

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

**HEALTH DIAGNOSTIC LABORATORY,
INC., et al.,**

Debtors.¹

Chapter 11

Case No. 15-32919 (KRH)

(Jointly Administered)

SECOND AMENDED PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS

Health Diagnostic Laboratory, Inc., Central Medical Laboratory, Inc., and Integrated Health Leaders, LLC (each a “Debtor” and, collectively, the “Debtors”), hereby propose and file this Second Amended Plan of Liquidation under Chapter 11 of title 11 of the United States Code.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728) and Integrated Health Leaders, LLC (2434).

HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)

*Counsel to the Debtors
and Debtors-in-Possession*

TABLE OF CONTENTS

Article I. DEFINITIONS AND INTERPRETATION 1

 A. Definitions..... 1

 1.1. Administrative Claim..... 1

 1.2. Administrative Claims Estimate 1

 1.3. Administrative Claims Reserve 1

 1.4. Agreed List..... 1

 1.5. Allowed Claim 1

 1.6. Allowed [Class or Claim Type Designation] Claim 2

 1.7. Assets 2

 1.8. Asset Purchase Agreements 2

 1.9. Assigning Creditor 2

 1.10. Available Cash 2

 1.11. Ballot..... 2

 1.12. Bankruptcy Code 2

 1.13. Bankruptcy Rules..... 2

 1.14. Bar Date Order 2

 1.15. BlueWave..... 3

 1.16. BlueWave Parties 3

 1.17. Business Day..... 3

 1.18. Case..... 3

 1.19. Cash..... 3

 1.20. Causes of Action 3

 1.21. Chapter 5 Causes of Action 3

 1.22. Claim..... 4

 1.23. Claims Agent 4

 1.24. Claims Objection Deadline 4

 1.25. Class..... 4

 1.26. CML Sale Order..... 4

 1.27. Collateral..... 4

 1.28. Confirmation Date 5

 1.29. Confirmation Hearing 5

 1.30. Confirmation Order..... 5

 1.31. Court 5

 1.32. Creditor Causes of Action..... 5

 1.33. Creditors’ Committee..... 5

 1.34. D&O..... 5

 1.35. D&O Claim..... 5

 1.36. Debtors 5

 1.37. Disclosure Statement 6

 1.38. Disputed Claim 6

 1.39. Disputed Unsecured Claims Reserve..... 6

 1.40. Distribution 6

 1.41. Distribution Address 6

 1.42. Distribution Date..... 6

1.43.	Distribution Record Date	6
1.44.	Effective Date	6
1.45.	Enjoined Action	7
1.46.	Entity.....	7
1.47.	Estates	7
1.48.	Estimation Order	7
1.49.	Exculpated Parties.....	8
1.50.	Face Amount.....	8
1.51.	Fee Claim	8
1.52.	Fee Claims Estimate	8
1.53.	Fee Claims Reserve.....	8
1.54.	Federal Judgment Rate.....	9
1.55.	Final Order	9
1.56.	HDL Sale Order	9
1.57.	Holder	9
1.58.	Initial Distribution Date	9
1.59.	Intercompany Claims.....	9
1.60.	Interim Compensation Procedures Order.....	9
1.61.	Interest.....	10
1.62.	LeClairRyan	10
1.63.	Lien	10
1.64.	Liquidating Trust	10
1.65.	Liquidating Trust Agreement.....	10
1.66.	Liquidating Trust Assets.....	10
1.67.	Liquidating Trust Beneficiaries	10
1.68.	Liquidating Trust Distributions	10
1.69.	Liquidating Trust Interests.....	11
1.70.	Liquidating Trust Operating Reserve.....	11
1.71.	Liquidating Trust Oversight Committee.....	11
1.72.	Liquidating Trustee.....	11
1.73.	Liquidating Trustee Professionals.....	12
1.74.	Litigation Claim	12
1.75.	Net Proceeds	12
1.76.	Person.....	12
1.77.	Petition Date.....	12
1.78.	Plan	13
1.79.	Plan Consideration.....	13
1.80.	Plan Distribution	13
1.81.	Plan Documents	13
1.82.	Plan Supplement	13
1.83.	Priority Non-Tax Claim	13
1.84.	Priority Non-Tax Estimate.....	13
1.85.	Priority Non-Tax Claims Reserve.....	13
1.86.	Priority Tax Claim	13
1.87.	Priority Tax Claims Estimate.....	14
1.88.	Priority Tax Claims Reserve.....	14

1.89.	Professional	14
1.90.	Ratable Share	14
1.91.	Reserves	14
1.92.	Sale Orders	14
1.93.	Schedules of Assets and Liabilities	14
1.94.	Secured Claim	14
1.95.	Secured Claim Estimate	15
1.96.	Secured Claim Reserve	15
1.97.	Subordinated Claim	15
1.98.	Subsequent Distribution Date	15
1.99.	Tolling Agreement	15
1.100.	Tolling Parties	15
1.101.	Unclaimed Distribution	15
1.102.	United States Trustee Fees	16
1.103.	Unsecured Claim	16
1.104.	Voting Deadline	16
1.105.	Voting Procedures Order	16
Article II. METHOD OF CLASSIFICATION OF CLAIMS AND INTERESTS AND BAR DATES		17
2.1.	General Rules of Classification	17
2.2.	Administrative Claims, Priority Tax Claims and Fee Claims	17
2.3.	Bar Date for Administrative Claims	17
2.4.	Bar Date for Fee Claims	18
Article III. CLASSIFICATION OF CLAIMS AND INTERESTS		18
3.1.	Class 1 – Priority Non-Tax Claims	18
3.2.	Class 2 – Secured Claims	18
3.3.	Class 3 – General Unsecured Claims	18
3.4.	Class 4 – Subordinated Claims	18
3.5.	Class 5 – Equity Interests	18
Article IV. TREATMENT OF UNIMPAIRED CLASSES		18
4.1.	Administrative Claims	19
4.2.	Fee Claims	19
4.3.	Priority Tax Claims	20
4.4.	Class 1 Priority Non-Tax Claims	20
4.5.	Class 2 Secured Claims	20
Article V. TREATMENT OF IMPAIRED CLASSES		21
5.1.	Class 3 General Unsecured Claims	21
5.2.	Class 4 Subordinated Claims	21
5.3.	Class 5 Interests	21

Article VI. IMPLEMENTATION	21
6.1. Substantive Consolidation	22
6.2. Corporate Action.....	22
6.3. Reserves	24
6.4. Liquidating Trust.	27
6.5. Liquidating Trustee.....	28
6.6. No Revesting of Assets.....	35
6.7. Creditors' Committee.....	35
6.8. Accounts and Reserves	35
6.9. Release of Liens.....	36
6.10. Exemption from Certain Transfer Taxes	36
6.11. Preservation of Litigation Claims	36
6.12. Setoffs	37
6.13. Withdrawal of Plan	37
6.14. D&O Claims	37
6.15. Insurance Preservation	38
6.16. Assignment of Creditor Causes of Action	38
Article VII. EFFECT OF PLAN ON CLAIMS AND INTERESTS	39
7.1. Binding Effect.....	39
7.2. Compromise and Settlement.....	39
7.3. No Discharge of the Debtors.....	39
7.4. Injunction	40
7.5. Exculpation.	41
7.6. Extinguishment of Intercompany Claims.	41
7.7. Indemnification Obligations	42
7.8. Terms of Injunctions or Stays.....	42
Article VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	42
8.1. Rejection of Executory Contracts and Unexpired Leases.....	42
8.2. Bar Date for Rejection Damages	43
Article IX. DISTRIBUTIONS	43
9.1. Distributions for Claims Allowed as of the Effective Date	43
9.2. No Distributions on Disputed Claims	43
9.3. Distributions on Claims Allowed After the Effective Date	44
9.4. Objections to and Estimation of Claims	44
9.5. Delivery of Distributions and Undeliverable or Unclaimed Distributions	45
9.6. Interest on Claims	46
9.7. Withholding and Reporting Requirements	46
9.8. Miscellaneous Distribution Provisions	47
9.9. De Minimis Distribution Provisions	47
9.10. Distribution Record Date	47

Article X. CONFIRMATION AND CONSUMMATION OF THIS PLAN.....48

 10.1. Conditions to Confirmation48

 10.2. Conditions to Effective Date.....48

 10.3. Waiver of Conditions.....49

 10.4. Consequences of Non-Occurrence of Effective Date49

Article XI. ADMINISTRATIVE PROVISIONS49

 11.1. Retention of Jurisdiction.....49

 11.2. Amendments51

 11.3. Successors and Assigns.....52

 11.4. Governing Law52

 11.5. Corporate Action.....52

 11.6. Effectuating Documents and Further Transactions.....52

 11.7. Confirmation Order and Plan Control.....52

 11.8. Rules of Construction52

 11.9. Notices53

 11.10. No Admissions.....54

Article I.

DEFINITIONS AND INTERPRETATION

A. Definitions

The capitalized terms set forth below shall have the following meanings:

1.1. Administrative Claim

means an unsecured Claim, other than a Fee Claim and United States Trustee Fees, for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(1) of the Bankruptcy Code, including the actual, necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the business of the Debtors (such as wages, salaries, or commissions for services rendered);

1.2. Administrative Claims Estimate

means, as of the Effective Date, the liquidated Face Amount of all Administrative Claims that have not been paid by the Debtors.

1.3. Administrative Claims Reserve

means the reserve of this name established by this Plan and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.4. Agreed List

means the list agreed upon by the Creditors' Committee and the Debtors that will consist of the three candidates proposed by the Debtors already agreed to by counsel to the Creditors' Committee, plus up to three candidates proposed by the Creditors' Committee who are acceptable to the Debtors. The Agreed List will be agreed upon and set forth in the Plan Supplement.

1.5. Allowed Claim

means a Claim to the extent such Claim is: (a) either (i) scheduled by the Debtors in their Schedules of Assets and Liabilities in a liquidated amount and not listed as contingent, unliquidated, zero, undetermined or disputed; or (ii) asserted in the Case by a proof of claim which has been timely filed, or deemed timely filed with the Court pursuant to the Bankruptcy Code, the Bankruptcy Rules and/or any applicable orders of the Court, or late filed with leave of Court; and (b) either (i) not objected to within the period fixed by the Bankruptcy Code, the Bankruptcy Rules and/or applicable orders of the Court; or (ii) that has otherwise been allowed by a Final Order or pursuant to this Plan. An Allowed Claim: (y) includes a previously Disputed Claim to the extent such Disputed Claim becomes allowed when the context so requires; and (z) shall be net of any valid setoff amount, which amount shall be deemed to have been set off in accordance with the provisions of this Plan.

1.6. Allowed [Class or Claim Type Designation] Claim

means an Allowed Claim in the specified Class or an Allowed Claim for Administrative Claims or Fee Claims. For example, an Allowed Unsecured Claim Against the Debtors is an Allowed Claim in Class 3.

1.7. Assets

means all of the right, title and interest of the Debtors or the Estates in and to property of whatever type or nature (real, personal, mixed, intellectual, tangible or intangible).

1.8. Asset Purchase Agreements

means, collectively, the HDL Purchase Agreement, the CML Purchase Agreement, and any other sale agreements approved by the Court in a Sale Order prior to the Effective Date.

1.9. Assigning Creditor

means a Holder of an Unsecured Claim who owns one or more Creditor Causes of Action and who on its Ballot affirmatively elects to assign or transfer such Creditor Causes of Action to the Liquidating Trust.

1.10. Available Cash

means all Cash held by the Liquidating Trustee that is not held in the Reserves.

1.11. Ballot

means the form approved by the Court and distributed to Holders of Claims entitled to vote on this Plan on which is to be indicated an acceptance or rejection of this Plan and the election described in Section 6.16 hereof.

1.12. Bankruptcy Code

means title 11 of the United States Code, as now in effect or hereafter amended.

1.13. Bankruptcy Rules

means the Federal Rules of Bankruptcy Procedure and the local rules of the Court, as now in effect or hereafter amended.

1.14. Bar Date Order

means the “Order (I) Establishing Bar Dates for Filing Proofs of Claim and Certain Administrative Claims, (II) Approving the Form and Manner of Notice Thereof, and (III) Providing Certain Supplemental Relief” [Doc. No. 640] entered on November 5, 2015, in the Case.

1.15. BlueWave

means BlueWave Healthcare Consultants, Inc.

1.16. BlueWave Parties

means, collectively, BlueWave, Robert Bradford Johnson, F. Calhoun Dent, III, and all independent sales contractors engaged by BlueWave, including but not limited to, HisWay of South Carolina, Inc., Royal Blue Medical, Inc., Ocean Diagnostics & Consulting LLC, MRT Health Consultants Inc., Med-con-EC LLC, Coffman Enterprises LCC, Christo Consulting Corp., JP Cornwell, Inc., Meade Medical Group Inc., Everhardt Veterinary Medical Group, Inc., Engleby LLC, El Medical Consulting Inc., JBH Marketing Inc., Metta Consulting Inc., MML Equipment Inc., RBLIV Consulting Inc., Lockhardt Consulting Inc., M Looney Consulting Inc., Bio-Matrix Healthcare Consulting LLC, Quasi Maturi LLC, Labyrinth LLC, Disease Testing & Management, Remember Pember Inc., Southern Coast Consultants Inc., WCBlue Lab LLC, Advanced Medical Consulting, Beyond Medicine LLC, Advanced Medical Sales LLC, Paramount Medical Consultants Inc., Medcentric LLC, DX Sales LLC and The Med Group of Georgia Inc.

1.17. Business Day

means any day except a Saturday, Sunday, or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

1.18. Case

means the jointly administered chapter 11 cases of the Debtors pending before the Court and assigned Case No. 15-32919 (KRH).

1.19. Cash

means legal tender of the United States or its equivalents, including but not limited to bank deposits, checks, and other similar items.

1.20. Causes of Action

means any and all actions, suits, claims for relief, causes of action, Chapter 5 Causes of Action, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether arising prior to or after the Petition Date, and expressly including any defenses or equitable remedies necessary for the adjudication of such Causes of Action.

1.21. Chapter 5 Causes of Action

mean any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtors arising under Chapter 5 of the Bankruptcy Code, including Sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code, including but not limited to, the recovery of preferences and fraudulent transfers from any entity that received cash or any other interest in property from any Debtor as identified in the Statement of Financial Affairs or as identified in the Debtors' accounts payable system.

1.22. Claim

means a claim, as such term is defined in section 101(5) of the Bankruptcy Code, against the Debtors (or any of them).

1.23. Claims Agent

means American Legal Claims Services LLC.

1.24. Claims Objection Deadline

means the last day for seeking to subordinate Claims, including without limitation by commencing a contested matter or an adversary proceeding to subordinate Claims, or for filing objections to Claims, including without limitation by commencing a contested matter or an adversary proceeding to object to Claims, other than Administrative Claims and Fee Claims, which day shall be the later of (a) two hundred ten (210) days after the Effective Date or (b) such other date as the Court may order. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion; provided that any hearing on said motion is held on or before the date that is no more than thirty (30) days after the Claims Objection Deadline. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Court's entry of an order denying the motion to extend the Claims Objection Deadline.

1.25. Class

means a group of Claims or Interests described in Article III of this Plan.

1.26. CML Sale Order

means the "Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of the Central Medical Laboratories, LLC Assets Outside the Ordinary Course of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief" [Doc. No. 511] entered September 17, 2015, in the Case, which became a Final Order on October 1, 2015.

1.27. Collateral

means any property or interest in property of the Debtors subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

1.28. Confirmation Date

means the date on which the Court enters the Confirmation Order on its docket.

1.29. Confirmation Hearing

means the first hearing pursuant to which the Court considers the confirmation of this Plan.

1.30. Confirmation Order

means the order of the Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

1.31. Court

means the United States Bankruptcy Court for the Eastern District of Virginia, or any other court exercising competent jurisdiction over the Case or any proceeding therein.

1.32. Creditor Causes of Action

means any Causes of Action which may be asserted by or on behalf of a Holder of an Unsecured Claim arising from or related to the Debtors or their business practices, a nonexclusive list of which is set forth on Exhibit A, whether arising prior to or after the Petition Date. For the avoidance of doubt, Creditor Causes of Action shall not include any Cause of Action that is property of the Debtors, the Estates, or the Creditors' Committee.

1.33. Creditors' Committee

means the Official Committee of Unsecured Creditors in the Case, as appointed by the United States Trustee and as may be reconstituted from time to time.

1.34. D&O

means any current or former officer or director of any of the Debtors, solely in his or her capacity as such.

1.35. D&O Claim

means the Claim of any D&O, but only to the extent such Claim is for indemnification, contribution, or reimbursement.

1.36. Debtors

has the meaning ascribed to such term on the first page of this Plan.

1.37. Disclosure Statement

means the Disclosure Statement that relates to this Plan, and as approved by the Court pursuant to section 1125 of the Bankruptcy Code, as such Disclosure Statement may be amended, modified, or supplemented (and all exhibits and schedules annexed thereto or referred to therein).

1.38. Disputed Claim

means that portion (including, when appropriate, the whole) of a Claim, if any, that is not an Allowed Claim. For the purposes of this Plan, a Claim shall be considered a Disputed Claim in its entirety before the time that an objection has been or may be filed if: (a) the amount or classification of the Claim specified in a relevant proof of claim exceeds the amount or classification of any corresponding Claim scheduled by the Debtors in their Schedules of Assets and Liabilities; (b) any corresponding Claim scheduled by the Debtors has been scheduled as disputed, contingent or unliquidated; or (c) no corresponding Claim has been scheduled by the Debtors in their Schedules of Assets and Liabilities.

1.39. Disputed Unsecured Claims Reserve

means the reserve of this name established and maintained by the Liquidating Trustee in accordance with Article VI hereof.

1.40. Distribution

means the distribution of Cash or other property, as the case may be, in accordance with this Plan.

1.41. Distribution Address

means the address for a Holder set forth in a proof of claim, as amended or supplemented. If no proof of claim is filed with respect to a particular Claim, such defined term means the address for the Holder set forth in the Debtors' Schedules of Assets and Liabilities.

1.42. Distribution Date

means (a) the Initial Distribution Date, or (b) any Subsequent Distribution Date.

1.43. Distribution Record Date

means the record date for purposes of making Distributions under this Plan on account of Allowed Claims, which date, for the purposes of the Initial Distribution Date, shall be the Confirmation Date or such other date designated in the Confirmation Order, and for purposes of a Subsequent Distribution Date, shall be a date designated by the Liquidating Trustee no earlier than 30 days prior to such Subsequent Distribution Date.

1.44. Effective Date

means the first date on which all of the conditions of section 10.2 of the Plan have been satisfied or have been waived in accordance with section 10.3 of the Plan.

1.45. Enjoined Action

means any suit, action, investigation or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative, or other forum) against a D&O to the extent that institution or prosecution of such suit, action, investigation or other proceeding may deplete any insurance policy owned or purchased by one or more of the Debtors (or their predecessors). Notwithstanding the foregoing, an Enjoined Action shall not include any suit, action, or other proceeding to the extent, but only to the extent, such suit, action or proceeding: (a) is a Creditor Cause of Action of an Assigning Creditor brought or maintained by the Liquidating Trustee; (b) is subject of either a (i) written agreement of the Liquidating Trustee, the D&O defendants or prospective defendants, and the plaintiffs or prospective plaintiffs or (ii) Court order, and in each of (i) and (ii), which agreement or order states or determines that such suit, action or other proceeding will not deplete proceeds of an insurance policy, which proceeds would otherwise be available to satisfy a judgment, settlement or other payment that could be made to or obtained by the Liquidating Trustee or the Liquidating Trust with respect to any of the Litigation Claims; (c) is brought after all Litigation Claims have been fully and finally resolved; (d) is brought against a D&O who is not a Tolling Party; or (e) is brought by the Debtors, the Creditors' Committee,² the Liquidating Trustee or the Liquidating Trust; provided, however, that if the suit, action, or proceeding is not a Litigation Claim or a Creditor Cause of Action of an Assigning Creditor brought by the Debtors, the Creditors' Committee, the Liquidating Trustee or the Liquidating Trust, (i) prior to the commencement of such suit, action, or other proceeding, the Entity commencing such action has provided the Liquidating Trustee and each potential defendant in such suit, action, or other proceeding who is a D&O, with ten (10) Business Days' notice in writing of the intended commencement of such action and (ii) such action may not be commenced against any D&O who becomes a Tolling Party prior to expiration of such ten (10) Business Day period; (iii) such action shall not be commenced earlier than thirty (30) days prior to the expiration of the longest applicable statute of limitations, and (iv) the Confirmation Order shall operate to stay such action immediately after its commencement until such time as subsection (b) or (c) above has been satisfied as to such action.

1.46. Entity

has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

1.47. Estates

means the estates created in the Case pursuant to section 541 of the Bankruptcy Code.

1.48. Estimation Order

² Nothing in this Plan grants the Creditors' Committee standing to pursue any Cause of Action or constitutes consent by the Debtors for the Creditors' Committee to have standing to pursue any Cause of Action.

means an order or orders of the Court estimating for voting and/or distribution purposes (under section 502(c) of the Bankruptcy Code) the aggregate (and if applicable, individual) Face Amount of Disputed Claims in each relevant Class. The defined term Estimation Order includes the Confirmation Order if the Confirmation Order grants the same relief that would have been granted in a separate Estimation Order.

1.49. Exculpated Parties

means, collectively, (a) the Debtors; (b) each of the following, and only the following, D&O, manager of the Debtors, and manager of a member of the Debtors, serving in such capacity at any time during the pendency of the Case: (i) Joseph P. McConnell, (ii) G. Russell Warnick, (iii) Noel L. Bartlett, Jr., (iv) Robert S. Galen, (v) John Young, (vi) Douglas Sbertoli; (vii) Martin McGahan, and (viii) Richard Arrowsmith; (c) the following Professionals: (1) Alvarez & Marsal Healthcare Industry Group, LLC, (2) Hunton & Williams LLP, (3) Hirschler Fleischer, P.C., (4) The Ettin Group, LLC, (5) MTS Health Partners, L.P., (6) Cooley LLP, and (7) Protiviti Inc.; (d) the Liquidating Trust; (e) the Liquidating Trustee; (f) the Liquidating Trustee Professionals; (g) the Creditors' Committee and its members; and (h) the Liquidating Trust Oversight Committee and its members.

1.50. Face Amount

means (a) with respect to any Claim for which a proof of claim is filed, an amount equal to: (i) the liquidated amount, if any, set forth therein, or (ii) any other amount set forth in an Estimation Order, or (b) with respect to any Claim scheduled in the relevant Debtor's Schedules of Assets and Liabilities, but for which no proof of claim is timely filed, the amount of the Claim scheduled as undisputed, noncontingent and liquidated.

1.51. Fee Claim

means a Claim for compensation or reimbursement of expenses of a Professional pursuant to section 327, 328, 330, 331 or 503(b) of the Bankruptcy Code in connection with the Case. "Fee Claim" does not include any Claim for compensation or reimbursement of expenses related to services rendered after the Effective Date by the Liquidating Trustee Professionals.

1.52. Fee Claims Estimate

means (i) with respect to each Professional, the Professional's good faith estimate of the amount of such Professional's accrued unpaid Fee Claims through the Effective Date, to be provided by each Professional in writing to the Debtors, or to be prepared by the Debtors, or the Creditors' Committee concerning their respective Professionals, prior to the commencement of the Confirmation Hearing and (ii) with respect to all of the Professionals, collectively, the sum of all individual Fee Claims Estimates.

1.53. Fee Claims Reserve

means the reserve of this name established by this Plan and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.54. Federal Judgment Rate

means the federal judgment interest rate, as provided under 28 U.S.C. § 1961(a), calculated from the Petition Date.

1.55. Final Order

means an order or judgment of the Court, as entered on the docket of the Court, that has not been reversed, stayed, modified, or amended, and as to which (a) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand or certiorari is pending, or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, however, that the possibility that a motion under Section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

1.56. HDL Sale Order

means the “Order (I) Approving Asset Purchase Agreement and Authorizing the Sale of Assets of the Debtors Outside the Ordinary Courts of Business, (II) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, (III) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases and (IV) Granting Related Relief” [Doc. No. 512] entered on September 17, 2015, in the Case, which became a Final Order on October 1, 2015.

1.57. Holder

means an Entity holding an Interest or a Claim.

1.58. Initial Distribution Date

means the Effective Date or as soon as reasonably practicable thereafter as the Liquidating Trustee reasonably determines to make initial Plan Distributions in accordance with the terms of the Liquidating Trust Agreement.

1.59. Intercompany Claims

means any Claim held by a Debtor against another Debtor or any Interest held by a Debtor in another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

1.60. Interim Compensation Procedures Order

means the “Order Establishing Procedures for Interim Monthly Compensation and Reimbursement” [Doc. No. 218] entered on July 1, 2015, in the Case.

1.61. Interest

means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtors.

1.62. LeClairRyan

means, collectively, LeClairRyan, P.C., any predecessor or successor thereto, and the attorneys and any other professionals employed by it during its representation of the Debtors.

1.63. Lien

means a judicial lien as defined in section 101(36) of the Bankruptcy Code; a lien as defined in section 101(37) of the Bankruptcy Code; a security interest as defined in section 101(51) of the Bankruptcy Code; a statutory lien as defined in section 101(53) of the Bankruptcy Code; and any other lien, interest, charge or encumbrance.

1.64. Liquidating Trust

means the grantor trust to be created on the Effective Date for the benefit of the Liquidating Trust Beneficiaries.

1.65. Liquidating Trust Agreement

means the trust agreement, in form and substance acceptable to the Debtors and the Creditors’ Committee, to be filed as part of the Plan Supplement, which will, among other things: (a) establish and govern the Liquidating Trust; (b) set forth the respective powers, duties and responsibilities of the Liquidating Trustee and the Liquidating Trust Oversight Committee; and (c) provide for Distribution of the Net Proceeds of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries.

1.66. Liquidating Trust Assets

means all assets of the Debtors as of the Effective Date, the Litigation Claims, and any other assets and property acquired by the Liquidating Trust on or after the Effective Date.

1.67. Liquidating Trust Beneficiaries

means the Holders of Allowed Class 3 Claims, Class 4 Claims, and Class 5 Interests.

1.68. Liquidating Trust Distributions

means distributions of Available Cash pursuant to the Plan and Liquidating Trust Agreement as may be authorized from time to time by the Liquidating Trustee under the supervision of the Liquidating Trust Oversight Committee.

1.69. Liquidating Trust Interests

means the beneficial interests in the Liquidating Trust that shall entitle the holder thereof to receive its Ratable Share of the Net Proceeds of the Liquidating Trust Assets, which interests shall be issued in three (3) series to Holders of Allowed Class 3 Claims, Class 4 Claims, and Class 5 Interests.

1.70. Liquidating Trust Operating Reserve

means the reserve of this name established and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.71. Liquidating Trust Oversight Committee

means the committee to be appointed in accordance with, and to exercise the duties set forth in, the Liquidating Trust Agreement. The Liquidating Trust Oversight Committee shall consist of up to nine members, which shall consist of up to seven members of the Creditors' Committee who elect to serve, plus the Holders of the two largest Class 3 Claims, based on the amount of such Claims for voting purposes, who (i) elect to serve as members as further provided in the Liquidating Trust Agreement; and (ii) are reasonably acceptable to the Debtors and the Creditors' Committee, provided, however, that if a potential member is not reasonably acceptable to the Debtors or the Creditors' Committee, then either the Debtors or the Creditors' Committee may submit such dispute to the Court for the Court to determine at the hearing on the confirmation of this Plan whether such potential member may serve on the Liquidating Trust Oversight Committee, and as part of such determination, the Debtors and the Creditors' Committee may submit their proposed candidates and any party in interest may submit any objections or arguments as to the appropriateness of the proposed candidates; provided, further, however, that in no event shall a Holder of a Claim or representative of a Holder of a Claim be permitted to serve on the Liquidating Trust Oversight Committee if (a) (i) such Holder of a Claim has filed a lawsuit or otherwise asserted a claim against any D&O, to the extent that prosecution of such claim may deplete any insurance policy owned or purchased by one or more of the Debtors (or their predecessors), (ii) such claim remains pending and unresolved, and (iii) such Holder is not an Assigning Creditor; or (b) such Holder of a Claim is a D&O, whether in his or her capacity as such, or in his or her individual capacity. If a Holder of a Claim or a representative of a Holder of Claim that is serving on the Liquidating Trust Oversight Committee files or otherwise asserts a claim against any D&O, such Holder of a Claim or representative of a Holder of a Claim shall immediately resign from the Liquidating Trust Oversight Committee.

1.72. Liquidating Trustee

means initially on an interim basis, Richard Arrowsmith, who will be retained as of the Effective Date, as the employee or fiduciary responsible for implementing the applicable provisions of the Plan relating to the Liquidating Trust in accordance with the Liquidating Trust Agreement; provided, however, that the Liquidating Trust Oversight Committee must select a permanent Liquidating Trustee from the Agreed List, and such permanent Liquidating Trustee must be in position before the expiration of 210 days after the Effective Date; provided, further,

that if after commercially reasonable efforts of the Liquidating Trust Oversight Committee, appointment of a permanent Liquidating Trustee from the Agreed List no longer is practicable, the Liquidating Trust Oversight Committee shall be permitted to seek relief from the Court, upon notice to parties in interest and an opportunity to be heard, to appoint an appropriate permanent Liquidating Trustee who is not from the Agreed List. For the avoidance of doubt, as used in this Plan, the term Liquidating Trustee means the interim Liquidating Trustee and any permanent Liquidating Trustee.

1.73. Liquidating Trustee Professionals

means the agents, financial advisors, attorneys, consultants, independent contractors, representatives, and other professionals retained by the Liquidating Trustee (in their capacities as such).

1.74. Litigation Claim

means, collectively, (i) claims, rights or other Causes of Action which may be asserted by or on behalf of the Debtors, the Estates, or the Creditors' Committee, a nonexclusive list of which is set forth on Exhibit A, including but not limited to all Causes of Action, including Chapter 5 Causes of Action; and (ii) the Creditor Causes of Action assigned to the Liquidating Trust in accordance with Section 6.16 hereof. Notwithstanding the foregoing sentence, Litigation Claims shall not include any claim, right or cause of action that has been settled and satisfied or waived, or for which there has been provided exculpation or release, pursuant to the Plan, the Confirmation Order, the Sale Orders, or another Court order in the Case entered prior to the Effective Date.

1.75. Net Proceeds

means the Cash consideration received from the sale, transfer, or collection of the non-Cash property of the Debtors' estates, including, without limitation, the liquidation of the Assets, the Litigation Claims, or the conversion of such property to Cash in some other manner as contemplated in this Plan, whether occurring prior to or from and after the Effective Date, less the reasonable, necessary and customary expenses attributable to such sale, transfer, collection or conversion, including the costs of paying personal property or other taxes accruing in connection with such sale, transfer or conversion or such property, brokerage fees and commissions, collection costs, reasonable attorneys' fees and expenses and any applicable taxes or other claims of any governmental authority in connection with such property and any escrows or accounts established to hold funds for purchase price adjustments, indemnification claims, or other purposes in connection with such sale, transfer or collection, as applicable.

1.76. Person

means any individual, corporation, partnership, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, the Creditors' Committee, Holders of Interests, Holders of Claims, current or former employees of the Debtors, or any other entity.

1.77. Petition Date

means June 7, 2015.

1.78. Plan

means this Second Amended Plan of Liquidation, together with any amendments or modifications hereto as the Debtors may file hereafter in accordance with the terms of this Plan (such amendments or modifications only being effective upon compliance with section 11.2 of the Plan).

1.79. Plan Consideration

means, with respect to any Class of Claims or Interests entitled to a Distribution under this Plan, Cash and/or one or more Liquidating Trust Interests, as applicable.

1.80. Plan Distribution

means the Distribution under the Plan of the Plan Consideration.

1.81. Plan Documents

means the documents, other than this Plan, to be executed, delivered, assumed and/or performed in connection with the consummation of this Plan, including, without limitation, the documents to be included in the Plan Supplement, and any and all exhibits to the Plan and the Disclosure Statement.

1.82. Plan Supplement

means the supplemental appendix to this Plan, filed with the Court no later than five (5) calendar days prior to the Voting Deadline, which contains, among other things, draft forms or signed copies, as the case may be, of the Liquidating Trust Agreement, and any schedules, lists, or documents that supplement or clarify aspects of this Plan and are identified as part of the Plan Supplement no later than five (5) calendar days prior to the Voting Deadline.

1.83. Priority Non-Tax Claim

means any Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than (a) an Administrative Claim, (b) a Fee Claim or (c) a Priority Tax Claim.

1.84. Priority Non-Tax Estimate

means, as of the Effective Date, the Face Amount of all Priority Non-Tax Claims that have not been paid by the Debtors.

1.85. Priority Non-Tax Claims Reserve

means the reserve of this name established and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.86. Priority Tax Claim

means any Claim of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) of the kind entitled to priority in payment under section 502(i) and 507(a)(8) of the Bankruptcy Code.

1.87. Priority Tax Claims Estimate

means, as of the Effective Date, the Face Amount of all Priority Tax Claims that have not been paid by the Debtors.

1.88. Priority Tax Claims Reserve

means the reserve of this name established and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.89. Professional

means any professional person or entity employed in this Case by Court order pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 or otherwise (and, for the avoidance of doubt, including without limitation Alvarez & Marsal Healthcare Industry Group, LLC).

1.90. Ratable Share

means a number (expressed as a percentage) equal to the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims plus Disputed Claims (in their aggregate Face Amount) in such Class as of the date of determination.

1.91. Reserves

means, collectively, the Fee Claims Reserve, the Administrative Claims Reserve, the Priority Tax Claims Reserve, the Secured Claim Reserve, the Priority Non-Tax Claims Reserve, the Disputed Unsecured Claims Reserve, the Liquidating Trust Operating Reserve, and such other reserves as may be deemed necessary by the Liquidating Trustee pursuant to the Liquidating Trust Agreement.

1.92. Sale Orders

means the HDL Sale Order, the CML Sale Order, and any other sale orders entered by the Court prior to the Effective Date that become Final Orders.

1.93. Schedules of Assets and Liabilities

means the Debtors' schedules of assets and liabilities filed with the Court pursuant to sections 521(a)(1) and 1106(a)(2) of the Bankruptcy Code, and as amended from time to time.

1.94. Secured Claim

means a Claim that is (a) secured by a valid and perfected Lien on property in which a Debtor's Estate has an interest, but only to the extent of the value of the Holder's interest in the applicable Estate's interest in such property as determined pursuant to section 506(a) of the Bankruptcy Code or (b) subject to setoff under section 553 of the Bankruptcy Code, but only to the extent of the amount subject to setoff, as determined pursuant to section 553 of the Bankruptcy Code.

1.95. Secured Claim Estimate

means, as of the Effective Date, the Face Amount of all Secured Claims that have not been paid by the Debtors.

1.96. Secured Claim Reserve

means the reserve of this name established and maintained by the Liquidating Trustee pursuant to Article VI hereof.

1.97. Subordinated Claim

means any Claim subject to subordination, whether pursuant to a Final Order of the Court under section 510 of the Bankruptcy Code or by written consent of the Holder of such Claim, whether such Final Order is entered or such consent is given prior to or following the Effective Date.

1.98. Subsequent Distribution Date

means any date after the Initial Distribution Date on which the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, makes a Distribution after determining that a Liquidating Trust Distribution should be made in light of, *inter alia*, resolutions of Disputed Claims, the administrative costs of such a Distribution, and Net Proceeds available for Distribution.

1.99. Tolling Agreement

means an agreement, substantially in the form set forth in the Plan Supplement, executed by a D&O to toll the statute of limitations with respect to Causes of Action that are Enjoined Actions.

1.100. Tolling Parties

means the D&Os set forth on Schedule 1 of this Plan who are parties to Tolling Agreements, which Schedule 1 will be included in the Plan Supplement, and the D&Os who become parties to Tolling Agreements within the time period required for a suit, action, or proceeding against such D&O to become an Enjoined Action in accordance with the definition of Enjoined Action in Section 1.44 of this Plan.

1.101. Unclaimed Distribution

means any Cash or other distributable property unclaimed on or after the Effective Date or the date on which an additional Distribution would have been made in respect of an Allowed Claim. Unclaimed Distributions shall include (a) checks (and the funds represented thereby) mailed to a Distribution Address and returned as undeliverable without a proper forwarding address, (b) funds for uncashed checks, (c) checks (and the funds represented thereby) not mailed or delivered because no Distribution Address to mail or deliver such property was available, and (d) any Distribution deemed to be an Unclaimed Distribution pursuant to Section 9.7 hereof.

1.102. United States Trustee Fees

means fees assessed against the Estates under Section 1930 of Title 28 of the United States Code.

1.103. Unsecured Claim

means any Claim that is not (a) an Administrative Claim, (b) a Priority Non-Tax Claim, (c) a Priority Tax Claim; (d) a Secured Claim; (e) a Fee Claim; or (f) a Subordinated Claim.

1.104. Voting Deadline

means the date specified in the Disclosure Statement, the Ballots, the Voting Procedures Order or related solicitation documents approved by the Court as the last date for Holders of Claims entitled to vote on this Plan to submit their ballots with respect to this Plan, as such date may be extended.

1.105. Voting Procedures Order

means that certain order dated [DATE] [Doc. No. ___], which sets forth the deadlines, procedures and instructions for voting to accept or reject this Plan.

B. Interpretation; Application of Definitions and Rules of Construction

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural. 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. Any reference in this Plan to a contract, instrument, release, indenture, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. Subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, release, or other agreements or

documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules. The captions and headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any reference to any entity as a holder of a Claim or Interest includes that entity's successors and assigns.

C. Appendices and Plan Documents

All Plan Documents and appendices to the Plan are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. The documents contained in the exhibits and Plan Supplement shall be approved by the Court pursuant to the Confirmation Order. Holders of Claims and Interests may inspect a copy of the Plan Documents, once filed, in the Office of the Clerk of the Court during normal business hours, or at <https://www.americanlegal.com/HDL>.

Article II.

METHOD OF CLASSIFICATION OF CLAIMS AND INTERESTS AND BAR DATES

2.1. General Rules of Classification

Generally, a Claim is classified in a particular Class for Distribution purposes only to the extent the Claim has not been paid, released or otherwise satisfied and qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim qualifies within the description of such other Class or Classes.

2.2. Administrative Claims, Priority Tax Claims and Fee Claims.

Administrative Claims, Priority Tax Claims and Fee Claims have not been classified and are excluded from the Classes set forth in Article III, in accordance with section 1123(a)(1) of the Bankruptcy Code, and their treatment is set forth in Article VI herein.

2.3. Bar Date for Administrative Claims

Subject at all times to the Bar Date Order, including without limitation the obligations of the Debtors in the Bar Date Order to file certain Administrative Claims, to be eligible to receive Distributions under this Plan on account of an Administrative Claim, a Holder of an Administrative Claim must have filed an application for allowance and payment of such Claim by the date set forth in the Bar Date Order, or the Debtors must have filed an Administrative Claim on behalf of such Holder in accordance with the Bar Date Order, or if the Bar Date Order does not apply to such Administrative Claim, the date that is 30 days after the Effective Date (or, if such date is not a Business Day, by the next Business Day thereafter), which shall be the bar date for such claims. Subject at all times to the Bar Date Order, any Entity that fails to file such an application on or before the applicable deadline shall be forever barred from asserting such Administrative Claim against the Debtors or their property and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim.

2.4. Bar Date for Fee Claims

All applications for payment of Fee Claims incurred prior to the Effective Date must be filed with the Court by the date that is 45 days after the Effective Date. Any Entity that fails to file such an application on or before such date shall be forever barred from asserting such Fee Claim against the Debtor or its property and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Fee Claim.

Article III.

CLASSIFICATION OF CLAIMS AND INTERESTS

The following is the designation of the Classes of Claims and Interests under this Plan:

3.1. Class 1 – Priority Non-Tax Claims

shall consist of all Priority Non-Tax Claims.

3.2. Class 2 – Secured Claims

shall consist of Secured Claims.

3.3. Class 3 – General Unsecured Claims

shall consist of all Unsecured Claims against any of the Debtors not otherwise classified that are not cured, paid, released or waived pursuant to the Sale Orders or this Plan, or classified in any other Class.

3.4. Class 4 – Subordinated Claims

shall consist of all Subordinated Claims.

3.5. Class 5 – Equity Interests

shall consist of all Interests in the Debtors as of the Effective Date.

Article IV.

TREATMENT OF UNIMPAIRED CLASSES

Pursuant to section 1126(f) of the Bankruptcy Code, Holders of unimpaired Claims are conclusively presumed to have accepted this Plan. The Holders of Administrative Claims, Fee Claims, Priority Tax Claims, Priority Non-Tax Claims and Secured Claims are not impaired classes under this Plan, and accordingly, they are conclusively presumed to have accepted this Plan.

4.1. Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the Debtors or the Liquidating Trustee, as applicable, each Holder of an Allowed Administrative Claim (other than holders of Fee Claims and Claims for United States Trustee Fees) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than 30 days after the date on which an order Allowing such Administrative Claim becomes a Final Order; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such Holder and the Debtors or the Liquidating Trustee, as applicable; or (e) at such time and upon such terms as set forth in an order of the Court. Notwithstanding the immediately preceding sentence, United States Trustee Fees shall be paid in accordance with the applicable schedule for payment of such fees.

4.2. Fee Claims

All requests for payment of Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed and served in accordance with the Interim Compensation Procedures Order by the date that is 45 days after the Effective Date. The Court shall determine the Allowed amounts of such Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Liquidating Trustee shall pay Fee Claims in Cash in the amount the Court allows from the Fee Claims Reserve, which the Liquidating Trustee will establish on the Effective Date and fund with Cash equal to the aggregate Fee Claims Estimate. Professionals shall deliver in writing to the Debtors their good faith estimates of the amount of such Professional's accrued unpaid Fee Claims through the Effective Date for purposes of the Debtors computing the Fee Claims Estimate prior to the commencement of the Confirmation Hearing. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Fee Claims filed with the Court. If a Professional does not provide an estimate, the Debtors or the Creditors' Committee may estimate the unpaid and unbilled fees and expenses of their respective Professionals. Any funds remaining in the Fee Claims Reserve after all Allowed Fee Claims have been paid shall become Available Cash and shall be distributed in accordance with the terms of the Plan and the Liquidating Trust Agreement. Notwithstanding the foregoing, the Holder of an Allowed Fee Claim may receive such other, less favorable treatment as may be agreed upon by such Holder and the Debtors.

From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Liquidating Trustee, subject to applicable non-bankruptcy law, may employ and pay any Professional, in accordance

with the Liquidating Trust Agreement, in the ordinary course of business without any further notice to or action, order, or approval of the Court.

4.3. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to different treatment, each Holder of any Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim, at the discretion of the Debtors or the Liquidating Trustee, as applicable, (a) on the Effective Date or as soon as reasonably practicable thereafter, Cash in an amount equal to the unpaid portion of such Allowed Priority Tax Claim, or (b) regular installment payments in cash of a total value, as of the Effective Date, equal to the allowed amount of such claim over a period ending not later than five (5) years after the Petition Date; provided, however, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as they become due. Notwithstanding the foregoing, the Holder of an Allowed Priority Tax Claim shall not be entitled to receive any payment on account of any penalty arising with respect to or in connection with the Allowed Priority Tax Claim. Any Claim or demand for any such penalty (a) will be subject to treatment as an Unsecured Claim, if and to the extent it is an Allowed Claim, and (b) the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect such amounts from the Debtors, the Estates, the Liquidating Trustee, or the Liquidating Trust except as an Unsecured Claim, if and to the extent it is an Allowed Claim.

4.4. Class 1 Priority Non-Tax Claims

Each Holder of an Allowed Class 1 Priority Non-Tax Claim shall be paid 100% of the unpaid amount of such Allowed Claim in Cash on the Initial Distribution Date. Notwithstanding the foregoing, the Holder of an Allowed Class 1 Priority Non-Tax Claim may receive such other, less favorable treatment as may be agreed upon by such Holder and the Debtors or the Liquidating Trustee.

4.5. Class 2 Secured Claims

Except to the extent that the Holder of an Allowed Claim in Class 2 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 2 shall be satisfied by, at the option of the Debtors or the Liquidating Trustee, as applicable: (i) payment in Cash in full on the later of the Effective Date and the date such Claim becomes Allowed, or as soon thereafter as is practicable; (ii) surrender to the Holder of such Allowed Claim of the Collateral securing such Allowed Claim; or (iii) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the Holder of the Allowed Claim is entitled. In the event an Allowed Claim in Class 2 is treated under clause (i) above, the Liens securing such Claim shall be deemed released and extinguished without further order of the Court. In the event an Allowed Claim in Class 2 is treated under clause (ii) or (iii), and such Holder has a deficiency claim, such deficiency claim shall be subject to treatment as a Class 3 Unsecured Claim, if and to the extent such deficiency claim is an Allowed Claim.

Article V.

TREATMENT OF IMPAIRED CLASSES

The claims in Classes 3, 4, and 5 are all impaired. Holders of Claims in Class 3 and Class 4 are entitled to vote to accept or reject this Plan. Holders of Class 5 Interests are conclusively deemed to reject the Plan and, therefore, are not entitled to vote on the Plan.

5.1. Class 3 General Unsecured Claims

Except to the extent that the Holder of an Allowed Claim in Class 3 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 3 shall be satisfied by receipt of its Ratable Share of Series A Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions until the principal amount of such Holder's Allowed Class 3 Claim is satisfied in full, and, after the principal amount of Allowed Class 4 Claims are satisfied in full, postpetition interest at the Federal Judgment Rate.

5.2. Class 4 Subordinated Claims

Except to the extent that the Holder of an Allowed Claim in Class 4 agrees to less favorable treatment, each Holder of an Allowed Claim in Class 4 shall be satisfied by receipt of such Holder's Ratable Share of Series B Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions, if any, after satisfaction in full of the principal amount of Allowed Class 3 Claims, and, after satisfaction in full of the principal amount of Allowed Class 4 Claims and postpetition interest at the Federal Judgment Rate for Allowed Class 3 Claims, postpetition interest at the Federal Judgment Rate.

5.3. Class 5 Interests

On the Effective Date, all Interests shall be canceled and each Holder of an Allowed Class 5 Interest shall receive, in full and final satisfaction of such Holder's Allowed Class 5 Interest, such Holder's Ratable Share of Series C Liquidating Trust Interests, which shall entitle such Holder to its Ratable Share of Liquidating Trust Distributions, if any, after satisfaction in full of (i) Allowed Class 3 Claims, including without limitation postpetition interest at the Federal Judgment Rate, and (ii) Allowed Class 4 Claims, including without limitation postpetition interest at the Federal Judgment Rate; provided, however, that based on the substantive consolidation occurring in this Plan and the related elimination of all Intercompany Claims, all Interests of a Debtor held by another Debtor shall be canceled and eliminated and the Debtor holding such Interests shall not receive any property or distribution on account of such Interests.

Article VI.

IMPLEMENTATION

In addition to the provisions set forth elsewhere in this Plan, the following shall constitute the means of execution and implementation of this Plan.

6.1. Substantive Consolidation

This Plan contemplates, and is predicated upon, the entry of an order, which may be the Confirmation Order, substantively consolidating the Estates and the Case. Accordingly, on the Effective Date: (i) all Intercompany Claims and Interests held by, between and among the Debtors shall be deemed eliminated, (ii) all assets and liabilities of the Debtors shall be merged or treated as if they were merged with the assets and liabilities of Health Diagnostic Laboratory, Inc., (iii) any obligation of a Debtor and all guarantees thereof by one or more of the other Debtors shall be deemed to be one obligation of Health Diagnostic Laboratory, Inc., and (iv) each Claim filed or to be filed against any Debtor shall be deemed filed only against the consolidated Health Diagnostic Laboratory, Inc., and shall be deemed a single Claim against and a single obligation of the consolidated Health Diagnostic Laboratory, Inc. On the Effective Date, in accordance with the terms of the Plan, all Claims based upon co-obligations or guarantees of collection, payment, or performance made by the Debtors as to the obligations of another Debtor shall be merged into a single obligation of Health Diagnostic Laboratory, Inc., and otherwise shall be released and of no further force and effect.

Substantive consolidation shall not, and shall not be deemed to, prejudice any of (i) the Litigation Claims, which shall survive for the benefit of the Debtors and their Estates and, upon the Effective Date, for the benefit of the Liquidating Trust and the Liquidating Trust Beneficiaries; or (ii) the available defenses to the Litigation Claims.

6.2. Corporate Action

(a) Transfer of Assets of the Estates

Upon the occurrence of the Effective Date, (a) the members of the board of directors or managers, as the case may be, of each of the Debtors shall be deemed to have resigned; and (b) each of the Debtors shall cause all of its Assets and those of the Estates to be transferred to the Liquidating Trust in accordance with this Plan.

Upon transfer of the Assets, the Debtors shall have no further duties or responsibilities in connection with the implementation of this Plan.

(b) Dissolution of the Debtors

At any time after the Effective Date, the Liquidating Trustee shall be authorized to dissolve the Debtors upon filing a notice of such dissolution with the Court, notwithstanding any requirements of applicable state law, without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

As soon as practicable after the transfer of the Assets to the Liquidating Trust, the Liquidating Trustee shall provide for the retention and storage of the books, records and files that shall have been delivered to the Liquidating Trust until such time as all such books, records and files are no longer required to be retained under applicable law, and file a certificate informing the Court of the location at which such books, records and files are being stored.

The Professionals employed by the Debtors and the Creditors' Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of Final Fee Applications, solely to the extent the expenses relating to the preparation, filing and prosecution of such Final Fee Application are allowable pursuant to the Bankruptcy Code, and any other services requested to be rendered by the Liquidating Trustee, upon the submission of invoices to the Liquidating Trust. Any fees or expenses incurred in the preparation, filing, and prosecution of Final Fee Applications shall be disclosed by each Professional in its Final Fee Application and shall be subject to approval and allowance by the Court pursuant to Section 330 of the Bankruptcy Code.

After the Effective Date, the Liquidating Trustee shall have the authority to exercise the voting and other rights of the Debtors in any non-Debtor affiliates of the Debtors, including, without, limitation, the authority to cause such affiliates to operate their businesses, dispose of assets, make distributions of Cash or other property to the Liquidating Trustee as successor to the rights of the Debtors, and dissolve under applicable State law.

(c) Legal Representation of the Debtors and the Creditors' Committee After the Effective Date.

Upon the Effective Date, the attorney-client relationship between the Debtors and their current counsel, Hunton & Williams LLP, and between the Creditors' Committee and its current counsel, Cooley LLP, shall be terminated; provided, however, that pursuant to section 6.6(e) of this Plan, the Liquidating Trustee shall succeed to the rights and claims of, and hold the attorney-client privilege of, the Debtors and the Creditors' Committee, including without limitation any common interest privilege.

(d) Cancellation of Existing Securities and Agreements

Except as otherwise provided in this Plan, and in any contract, instrument or other agreement or document created in connection with this Plan, on the Effective Date, the Interests and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards and commitments, including, without limitation, any agreements purporting to relate to deferred compensation that relate to Interests or options, shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order, or rule, and the obligations of the Debtors under the notes, share certificates, and other agreements and instruments governing such Claims and Interests shall be released; provided, however, that the cancellation, release and discharge of the foregoing shall not affect whether a timely Claim made on account of such obligation may become an Allowed Claim; provided, further, however, that certain instruments, documents, and credit agreements related to Claims shall continue in effect solely for the purpose of allowing the Liquidating Trustee to make Distributions in accordance with this Plan. The Holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights against the Debtors, the Estates, the Liquidating Trust, or the Liquidating Trustee arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan.

6.3. Reserves

(a) Order of Funding of Reserves

The Reserves shall be funded in the following order, and no Reserve shall be funded until the prior Reserves have been fully funded in accordance with the terms of this Plan: (i) the Administrative Claims Reserve; (ii) the Fee Claims Reserve; (iii) the Priority Tax Claim Reserve; (iv) the Secured Claim Reserve; (v) the Priority Non-Tax Claims Reserve; (vi) the Liquidating Trust Operating Reserve; and (vii) the Disputed Unsecured Claims Reserve. At any time following the Effective Date, the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, may fund or replenish any of the Reserves from Available Cash.

(b) Investment of Reserves

If practicable, the Liquidating Trustee will invest any Cash that is withheld in any of the Reserves created under this Plan in accordance with the investment and deposit guidelines set forth in the Liquidating Trust Agreement; provided, however, that, except to the extent expressly set forth in this Plan, nothing in this Plan, the Disclosure Statement, or the Liquidating Trust Agreement shall be deemed to entitle the Holder of a Claim to postpetition interest on such Claim.

(c) Administrative Claims Reserve

On the Effective Date, the Liquidating Trustee shall fund the Administrative Claims Reserve in the amount of the aggregate Administrative Claims Estimate. The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, pay each Allowed Administrative Claim as provided for in section 4.1 of this Plan. In the event that excess Cash remains in the Administrative Claims Reserve after payment of all Allowed Administrative Claims, or at such time as the Cash in the Administrative Claim Reserve exceeds the Face Amount of the unpaid Administrative Claims as periodically determined by the Liquidating Trustee, such Cash may be used to fund other Reserves or shall become Available Cash.

(d) Fee Claims Reserve

On the Effective Date, the Liquidating Trustee shall fund the Fee Claims Reserve in the amount of the aggregate Fee Claims Estimate. The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, pay each Fee Claim as soon as practicable after a Fee Claim is Allowed under the Interim Compensation Procedures Order and any remaining amounts once such amounts are Allowed in accordance with section 4.2 of this Plan. In the event that excess Cash remains in the Fee Claims Reserve after payment of all Fee Claims, such Cash may be used to fund other Reserves or shall become Available Cash.

(e) Priority Tax Claims Reserve

On the Effective Date, the Liquidating Trustee shall fund the Priority Tax Claims Reserve in the amount of the aggregate Priority Tax Claims Estimate. The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, pay each Allowed Priority Tax Claim as provided for in section 4.3 of this Plan. In the event that excess Cash remains in the Priority Tax Claims Reserve after payment of all Allowed Priority Tax Claims, or at such time as the Cash in the Priority Tax Claims Reserve exceeds the Face Amount of the unpaid Priority Tax Claims as periodically determined by the Liquidating Trustee, such Cash may be used to fund other Reserves or shall become Available Cash.

(f) Secured Claims Reserve

On the Effective Date, the Liquidating Trustee shall fund the Secured Claims Reserve in the amount of the aggregate Secured Claims Estimate. The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, pay each Allowed Secured Claim as provided for in section 4.5 of this Plan. In the event that excess Cash remains in the Secured Claims Reserve after payment of all Allowed Secured Claims, or at such time as the Cash in the Secured Claims Reserve exceeds the Face Amount of the unpaid Secured Claims as periodically determined by the Liquidating Trustee, such Cash may be used to fund other Reserves or shall become Available Cash.

(g) Priority Non-Tax Claims Reserve

On the Effective Date, the Liquidating Trustee shall fund the Priority Non-Tax Claims Reserve in the amount of the aggregate Priority Non-Tax Claims Estimate. The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, pay each Allowed Priority Non-Tax Claim as provided for in section 4.4 of this Plan. In the event that excess Cash remains in the Priority Non-Tax Claims Reserve after payment of all Allowed Priority Non-Tax Claims, or at such time as the Cash in the Priority Non-Tax Claims Reserve exceeds the Face Amount of the unpaid Priority Non-Tax Claims as periodically determined by the Liquidating Trustee, such Cash may be used to fund other Reserves or shall become Available Cash.

(h) Liquidating Trust Operating Reserve

On the Effective Date, and at any time thereafter, the Liquidating Trustee shall fund the Liquidating Trust Operating Reserve with such Cash as is reasonably sufficient (i) to meet contingent liabilities and maintain the value of the assets of the Liquidating Trust during liquidation; (ii) to pay reasonable and necessary administrative expenses of the Liquidating Trust, including, but not limited to, (a) the reasonable costs and expenses incurred or anticipated to be incurred by the Liquidating Trustee (including reasonable fees, costs and expenses incurred or anticipated to be incurred by professionals retained by the Liquidating Trustee), (b) the reasonable costs and expenses incurred or anticipated to be incurred by the Liquidating Trust Oversight Committee and its members (including reasonable fees, costs and expenses incurred or anticipated to be incurred by professionals retained by the Liquidating Trust Oversight Committee but excluding the fees, costs and expenses of professionals retained by Liquidating Trust Oversight Committee members individually), (c) any taxes imposed on the Liquidating Trust in respect of the Liquidating Trust Assets, (d) the reasonable fees and expenses incurred or

anticipated to be incurred in connection with, arising out of or related to the Liquidating Trust Assets and litigation associated therewith), and (e) other costs and expenses contemplated by this Plan or the Liquidating Trust Agreement; (iii) to satisfy other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with this Plan or the Liquidating Trust Agreement; (iv) as determined by the Liquidating Trustee after consultation with the Liquidating Trust Oversight Committee, to fund the operations of the Liquidating Trust. In the event that excess Cash remains in the Liquidating Trust Operating Reserve after payment of the foregoing expenses, such Cash may be used to fund other Reserves or shall become Available Cash.

(i) Disputed Unsecured Claims Reserve

On the Initial Distribution Date and on each Subsequent Distribution Date, the Liquidating Trustee shall withhold from property that would otherwise be distributed on account of Class 3 Unsecured Claims entitled to Distributions under this Plan on such date, in the Disputed Unsecured Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of Disputed Unsecured Claims would be entitled under this Plan if such Disputed Unsecured Claims were Allowed in their Disputed Claim Amount. The Liquidating Trustee may request, if necessary, estimation for any Disputed Claim that is contingent or unliquidated, or for which the Liquidating Trustee determines to reserve less than the Face Amount. The Liquidating Trustee shall withhold the applicable portion of the Disputed Unsecured Claims Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Court. If the Liquidating Trustee elects not to request such an estimation from the Court with respect to a Disputed Unsecured Claim with a Face Amount of \$1,000,000 or less, the Liquidating Trustee shall withhold Cash in the Disputed Unsecured Claims Reserve based upon the good faith estimate of the amount of such Claim by the Liquidating Trustee.

The Liquidating Trustee shall, subject to the terms and conditions of the Liquidating Trust Agreement and this Plan, make Distributions from the Disputed Unsecured Claims Reserve on account of any Disputed Unsecured Claim that has become an Allowed Unsecured Claim since the preceding Distribution Date pursuant to the provisions of this Plan governing Distributions to Class 3 Unsecured Claims.

After a Final Order has been entered, or other final resolution has been reached with respect to all Disputed Unsecured Claims, any remaining Cash held in the Disputed Unsecured Claims Reserve, to the extent not needed to fund other Reserves, shall constitute Available Cash that shall be distributed in accordance with the other provisions of this Plan; provided, however, that to the extent that the Liquidating Trustee determines in his discretion that the Disputed Unsecured Claims Reserve contains excess Cash over and above the amounts necessary to make Distributions to Holders of any remaining Disputed Unsecured Claims, such Cash may be used to fund other Reserves or shall become Available Cash.

(j) Reserve Satisfies Security or Bond Requirements

In the event of an appeal of an order of the Court with respect to a Claim, the Debtors or the Liquidating Trust, as the case may be, shall be deemed to have satisfied any

bond or other security requirement in connection with such appeal by reserving for the Face Amount of the Claim in the appropriate Reserve.

6.4. Liquidating Trust.

(a) Establishment of the Liquidating Trust

The Liquidating Trust shall be established and shall become effective on the Effective Date.

(b) Liquidating Trust Assets

All Distributions to the Holders of Allowed Claims shall be from the Liquidating Trust. The Liquidating Trust shall hold and administer the Liquidating Trust Assets.

(c) Trust Distributions

Following the funding of the Reserves, the Liquidating Trustee shall liquidate the Liquidating Trust Assets and distribute the Net Proceeds of such liquidation from the Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement on the Initial Distribution Date and each Subsequent Distribution Date; provided, however, that the Liquidating Trustee shall distribute at least annually, subject to Section 6.5(g) of the Plan, the Net Proceeds and any net income earned by the Liquidating Trust, except that the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, may retain an amount of Net Proceeds reasonably necessary to maintain the value of the Liquidating Trust or to meet existing or anticipated liabilities of the Liquidating Trust, which amount shall be used to fund the Liquidating Trust Operating Reserve.

(d) Duration of Trust

The Liquidating Trust shall have an initial term of five (5) years; provided, however that, if warranted by the facts and circumstances, and subject to the approval of the Court, upon a finding that an extension of the term of the Liquidating Trust is necessary to accomplish the liquidating purpose of the Liquidating Trust, the Liquidating Trustee shall be authorized to extend the Liquidating Trust for six (6) months or longer provided that such extension is approved by the Court within (6) months of the beginning of the extended term. The Liquidating Trust may be terminated earlier than its scheduled termination if (a) the Court has entered a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code or (b) the Liquidating Trustee has administered all of the Liquidating Trust Assets and performed all other duties required by this Plan and the Liquidating Trust Agreement. As soon as practicable after the final Distribution Date, the Liquidating Trustee shall seek entry of a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code.

(e) Liquidation of Litigation Claims

Subject to the limitations set forth in the Liquidating Trust Agreement, on and after the Effective Date, the Liquidating Trustee shall have sole authority and responsibility

for investigating, analyzing, commencing, prosecuting, litigating, compromising, collecting, and otherwise administering all Litigation Claims.

6.5. Liquidating Trustee

(a) Appointment

The appointment of the Liquidating Trustee shall be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the Liquidating Trust Agreement.

(b) Term

The Liquidating Trustee's term, including without limitation the term of any Successor Liquidating Trustee(s), shall expire upon termination of the Liquidating Trust pursuant to this Plan and/or the Liquidating Trust Agreement.

(c) Powers and Duties

The Liquidating Trustee shall have the rights and powers set forth in the Liquidating Trust Agreement including, but not limited to, the powers of a debtor-in-possession under sections 1107 and 1108 of the Bankruptcy Code. The Liquidating Trustee shall be governed in all things by the terms of the Liquidating Trust Agreement and this Plan. The Liquidating Trustee shall administer the Liquidating Trust, and the Liquidating Trust Assets, and make Distributions from the proceeds of the Liquidating Trust in accordance with this Plan. In addition, the Liquidating Trustee shall, in accordance with the terms of this Plan, take all actions necessary to wind down the affairs of the Debtors consistent with this Plan and applicable non-bankruptcy law. Subject to the terms of the Liquidating Trust Agreement, which includes, among other things, limitations on the Liquidating Trustee's discretion to take certain action without consultation or approval of the Liquidating Trust Oversight Committee or, in some circumstances, the Court, the Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary to comply with this Plan and exercise and fulfill the duties and obligations arising hereunder, including, without limitation, to:

- (1) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any partner, member, officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such partners, members, officers, directors and shareholders; including, without limitation, amendment of the certificates of incorporation and by-laws of the Debtors, merger of any Debtor into another Debtor, the dissolution of any Debtor and the assertion or waiver of the Debtors' attorney/client privilege; provided, however, that no such amendment of the certificates of incorporation or by-laws

of the Debtors shall apply retroactively to the time period before the Effective Date;

- (2) To open and maintain bank and other deposit accounts, escrows and other accounts, calculate and implement Distributions to Holders of Allowed Unsecured Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate Reserves, in the name of the Debtors or the Liquidating Trustee, even in the event of the dissolution of the Debtors;
- (3) To make a good faith valuation of the Liquidating Trust Assets, as soon as possible after the Effective Date;
- (4) Subject to the applicable provisions of the Plan, to collect and liquidate all assets of the Estates pursuant to the Plan and to administer the winding-up of the affairs of the Debtors;
- (5) To object to any Claims (Disputed or otherwise), and to defend, compromise and/or settle any Claims prior to or following objection without the necessity of approval of the Court for all Claims with a Face Amount of less than two hundred fifty thousand dollars (\$250,000), and/or to seek Court approval for any Claims settlement, to the extent thought appropriate by the Liquidating Trustee or to the extent such approval is required by prior order of the Court; provided, however, that Court approval, upon notice and a hearing, shall be required for any Claims settlements of Claims with a Face Amount of two hundred fifty thousand dollars (\$250,000) or more, unless, upon notice and a hearing, the Court enters a subsequent order that becomes a Final Order increasing such amount;
- (6) To make decisions after consultation with the Liquidating Trust Oversight Committee, without further Court approval, regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trust and to pay, from the Liquidating Trust Operating Reserve, (i) the charges incurred by the Liquidating Trust on or after the Effective Date for services of professionals after approval of the Liquidating Trust Oversight Committee, without application to the Court, and (ii) disbursements, expenses or related support services relating to the winding down of the Debtors and

implementation of the Plan, without application to the Court;

- (7) To cause, on behalf of the Liquidating Trust, the Debtors, and their estates all necessary tax returns and all other appropriate or necessary documents related to municipal, State, Federal or other tax law to be prepared or filed timely, and to the extent necessary, pay such taxes, in accordance with the Plan, from the Liquidating Trust Operating Reserve; provided, however, that such filings shall not amend or restate prior returns without Court approval, upon notice and a hearing, for such amendment or restatement;
- (8) To invest Cash in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Court and as deemed appropriate by the Liquidating Trustee in accordance with the investment and deposit guidelines set forth in the Liquidating Trust Agreement;
- (9) To collect any accounts receivable or other claims and assets of the Debtors or their estates not otherwise disposed of pursuant to the Plan;
- (10) To enter into any agreement or execute any document required by or consistent with the Plan and perform all of the obligations of the Debtors or the Liquidating Trustee hereunder;
- (11) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization approved by the Liquidating Trust Oversight Committee, any assets that the Liquidating Trustee determines, at the conclusion of the Case, are of no benefit to creditors of the Debtors or too impractical to distribute, provided, however, that Court approval, upon notice and a hearing, shall be required for any abandonment or donation of assets with a value of ten thousand dollars (\$10,000) or more;
- (12) To investigate (including pursuant to Bankruptcy Rule 2004), prosecute and/or settle, subject to (5) above and (13) below, any Litigation Claims not expressly released or waived under the Plan (after consultation with the Liquidating Trust Oversight Committee), participate in or initiate any proceeding before the Court or any other court

of appropriate jurisdiction, participate as a party or otherwise in any administrative, arbitrate or other non-judicial proceeding, litigate or settle such Litigation Claims on behalf of the Liquidating Trust and pursue to settlement or judgment such actions;

- (13) To approve, without Court approval, the settlement of one or more Litigation Claims for which the amount claimed by the Liquidating Trust against a defendant is less than two hundred fifty thousand dollars (\$250,000) and to seek Court approval, upon notice and a hearing, of the settlement of any Litigation Claim for which the amount claimed by the Liquidating Trust is unliquidated or equals or exceeds two hundred fifty thousand dollars (\$250,000), unless, upon notice and a hearing, the Court enters a subsequent order that becomes a Final Order increasing such amount;
- (14) To use Liquidating Trust Assets to purchase or create and carry all appropriate insurance policies, bonds or other means of assurance and protection of the Liquidating Trust Assets and pay all insurance premiums and other costs he or she deems necessary or advisable to insure the acts and omissions of the Liquidating Trustee, and if appropriate, the Liquidating Trust Oversight Committee;
- (15) To implement and/or enforce all provisions of this Plan;
- (16) To maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Liquidating Trust Assets, provided, however, that any abandonment or destruction of books and records shall require Court approval, upon notice and a hearing;
- (17) To collect and liquidate all assets of the Estates pursuant to the terms of this Plan and administer the winding-up of the affairs of the Debtors including, but not limited to, closing the Case;
- (18) To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Court and serve on the United States Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Court orders otherwise, a final decree is entered closing this Case or the Case is converted or dismissed.

- (19) To dissolve the Liquidating Trust if the Liquidating Trustee determines, in reliance on such professionals as it may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to Trust Beneficiaries is likely to exceed the value of the remaining Liquidating Trust Assets;
- (20) To seek a final decree closing the Bankruptcy Case;
- (21) Within thirty (30) days after the end of the first full month following the Effective Date, and within twenty (20) days after the end of each quarter thereafter, (a) file with the Court and provide to the Liquidating Trust Oversight Committee a report setting forth (i) the receipt and disposition by the Liquidating Trustee of property of the Estates during such period, including the amounts, recipients and dates of any Distribution and any payments to the Liquidating Trustee and professionals, employees, and consultants of the Liquidating Trust, (ii) any Disputed Claims resolved by the Liquidating Trustee, (iii) all known material non-Cash assets of the Debtors remaining to be disposed of, and (iv) the status of all Litigation Claims; and (b) provide to the Liquidating Trust Oversight Committee a report setting forth (i) an itemization of all expenses the Liquidating Trustee anticipates will become due and payable within the subsequent quarter, and (ii) the Liquidating Trustee's forecast of cash receipts and expenses for the subsequent quarter;
- (22) To do all other acts or things consistent with the provisions of this Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing this Plan; and
- (23) To be the successor of the Debtors and the Creditors' Committee for all purposes, and to be the successor of the Assigning Creditors with respect to the Creditor Causes of Action of such Assigning Creditor to the extent such Creditor Causes of Action are assignable.

(d) Fees and Expenses

Except as otherwise provided in this Plan, compensation of the Liquidating Trustee and the actual costs and expenses of the Liquidating Trustee and the Liquidating Trust (including, without limitation, the actual fees and expenses of the Liquidating Trustee Professionals) shall be paid from the Liquidating Trust Operating Reserve. The Liquidating Trustee shall pay the actual reasonable fees and expenses of the Liquidating Trustee

Professionals, as necessary to discharge the Liquidating Trustee's duties under this Plan and the Liquidating Trust Agreement. Payments to the Liquidating Trustee shall not require notice to any party, or an order of the Court approving such payments; provided, however, that (i) the Liquidating Trustee shall be entitled to payment of the actual reasonable fees and expenses incurred prior to the Effective Date in an amount to be agreed to by the Debtors and the Creditors' Committee, and approved by the Court in the Confirmation Order; (ii) prior to making any payments to the Liquidating Trustee for fees and expenses incurred after the Effective Date, the Liquidating Trustee shall obtain approval from the Liquidating Trust Oversight Committee; and (iii) prior to making any payments to the Liquidating Trustee Professionals for fees and expenses incurred after the Effective Date, the Liquidating Trustee shall obtain approval from the Liquidating Trust Oversight Committee. Notwithstanding anything else herein, nothing in this Plan, the Confirmation Order, or the Liquidating Trust Agreement (1) shall prevent the Holder of a Claim from seeking relief related to or in connection with the fees paid to the Liquidating Trustee Professionals and the quarterly report provided pursuant section 6.5(21) of this Plan; or (2) shall prevent the Liquidating Trustee from contesting whether any such Holder is the Holder of an Allowed Claim (unless such Claim has become an Allowed Claim under the terms of this Plan), provided, that the Liquidating Trustee's decisions concerning payments to the Liquidating Trustee Professionals shall be subject to the prudent investor rule.

(e) Liquidating Trustee as Successor

Pursuant to section 1123(a)(5)(B), section 1123(b)(3), and section 1123(b)(6) of the Bankruptcy Code, the Liquidating Trustee shall be the successor to the Debtors for all purposes. The Liquidating Trustee also shall be the successor to the Creditors' Committee for all purposes. In addition, the Liquidating Trustee shall be the assignee and successor to the Assigning Creditors with respect to the Creditor Causes of Action to the extent such Creditor Causes of Action are assignable.

(f) Investment Powers

The powers of the Liquidating Trustee to invest any Cash that is held by the Liquidating Trust in any of the Reserves created by this Plan, other than those powers reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the Liquidating Trust's liquidating purposes, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in federally insured banks, or other government-backed liquid investments, such as treasury bills. The Liquidating Trustee is prohibited from continuing or engaging in the conduct of a trade or business, except to the extent the Liquidating Trust Assets include existing membership interests and as reasonably necessary to and consistent with the liquidating purpose of the Liquidating Trust.

(g) Distributions

Except as otherwise provided in this Plan, on the Initial Distribution Date and Subsequent Distribution Dates, the Liquidating Trustee shall make Distributions of Available Cash to the Liquidating Trust Beneficiaries qualifying to receive Distributions from the Liquidating Trust under the Plan, which Distributions shall be made at least annually; provided, however, that the Liquidating Trustee may postpone any Distribution if the Liquidating

Trustee determines, with the consent of the Liquidating Oversight Committee, that the amount of such Distribution would be too small to justify the administrative costs associated with such Distribution. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely Distributions, and not unduly prolong the duration of the Liquidating Trust.

(h) Vesting of Certain Assets

On the Effective Date, all Litigation Claims, all property of the Debtors or the Estates treated by this Plan, any minutes and general corporate records of the Debtors, any minutes and books and records of the Creditors' Committee, and any books and records relating to the foregoing not otherwise treated by this Plan, shall vest in the Liquidating Trust free and clear of all Liens, Claims, encumbrances, and other interests and shall thereafter be administered, liquidated by sale, collection, recovery, or other disposition and distributed by the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and this Plan.

(i) Tax Treatment of Holders of Liquidating Trust Interests

The Debtors and the Liquidating Trustee shall treat the Liquidating Trust Beneficiaries as grantors of the Liquidating Trust and the Liquidating Trustee will file tax returns for the Liquidating Trust as a "grantor trust" pursuant to section 1.671-4(a) of the U.S. Treasury Regulations. Items of income, gain, loss, expense, and other tax items will be allocated to those Liquidating Trust Beneficiaries that would be entitled to receive such items if they constituted cash distributions or reductions therefrom, and such Liquidating Trust Beneficiaries shall be responsible for the payment of taxes on a current basis that result from such allocations.

For all U.S. federal income tax purposes, all parties must treat the transfer of Assets to the Liquidating Trust as (i) a transfer of the Assets to the beneficiaries of the Liquidating Trust followed by (ii) a transfer of the Assets by such beneficiaries to the Liquidating Trust, with the beneficiaries being treated as the grantors and owners of the Liquidating Trust. Each Holder that is a beneficiary of the Liquidating Trust will generally recognize gain (or loss) in its taxable year that includes the Effective Date in an amount equal to the difference between the amount realized in respect of its Claim and its adjusted tax basis in such Claim. The amount realized for this purpose should generally equal the fair market value of the Assets deemed received for U.S. federal income tax purposes under the Plan in respect of such Holder's Claim. A Holder that is deemed to receive for U.S. federal income tax purposes the Assets under the Plan in respect of its Claim should generally have a tax basis in such Assets in an amount equal to the fair market value of such Assets on the date of receipt.

(j) Nature of Liquidating Trust Interests

The Liquidating Trust Interests issued pursuant to the Plan shall be in the nature of equity interests, and not in the nature of notes, bonds, debentures or evidence of indebtedness. As such, all of the Liquidating Trust Interests shall be junior in right of payment to all liabilities and obligations of the Liquidating Trust and payments with respect to Liquidating Trust Interests shall be contingent upon recoveries of Net Proceeds from the liquidation of the Liquidating Trust Assets.

The Liquidating Trust Beneficiaries shall have beneficial interests in the Liquidating Trust Assets as provided herein. The Liquidating Trust Beneficiaries' proportionate interests in the Liquidating Trust Assets as thus determined shall not be transferable, except upon the death of the Liquidating Trust Beneficiary or by operation of law. The ownership of Liquidating Trust Interest shall not entitle a holder of any Liquidating Trust Interest to any title in or to the assets of the Liquidating Trust as such (which title shall be vested in the Liquidating Trustee) or to any right to call for a partition or division of the assets of the Liquidating Trust or to require an accounting.

(k) Treatment of Reserves

The Liquidating Trustee may file a tax election to treat any of the Reserves established for Disputed Claims (such as the Disputed Unsecured Claim Reserve) as a Disputed Ownership Fund ("DOF") within the meaning of section 1.468B-9 of the U.S. Treasury Regulations rather than tax such Reserve as a part of the grantor Liquidating Trust. If the election is made, the Liquidating Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due.

(l) Indemnification Provisions

The Liquidating Trust Agreement may authorize the Liquidating Trustee to seek approval of the Court to obtain appropriate indemnification protections, including without limitation to obtain insurance after the term of Debtors' current insurance policy ends.

6.6. No Revesting of Assets

All Litigation Claims and all property of the Estates shall not be vested in the Debtors on or following the Effective Date, but shall be vested in the Liquidating Trust, and continue to be subject to the jurisdiction of the Court following confirmation of this Plan until such property is distributed to Holders of Allowed Claims or abandoned in accordance with the provisions of this Plan, the Liquidating Trust Agreement and the Confirmation Order.

6.7. Creditors' Committee

On the Effective Date, the Creditors' Committee will be deemed dissolved and cease to exist. The dissolution of the Creditors' Committee under this Section shall not prevent any Professional from filing a Fee Claim for service provided to the Creditors' Committee.

6.8. Accounts and Reserves

The Liquidating Trustee shall establish one or more accounts into which shall be deposited all funds of the Liquidating Trust. The Liquidating Trustee may elect to establish separate accounts for the Reserves, but in all cases the Liquidating Trustee shall separately account for funds deposited into and withdrawn from the Reserves.

6.9. Release of Liens

Except as otherwise provided in this Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with this Plan, on the Effective Date, all mortgages, deeds of trust, Liens, or other security interests against the property of the Estates shall be released.

6.10. Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from any of the Debtors to the Liquidating Trust or by the Debtors to any other Entity pursuant to this Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any applicable instruments or documents without the payment of any such tax or governmental assessment.

6.11. Preservation of Litigation Claims

Unless a Litigation Claim against any Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order and the Sale Orders), the Debtors and their Estates, and the Creditors' Committee, expressly reserve such Litigation Claims, a nonexclusive list of which is set forth on Exhibit A, to be transferred by the Debtors, the Creditors' Committee, and/or an Assigning Creditor, as applicable, to the Liquidating Trust pursuant to the Plan, for possible prosecution by the Liquidating Trustee, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Litigation Claims upon or after the entry of the Confirmation Order or Effective Date based on the Plan or the Confirmation Order, except where such Litigation Claims have been released in the Plan or any Final Order (including the Confirmation Order and the Sale Orders). In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust may enforce all rights to commence and pursue, as appropriate, any and all such Litigation Claims, whether arising prior to or after the Petition Date, and the Liquidating Trust's rights to commence, prosecute, or settle any such Litigation Claims shall be preserved notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date.

The failure of the Debtors to list a claim, right, cause of action, suit or proceeding on Exhibit A shall not constitute a waiver or release by the Debtors or their Estates of such claim, right of action, suit or proceeding. **No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Litigation Claim against them as any indication that the Liquidating Trustee will not pursue any and all available Litigation Claims against them.**

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Litigation Claims that a Debtor may hold against any Entity shall vest in the Liquidating Trust and the Liquidating Trustee on behalf of the Liquidating Trust. In addition, the Liquidation Trust reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a

defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

Notwithstanding the foregoing or anything else in this Plan or the Confirmation Order, nothing herein or in the Confirmation Order shall affect the rights, claims, or defenses of any Person concerning whether any Creditor Causes of Action are assignable by an Assigning Creditor.

6.12. Setoffs

Except as otherwise provided in this Plan, the Confirmation Order, the Sale Orders or in agreements previously approved by Final Order of the Court, the Debtors or, on or after the Effective Date, the Liquidating Trustee, may, pursuant to applicable law (including section 553 of the Bankruptcy Code), offset against any Claim, including an Administrative Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights and Causes of Action of any nature that the Debtors or the Liquidating Trustee may hold against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim, any other action or omission of the Debtors or the Liquidating Trustee, nor any provision of this Plan shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claims, rights and Causes of Action that the Debtors or the Liquidating Trustee may possess against such Holder.

6.13. Withdrawal of Plan

The Debtors reserve the right, in the exercise of their reasonable discretion, with the agreement of the Creditors' Committee, to revoke and withdraw or modify this Plan at any time prior to the Confirmation Date or, if the Debtors are for any reason unable to consummate this Plan after the Confirmation Date, at any time up to the Effective Date. If the Debtors revoke or withdraw this Plan, (a) nothing contained in this Plan shall be deemed to constitute a waiver or release of any claims by or against the Debtors or to prejudice in any manner the rights of the Debtors or any Entity in any further proceeding involving the Debtors and (b) the result shall be the same as if the Confirmation Order were not entered, this Plan was not filed and the Effective Date did not occur.

6.14. D&O Claims

(a) Nothing in this Plan shall prejudice the rights of the Liquidating Trust or the Liquidating Trustee to seek subordination of any D&O Claim on or prior to the Claims Objection Deadline, either in connection with, or following, the final adjudication or other final resolution of the Litigation Claim against such D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.

(b) Each D&O Claim shall be deemed a Disputed Claim until entry of a Court order allowing or disallowing such Claim after, or in connection with, the final adjudication or other final resolution of the Litigation Claim against the applicable D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.

(c) Subject to Section 6.14(b) above, nothing in this Plan shall prejudice the rights of (i) the Liquidating Trust or the Liquidating Trustee, or any other party in interest, to object to the allowance of any D&O Claim, or (ii) any D&O to oppose such objection.

(d) Nothing in this Plan shall preclude (i) any D&O from asserting setoff, recoupment, or any other defenses in any litigation, including concerning the Litigation Claims, against such D&O, whether such Litigation Claim is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity, provided such D&O has filed a Claim prior to the date set forth in the Bar Date Order or a Claim was filed on behalf of such D&O as required by the Bar Date Order or (ii) the Liquidating Trust or the Liquidating Trustee, or any other party in interest, from objecting to the exercise or effect of such right to setoff, recoupment, or other affirmative defenses on any and all grounds, including but not limited to, subordination of the D&O Claims of such D&O.

6.15. Insurance Preservation

Nothing in this Plan shall diminish or impair the enforceability of any insurance policies and related agreements that may cover Claims and Causes of Action against the Debtors or any other Entity. Without limiting the foregoing, and notwithstanding anything else in this Plan, (i) nothing in this Plan shall limit any insured from obtaining coverage under any of the Debtors' insurance policies and related agreements, provided, however, that other orders of the Court, whether entered before or after the Effective Date, may limit insureds from obtaining the proceeds of such coverage for reasons other than this Plan and shall not be affected by this Plan; and (ii) nothing in this Plan (including, without limitation, any provision that purports to be preemptory or supervening or grants an injunction, discharge, or a release) shall in any way operate to impair, diminish, or waive, or have the effect of impairing, diminishing or waiving, the legal or contractual rights, claims, defenses, liabilities or obligations of any Entity, including, without limitation, the Debtors, the Creditors' Committee, the Liquidating Trust, the Liquidating Trustee, the D&Os and any insurers, pursuant to any insurance policies and related agreements, including, without limitation, the terms, conditions, limitations, exclusions, and endorsements thereof, that may cover Claims or Causes of Action against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the D&Os, any insurers or any other Entity.

6.16. Assignment of Creditor Causes of Action

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

(b) To the extent the Liquidating Trustee obtains any benefit, or collects any consideration, arising out of a Creditor Cause of Action assigned by an Assigning Creditor, the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, shall request Court approval, upon notice and a hearing, to increase the allowed

amount of such Assigning Creditor's Allowed Class 3 Claim based on such obtained benefit and/or collected consideration by an appropriate amount of up to fifty percent (50%) of the Net Proceeds attributable to such Creditor Cause of Action.

(c) Notwithstanding anything to the contrary in the Plan, it shall be a condition to any effective transfer of a Creditor Cause of Action by a Holder of an Unsecured Claim, and therefore a condition to benefiting from this Section 6.16, that such Holder (i) evidence its ownership of such Creditor Cause of Action to the Liquidating Trustee; and (ii) execute an assignment agreement, the form of which will be included in the Plan Supplement.

Article VII.

EFFECT OF PLAN ON CLAIMS AND INTERESTS

7.1. Binding Effect

This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and the Liquidating Trustee.

7.2. Compromise and Settlement

Notwithstanding anything contained in this Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective Distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled and compromised pursuant to this Plan. The Confirmation Order will constitute the Court's finding and determination that the settlements reflected in this Plan are (1) in the best interests of the Debtors, their Estates and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith and (4) approved by the Court pursuant to Bankruptcy Rule 9019. Notwithstanding anything contained in this Plan or the Confirmation Order, no Litigation Claim is being settled, compromised, released, or otherwise affected by this Plan except as set forth in Section 7.5 of this Plan.

Provided such compromise and settlement is effected in accordance with the provisions of the Plan, the Liquidating Trust Agreement and pursuant to Bankruptcy Rule 9019(b), as applicable, without any further notice to or action, order or approval of the Court, after the Effective Date the Liquidating Trustee may compromise and settle all Claims and Causes of Action against other Entities.

7.3. No Discharge of the Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of any Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution

from, or seek recourse against, any of the Estates, the Liquidating Trust, the Liquidating Trustee and/or their respective successors, assigns and/or property, except as expressly provided in this Plan.

7.4. Injunction

(a) The Confirmation Order shall provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in the Debtors are, with respect to any such Claims or Interests, permanently enjoined from and after the Confirmation Date from taking any of the following actions (other than actions to enforce any rights or obligations under this Plan): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property; (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Debtors, the Liquidating Trust, the Liquidating Trustee or any of their property, except as contemplated or allowed by this Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (vi) prosecuting or otherwise asserting any right, claim or cause of action released pursuant to this Plan, including, without limitation, any right, claim or cause of action against an Exculpated Party that has been exculpated pursuant to Section 7.5 of this Plan; provided, however, that the injunction provided in this section shall neither bar any Entity from asserting any defense in an action commenced by or on behalf of any of the Debtors or the Liquidating Trust, nor prohibit any Entity from asserting any right expressly preserved or contemplated by this Plan. The injunction provided for in this section shall be limited in all respects to the breadth of the releases and exculpations granted in this Plan.

(b) The Confirmation Order shall also provide, among other things, that all Entities who have held, hold or may hold Claims against or Interests in the Debtors, other than the Debtors, the Liquidating Trustee and the Liquidating Trust, are permanently enjoined from and after the Confirmation Date from (i) commencing, conducting or continuing in any manner, directly or indirectly, any Enjoined Action; (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against any D&O, solely in their capacity as such, or any property of any such transferee or successor, each solely in their capacity as such arising from an Enjoined Action; and (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against any D&O, or any director or indirect transferee of any property of, or successor in interest to, any of the foregoing Entities, arising from an Enjoined Action; provided, however, that nothing contained herein shall preclude the IRS from pursuing an action against any Entity, or any

governmental entity from pursuing a criminal action against any Entity, provided, further, that nothing herein shall constitute a waiver of any rights or defenses of such Persons with respect to such actions.

(c) By accepting distributions pursuant to this Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the Injunctions set forth in this Section.

7.5. Exculpation.

Notwithstanding anything contained in this Plan to the contrary, the Exculpated Parties, and any property of any of the foregoing Persons, shall not have or incur any liability to any Entity for any prepetition act taken or omitted to be taken in connection with, related to or arising from authorizing, preparing for or filing the Case, or any postpetition act taken or omitted to be taken in connection with, related to or arising from the formulation, negotiation, preparation, dissemination, implementation, administration of this Plan, the Plan Exhibits, the Disclosure Statement, or any contract, instrument, or other agreement or document created or entered into in connection with this Plan, or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the Case, or the confirmation or consummation of this Plan, including but not limited to (i) the Sale Orders and the related sales; (ii) formulating, preparing, disseminating, implementing, confirming, consummating or administrating this Plan (including soliciting acceptances or rejections thereof if necessary); (iii) the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into or any action taken or not taken in connection with this Plan; or (iv) any Distributions made pursuant to this Plan, except for acts constituting willful misconduct, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. Notwithstanding the foregoing, for the avoidance of doubt, this Section of the Plan shall not (i) exculpate or release the Exculpated Parties from anything other than as expressly identified in the preceding sentence, (ii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to a Claim of an Exculpated Party on any basis other than matters exculpated or released in this Section, (iii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to, or defend against, on any basis, (a) any Administrative Claim of an Exculpated Party for substantial contribution, or (b) any Administrative Claim of an Exculpated Party arising solely from the Exculpated Party's capacity as a director, provided, however, that nothing in this (iii)(b) shall prevent any Exculpated Party from recovering on a claim under the Debtors' post-petition director and officer insurance policy, or (iv) exculpate or release the Liquidating Trustee, the Liquidating Trust Professionals, or the Liquidating Trust Oversight Committee and its members, with respect to any act taken or omitted to be taken after the Effective Date that would result in liability under the terms of the Liquidating Trust Agreement.

7.6. Extinguishment of Intercompany Claims.

Following the Effective Date, any Claims that any of the Debtors may have against another Debtor shall be forever waived, released and extinguished for all purposes and no

Debtor shall have a Claim or Administrative Claim Allowed against the Estate of any other Debtor.

7.7. Indemnification Obligations

Except as otherwise provided in a previously entered Order of this Court, this Plan or any contract, instrument, release, or other agreement or document entered into in connection with this Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, shall be rejected as of the Effective Date, to the extent executory; provided, however, that (i) all rights, if any, of the D&Os, the Debtors, the Estates, the Creditors' Committee, the Liquidating Trust, and the Liquidating Trustee in and to any of the Debtors' insurance policies hereby are expressly reserved and are not limited in any way by this Plan; and (ii) nothing in this Plan shall be deemed to modify any indemnification obligations of the Debtors pursuant to an Order of this Court concerning the retention or employment of a professional. Nothing in this Plan shall be deemed to release the Debtors' insurers from, or limit the obligations of any of the Debtors' insurers concerning any claims that might be asserted by insureds, additional insureds, or counter-parties to contracts or agreements providing for the indemnification by and of the Debtors, to the extent of available coverage. For the avoidance of doubt, this Section shall not limit the Debtors' indemnification or other obligations under their engagement letter agreement with A&M dated June 6, 2015 ("A&M Engagement Agreement"), which agreement was approved by the Court and, to the extent necessary to be enforceable on and after the Effective Date, is hereby assumed by the Debtors.

7.8. Terms of Injunctions or Stays

Unless otherwise provided in this Plan, all injunctions or stays provided for in the Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.

Article VIII.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1. Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided in the Confirmation Order, this Plan, the Sale Orders, or any other Plan Document, the Confirmation Order shall constitute an order under section 365 of the Bankruptcy Code rejecting all pre-petition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) is expressly assumed hereunder or previously shall have been assumed or assumed and assigned by the Debtors, or (b) is the subject of a pending motion to assume or reject on the Confirmation Date; provided, however, that the Debtors believe that the insurance agreements of the Debtors are not executory contracts and therefore are not subject to assumption or rejection. To the extent that an insurance policy or agreement is determined to be

an executory contract subject to assumption by the Debtors, such executory insurance policy or agreement, as the case may be, is hereby assumed and assigned to, and shall vest with, the Liquidating Trust.

Notwithstanding anything to the contrary in this Plan, all insurance policies and agreements of the Debtors and the D&Os that were not assigned pursuant to or in connection with a Sale Order, and all obligations of any of the Debtors and the other counterparties thereto, shall be unaffected by the Plan and shall remain enforceable according to their terms and applicable law.

8.2. Bar Date for Rejection Damages

If the rejection of any executory contract or unexpired lease under this Plan gives rise to a Claim by the non-Debtor party or parties to such contract or lease, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified in Class 3; provided, however, that the Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Debtors, the Liquidating Trust, their successors or properties, unless a proof of such Claim is filed and served on the Liquidating Trustee within 30 days after the date of notice of the entry of the order of the Court rejecting the executory contract or unexpired lease which may include, if applicable, the Confirmation Order.

Article IX.

DISTRIBUTIONS

9.1. Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided herein, and only after the funding of the Reserves, or as ordered by the Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on a Distribution Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan. Notwithstanding any other provision of this Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been satisfied after the Petition Date pursuant to an order of the Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim.

9.2. No Distributions on Disputed Claims

No Distribution shall be made by the Liquidating Trustee with respect to a Disputed Claim until the same, or some portion thereof, becomes an Allowed Claim; provided, however, that if the only dispute regarding a Disputed Claim is the amount of the Disputed Claim, the Holder of a Disputed Claim shall be entitled to a Distribution on account of that portion of the Disputed Claim which the Debtors or the Liquidating Trustee do not dispute at the time and in the manner that the Liquidating Trustee makes Distributions to Holders of Allowed Claims pursuant to the provisions of this Plan.

9.3. Distributions on Claims Allowed After the Effective Date

Payments and Distributions from the Liquidating Trust to each respective Holder on account of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes an Allowed Claim, shall be made in accordance with provisions of this Plan that govern Distributions to such Holders of Allowed Claims. Except as otherwise provided in this Plan, within ninety (90) days after such Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to such Holder any Cash from the applicable Reserve or the Liquidating Trust that would have been distributed on the dates Distributions were previously made to Holders of Allowed Claims if such Disputed Claim had been an Allowed Claim on such dates.

All Distributions made under this Article of this Plan on account of an Allowed Claim will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Disputed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of Allowed Claims included in the applicable Class.

9.4. Objections to and Estimation of Claims

Unless otherwise provided in this Plan, from the Effective Date through the Claims Objection Deadline, only the Liquidating Trustee will retain the right to object to Claims in order to have the Court determine the amount and treatment of any Claim. Subject to the terms of the Liquidating Trust Agreement, from and after the Effective Date, the Liquidating Trustee may settle or compromise any Disputed Claim without approval of the Court. Except as otherwise provided in this Plan, if a party files a Proof of Claim and (i) the Debtors, or the Liquidating Trustee, as applicable, file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim otherwise is a Disputed Claim under this Plan, then such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this Plan. Except as otherwise provided in this Plan, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors, the Estates or the Liquidating Trust, without the need for any objection by the Liquidating Trustee or any further notice to or action, order, or approval of the Court.

Except as set forth in this Plan with respect to Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in the Case, or to such Entities as the Court shall order.

9.5. Delivery of Distributions and Undeliverable or Unclaimed Distributions

(a) Delivery of Distributions in General

Distributions to Holders of Allowed Claims shall be made (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Liquidating Trustee has not received a written notice of a change of address, or (d) at the addresses set forth in the other records of the Debtors or the Liquidating Trustee at the time of the Distribution.

Distributions shall be made from the Liquidating Trust, as applicable, in accordance with the terms of this Plan and, if applicable, the Liquidating Trust Agreement.

In making Distributions under this Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Claims Agent in the Case, as modified by any Final Order of the Court disallowing Claims in whole or in part.

(b) Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Creditor's then-current address. Unclaimed Distributions shall be returned to the Liquidating Trust until such Distributions are claimed. The Liquidating Trustee shall, with respect to Cash, maintain in the applicable Reserve, Cash on account of Unclaimed Distributions until such time as a Distribution becomes deliverable, is claimed or is forfeited.

(c) Treatment of Unclaimed Distributions

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an Unclaimed Distribution within three (3) months after the final Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an Unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Liquidating Trust, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for Unclaimed Distributions shall become the property of the Liquidating Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of this Plan and the Liquidating Trust Agreement. Nothing contained in this Plan or the Liquidating Trust Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim; provided, however, that in his sole

discretion, the Liquidating Trustee may periodically publish notice of Unclaimed Distributions.

9.6. Interest on Claims

Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. For the avoidance of doubt, pursuant to Sections 5.1 and 5.2, hereof, (i) Holders of Allowed Class 3 Claims shall be entitled to postpetition interest at the Federal Judgment Rate only after Holders of Allowed Class 4 Claims have received payment in the full principal amount of such Claims; and (ii) Holders of Allowed Class 4 Claims shall be entitled to postpetition interest at the Federal Judgment Rate only after Holders of Allowed Class 3 Claims have received payment in the full principal amount of such Claims plus postpetition interest at the Federal Judgment Rate.

9.7. Withholding and Reporting Requirements

In connection with this Plan and all Distributions under this Plan, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under this Plan shall be subject to any such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder.

All Entities holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes. No Distribution shall be made to or on behalf of such Entity pursuant to this Plan unless and until such Entity has furnished such information. Any property to be distributed pursuant to this Plan shall be deemed: (i) pending the receipt of such information in the manner established by the Liquidating Trustee, an Undeliverable Distribution pursuant to section 9.5(b) of this Plan; or (ii) if such information is not received by the deadline established by the Liquidating Trustee and approved by the Court upon notice and a hearing, forfeited and treated in accordance with section 9.5(c) of this Plan.

Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee

for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustee in connection with such Distribution. Any property to be distributed pursuant to this Plan shall be deemed: (i) pending the implementation of such arrangements, an Undeliverable Distribution pursuant to section 9.5(b) of this Plan; or (ii) if such arrangements are not implemented by the deadline established by the Liquidating Trustee and approved by the Court upon notice and a hearing, forfeited and treated in accordance with section 9.5(c) of this Plan.

9.8. Miscellaneous Distribution Provisions

(a) **Method of Cash Distributions.** Any Cash payment to be made by the Liquidating Trustee pursuant to this Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. In the case of foreign creditors, Cash payments may be made, at the option of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular jurisdiction.

(b) **Distributions on Non-Business Days.** Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

(c) **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the allowed amount of such Claim plus postpetition interest, to the extent postpetition interest is authorized to be paid under this Plan.

9.9. De Minimis Distribution Provisions

No Distribution shall be required to be made hereunder to any Holder of a Claim unless such Holder is to receive in such Distribution at least \$50.00, or unless such Distribution is the final Distribution to such Holder pursuant to this Plan. Any such Distribution not made in accordance with the provisions of this Article IX shall be retained by the Liquidating Trustee and invested as provided in this Plan. Any Distribution not made in accordance with this Article IX to such Holder, shall be held in trust for the relevant Holder until the earlier of (x) the date the next Distribution is scheduled to be made to such Holder; provided, however, that such subsequent Distribution, taken together with amounts retained hereby, equals at least \$50.00, or (y) is the final Distribution to such Holder.

9.10. Distribution Record Date

As of the close of business on the Distribution Record Date, the various lists of Holders of Claims and Interests in each of the Classes, as maintained by the Debtors, or their agents, shall be deemed closed and there shall be no further changes in the record Holders of any of the Claims or Interests. Neither the Liquidating Trustee nor the Debtors will have any obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on a Distribution Record Date, and will be entitled for all purposes herein to recognize, deal with and distribute only to those Holders of Allowed Claims

who are record Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date, as stated on the official claims register.

Article X.

CONFIRMATION AND CONSUMMATION OF THIS PLAN

10.1. Conditions to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date:

(a) A Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Court;

(b) A proposed Confirmation Order shall be acceptable to both the Debtors and the Creditors' Committee;

(c) All documents contained in the exhibits and Plan Supplement are in form and substance satisfactory to both the Debtors and the Creditors' Committee;

(d) Approval of all provisions, terms and conditions hereof shall be contained in the Confirmation Order.

10.2. Conditions to Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing in accordance with section 10.3:

(a) The Confirmation Order shall have been entered and shall provide that the Debtors, the Liquidating Trust, and the Liquidating Trustee are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with this Plan and effectuate, advance, or further the purposes thereof;

(b) The Confirmation Order, the Plan and all Plan Exhibits shall be, in form and substance, acceptable to both the Debtors and the Creditors' Committee, and shall have been executed and delivered by all parties' signatory thereto;

(c) All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed;

(d) The Debtors shall have sufficient Cash to make all required payments to be made on the Effective Date and to fund the Reserves; and

(e) The Confirmation Order shall have become a Final Order.

10.3. Waiver of Conditions

Each of the conditions set forth in section 10.1 and 10.2 of this Plan, except section 10.2(a), 10.2(b), and 10.2(d), may be waived in whole or in part by the Debtors, with the written consent of the Creditors' Committee. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors, with the written consent of the Creditors' Committee, as a basis not to consummate this Plan regardless of the circumstances giving rise to the failure of such conditions to be satisfied. The failure of a party to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

10.4. Consequences of Non-Occurrence of Effective Date

In the event that the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Court directing that the Confirmation Order be vacated and that this Plan be null and void in all respects. In the event that the Court shall have entered an order vacating the Confirmation Order, the time within which the Debtors may assume and assign or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

Article XI.

ADMINISTRATIVE PROVISIONS

11.1. Retention of Jurisdiction.

Notwithstanding confirmation of this Plan or occurrence of the Effective Date, the Court shall retain such jurisdiction as is legally permissible, including for the following purposes:

(a) To determine the allowability, classification, or priority of Claims upon objection by the Debtors, the Liquidating Trustee or any other party in interest entitled to file an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;

(b) To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Entity, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Court in the Case on or before the Effective Date with respect to any Entity;

(c) To protect the property of the Estates, including Litigation Claims, from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens on property of the Estates;

- (d) To determine any and all applications for allowance of Fee Claims;
- (e) To determine any Priority Claim, Administrative Claims or any other request for payment of claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;
- (f) To resolve any disputes arising under or related to the implementation, execution, consummation or interpretation of this Plan and the making of Distributions hereunder;
- (g) To determine any and all motions related to the rejection, assumption or assignment of executory contracts or unexpired leases, or to determine any motion to reject an executory contract or unexpired lease pursuant to section 8.1 of this Plan;
- (h) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of the Case, including any remands;
- (i) To enter a Final Order closing the Case;
- (j) To modify this Plan under section 1127 of the Bankruptcy Code, to remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;
- (k) To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;
- (l) To enable the Liquidating Trustee to prosecute any and all proceedings to set aside Liens and to recover any transfers, assets, properties or damages to which the Estates may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be expressly waived pursuant to this Plan;
- (m) To determine any tax liability of the Debtors or the Liquidating Trust pursuant to section 505 of the Bankruptcy Code, and to address any request by the Liquidating Trustee or the Liquidating Trust for a prompt audit pursuant to section 505(b) of the Bankruptcy Code;
- (n) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (o) To resolve any disputes concerning whether an Entity had sufficient notice of the Case, the Bar Date Order or the otherwise applicable Claims bar date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing;
- (p) To resolve any dispute or matter arising under or in connection with any order of the Court entered in the Case;

(q) To authorize sales of assets as necessary or desirable and resolve objections, if any, to such sales;

(r) To hear and resolve Litigation Claims;

(s) To resolve any disputes concerning any exculpation of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;

(t) To approve any Distributions, or objections thereto, under this Plan;

(u) To approve any Claims settlement entered into or offset exercised by the Liquidating Trustee; and

(v) To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

11.2. Amendments

(a) **Preconfirmation Amendment.** The Debtors, with the written consent of the Creditors' Committee, may modify this Plan at any time prior to the entry of the Confirmation Order, provided that this Plan, as modified, and the disclosure statement pertaining thereto meet applicable Bankruptcy Code requirements.

(b) **Postconfirmation Amendment Not Requiring Resolicitation.** After the entry of the Confirmation Order, the Debtors, with the written consent of the Creditors' Committee, may modify this Plan to remedy any defect or omission or to reconcile any inconsistencies in this Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of this Plan, provided that: (i) the Debtors, with the written consent of the Creditors' Committee, obtain approval of the Court for such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, treatment or Distributions of any Class of Allowed Claims or Interests under this Plan.

(c) **Postconfirmation/Preconsummation Amendment Requiring Resolicitation.** After the Confirmation Date and before substantial consummation of this Plan, the Debtors, with the written consent of the Creditors' Committee, may modify this Plan in a way that materially or adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Interests, provided that: (i) this Plan, as modified, meets applicable Bankruptcy Code requirements; (ii) the Debtors, with the written consent of the Creditors' Committee, obtain Court approval for such modification, after notice and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims or Interests voting in each Class materially or adversely affected by such modification; and (iv) the Debtors comply with section 1125 of the Bankruptcy Code with respect to this Plan as modified.

11.3. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Entity.

11.4. Governing Law

Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia, without giving effect to principles of conflicts of law.

11.5. Corporate Action

Any matters provided for under this Plan involving the corporate structure of the Debtor or corporate action, as the case may be, to be taken by or required of the Debtors shall be deemed to have occurred and be effective as of the Effective Date and shall be authorized and approved in all respects, without any requirement of further action by the Debtors or the Liquidating Trustee, as the case may be.

11.6. Effectuating Documents and Further Transactions

The Debtors and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and take such other actions as may be necessary to effectuate and further evidence the terms and conditions of this Plan.

11.7. Confirmation Order and Plan Control

To the extent this Plan is inconsistent with the Disclosure Statement or the Liquidating Trust Agreement, this Plan controls the Disclosure Statement and the Liquidating Trust Agreement. To the extent the Confirmation Order is inconsistent with this Plan, the Disclosure Statement or the Liquidating Trust Agreement, the Confirmation Order (and any other orders of this Court) controls this Plan, the Disclosure Statement and the Liquidating Trust Agreement; provided, however, that to the extent a subsequent order of the Court authorizes the amendment of the Liquidating Trust Agreement and becomes a Final Order, such Final Order and amended Liquidating Trust Agreement shall control.

11.8. Rules of Construction

(a) **Undefined Terms.** Any term used herein that is not defined herein shall have the meaning ascribed to any such term used in the Bankruptcy Code and/or the Bankruptcy Rules, if used therein.

(b) **Miscellaneous Rules.** (i) The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Plan as a whole, not to any particular section, subsection, or clause, unless the context requires otherwise; (ii) the words “include” and

“including” shall mean “include, without limitation,” or “including,” as the case may be; (iii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply, unless superseded herein or in the Confirmation Order; (iv) any reference in this Plan to an existing document or Exhibit means such document or Exhibit as it may have been amended, restated, modified or supplemented as of the Effective Date; (v) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; and (vi) whenever this Plan provides that a payment or Distribution shall occur “on” any date, it shall mean “on, or as soon as reasonably practicable after”, such date.

11.9. Notices

All notices or requests in connection with this Plan shall be in writing and will be deemed to have been given when received by mail and addressed to:

□
Liquidating Trustee
Richard Arrowsmith
Managing Director
Alvarez & Marsal Holdings, LLC
Healthcare Industry Group
555 13th Street, N.W., 5th Fl.
Washington, DC 20004

with a copy to:

□
□
Debtors

with a copy to:

Tyler P. Brown
Jason W. Harbour
Henry P. (Toby) Long, III
Justin F. Paget
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

□
Creditors' Committee

with a copy to:

Richard S. Kanowitz

Jay R. Indyke
COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Email: rkanowitz@cooley.com
Email: jindyke@cooley.com

11.10. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Debtors with respect to any matter set forth herein, including liability on any Claim or the propriety of a Claim's classification.

Dated: February 9, 2016

By: /s/ Jason W. Harbour
Counsel

Tyler P. Brown (VSB No. 28072)
Jason W. Harbour (VSB No. 68220)
Henry P. (Toby) Long, III (VSB No. 75134)
Justin F. Paget (VSB No. 77949)
HUNTON & WILLIAMS LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
Tel: (804) 788-8200
Fax: (804) 788-8218
Counsel for the Debtors

EXHIBIT A³

Nonexclusive Schedule of Preserved Litigation Claims

All (i) Causes of Action of the Debtors and (ii) Creditor Causes of Action that are assigned to the Liquidating Trust by an Assigning Creditor pursuant to the Plan, to the extent such Causes of Action are assignable, including, without limitation, the following:

- The Causes of Action identified in the *Motion of Creditors Committee for an Order Authorizing It to Conduct Bankruptcy Rule 2004 Examinations of the Debtors and Certain Third Parties* [D.I. 541], the *Order Authorizing the Creditors Committee to Conduct Bankruptcy Rule 2004 Examinations of the Debtors and Certain Third Parties*, and the Creditors' Committee's demand letter to D&Os, dated October 26, 2015, (annexed as Exhibit A to the *Motion of the Creditors Committee for an Order Establishing Protocol for Payment of Proceeds under Director and Officer Liability Insurance Policies* [D.I. 661]), whether such Cause of Action is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity.
- The Causes of Action identified in the demand letter to LeClairRyan, dated on or about October 26, 2015.
- Causes of Action similar to those identified in the demand letter to LeClairRyan, dated on or about October 26, 2015, against Dennis Ryan, Michael Ruggio, and Patrick Hurd.
- The Causes of Action identified in the demand letter from the Creditors' Committee to certain Persons, including D&Os, whether such Causes of Action are against such D&Os in their capacity as such or are against such D&Os in their individual capacity, dated on or about October 26, 2015.
- Causes of Action arising out of or related to the Debtors or their business practices against the D&Os, whether such Cause of Action is against such D&O in his or her capacity as such or is against such D&O in his or her individual capacity, the Debtors' current and former shareholders, the Debtors' current and former employees, the BlueWave Parties, Helena Laboratories, and LeClairRyan arising out of or related to, inter alia:
 - Intentional or constructive fraudulent conveyance under Section 548 of the Bankruptcy Code and Sections 55-80 and 55-81 of the Virginia Code;
 - Preference payments under Section 547 of the Bankruptcy Code;
 - Unlawful distributions to shareholders in violation of Section 13.1-653 of the Virginia Code;
 - Breach of fiduciary duty under Section 13.1-690 of the Virginia Code;

³ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan.

- Virginia common law conspiracy and statutory conspiracy under Section 18.2-499 of the Virginia Code;
 - Claims for civil remedies against racketeer influenced and corrupt organizations under chapter 96 of title 18 of the United States Code;
 - Claims for claims for overpayments, unjust enrichment, fraud, negligent misrepresentation, tortious interference with contract and unfair and deceptive, and civil conspiracy, whether under federal law or the laws of any state.
 - The Claims and Causes of Action asserted in the actions captioned Connecticut General Life Insurance Company et al v. Health Diagnostic Laboratory, Inc., (Case No. 3:14-cv-01519-VAB), pending before the United States District Court for the District of Connecticut, and Aetna Inc. v. Health Diagnostic Laboratory, Inc. at al., (Case No. 2:15-cv-01868-RK) United States District Court for the Eastern District of Pennsylvania, and any other Causes of Action arising from the occurrences, transactions, and/or practices that are the subject of such proceedings.
 - Aiding and abetting any act or omission of any Entity.
- Causes of Action against LeClairRyan for professional malpractice.
 - Causes of Action against Dennis Ryan, Michael Ruggio, and Patrick Hurd for professional malpractice.
 - All Chapter 5 Causes of Action, including, without limitation, the recovery of preferences and fraudulent transfers from any entity that received cash or any other interest in property from any Debtor as identified in the Statement of Financial Affairs or as identified in the Debtors' accounts payable system.
 - All Causes of Action related to any accounts receivable owned by any Debtor or in which any Debtor has an interest.
 - Causes of Action against True Health Diagnostics, LLC.