community Health Foundation			
Liquidation Analysis			
Proposed Chapter 11 Plan vs. Chapter 7 Plan of Liquidation			
<i>\$ in USD 000's</i>			
	Proposed Plan	Chapter 7	FN
Current Cash on Hand	\$ 69,332	\$ 69,332	[A]
Cash Burn to Plan Effective Date (ED)	(1,628)	(1,628)	[B]
Distributable Value at ED	\$ 67,705	\$ 67,705	
Secured Claims	(3)	(3)	
DHCS Sales Proceeds Recovery	(13,600)	(13,600)	[C]
US Trustee Fees	(250)	(250)	
Administrative Claims - Excluding Professional Fees	(1,939)	-	
Administrative Professional Fee Claims	(2,015)	-	
Priority Claims	(1,435)	-	
Claims to be Paid at ED	\$ (19,242)	\$ (13,853)	
Excess Distributable Value at ED	\$ 48,463	\$ 53,851	
Litigation Settlement Proceeds	1,500	1,500	
Jared Settlement Proceeds	105	105	[D]
Estimated Post-ED Net Payments Due to Buyer	(1,425)	(1,425)	[E]
Distributable Value to be Realized Post-ED	\$ 48,643	\$ 54,031	
Post-ED US Trustee Fees	(750)	(750)	
Wind-Down Expenses	(1,523)	(1,523)	[F]
Liquidating Trust Fees	(3,110)	-	
Chapter 7 Trustee Fee (3% of disbursements)	-	(2,372)	
Chapter 7 Trustee Legal Counsel	-	(3,000)	[G]
Chapter 7 Trustee Financial Advisor	-	(1,100)	[G]
Cost of Transition from Chapter 11 Debtor's Professionals	-	(1,000)	[H]
Administrative Claims - Excluding Professional Fees	-	(1,939)	
Administrative Professional Fee Claims	-	(2,015)	
Priority Claims	-	(1,435)	
Administrative & Priority Claims Paid Post-ED	\$ (5,382)	\$ (15,133)	
Remaining Value Available for Unsecured Creditors	\$ 43,260	\$ 38,898	
Estimated General Unsecured Claims	11,668	11,668	[I]
Remaining Value for DHCS Claim	\$ 31,592	\$ 27,230	[C]
Negative Impact of Chapter 7 Scenario		\$ (4,362)	

1 **Footnotes to the Liquidation Analysis**

2 [A]: This reflects the Debtor’s Cash on hand as of November 3, 2023.

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4 [B]: The projected uses of Cash include estimated payment of Administrative Claims
5 and Chapter 11 administrative costs incurred before the Effective Date, net of
6 estimated accounts receivable collections.

7 [C]: Pursuant to the DHCS Settlement Agreement, DHCS will be paid the first 40%
8 of Net Cash Proceeds of the DAP Sale. The remaining cash available after
9 disbursements to Allowed General Unsecured Creditors will be distributed to DHCS
10 in accordance with the Plan and DHCS Settlement Agreement.

11 [D]: This reflects payments pursuant to the compromise among Debtor, George Jared,
12 D.D.S., and George Jared D.D.S., Inc. [Docket Nos. 761], as approved by this Court’s
13 order [Docket No. 824].

14 [E]: This represents accounts receivable collected on behalf of DAP Health pursuant
15 to the Asset Purchase Agreement after Closing [Docket No. 465], net of any Debtor-
16 related accounts receivable collections.

17 [F]: This represents the costs of maintaining the Debtor’s Estate until the regulatory
18 change of ownership applications are approved, and costs of the subsequent wind-
19 down of the Estate. Expenses include, but are not limited to, regulatory reporting and
20 audits, tax related filings, business software licenses, document storage, and bank
21 fees.

22 [G]: Chapter 7 trustee advisor fees are estimated to be materially greater than the
23 Liquidating Trust advisor fees given the need for the chapter 7 trustee’s professionals
24 to familiarize themselves with the Chapter 11 Case and its complexities.

25 [H]: This represents an estimate of the costs to transition from the Debtor's current
26 professionals in the Chapter 11 Case to incoming chapter 7 professionals including
27 the costs of information and knowledge transfer by the Debtor's professionals related
28 to outstanding causes of action.

[I]: General Unsecured Claims were based on the mid-point of an estimated allowed
claims range of \$6.2 million to \$17.1 million. As set forth herein and in the Plan,
General Unsecured Claimants are anticipated to receive 100% recovery on their
Allowed Claims.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
213 623 9300