

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:	Chapter 11
WESTPORT HOLDINGS TAMPA, LIMITED PARTNERSHIP,	Case No. 8:16-bk-08167-MGW
WESTPORT HOLDINGS TAMPA II, LIMITED PARTNERSHIP,	Case No. 8:16-bk-08168-MGW
Debtors.	<i>Jointly Administered under Case No. 8:16-bk-08167-MGW</i>

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**FIRST AMENDED AND RESTATED  
MEDIATED JOINT PLAN OF LIQUIDATION UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

Tampa, Florida  
Dated as of December 31, 2017

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PURSUANT TO SECTION 1125 OF TITLE 11 OF THE UNITED STATES CODE, NOTHING CONTAINED IN THIS FIRST AMENDED AND RESTATED MEDIATED JOINT PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE (THE “**PLAN**”) SHOULD BE CONSTRUED AS CONSTITUTING A SOLICITATION OF ACCEPTANCES OF THIS PLAN UNTIL SUCH TIME AS THE DISCLOSURE STATEMENT (AS DEFINED HEREIN) HAS BEEN CONDITIONALLY OR FINALLY APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, AND DISTRIBUTED, WITH APPROPRIATE BALLOTS, TO ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS ENTITLED TO VOTE ON THIS PLAN. THE PLAN PROPONENTS RESERVE THE RIGHT TO FILE (I) A MODIFICATION OR SUPPLEMENT TO THIS PLAN OR A MODIFIED, AMENDED, OR AMENDED AND RESTATED PLAN, AND/OR (II) A MODIFICATION OR SUPPLEMENT TO THE DISCLOSURE STATEMENT OR A MODIFIED, AMENDED, OR AMENDED AND RESTATED DISCLOSURE STATEMENT FROM TIME TO TIME. REFERENCE IS MADE TO THE DISCLOSURE STATEMENT FOR A DISCUSSION OF VOTING INSTRUCTIONS, THE DEBTORS’ HISTORIES, BUSINESSES, AND ASSETS, A SUMMARY OF SIGNIFICANT EVENTS WHICH HAVE OCCURRED TO DATE IN THE BANKRUPTCY CASES, THE PROCEDURES FOR VOTING ON THE PLAN, AND THE MEANS OF IMPLEMENTING AND FUNDING THIS PLAN (INCLUDING THE FUTURE SALE OF THE PURCHASED ASSETS PURSUANT TO AN ASSET PURCHASE AGREEMENT). THE DISCLOSURE STATEMENT ALSO CONTAINS THE CASH FLOW AND INCOME STATEMENT PROJECTIONS REGARDING THE FUTURE PERFORMANCE OF THE DEBTORS FOLLOWING THE EFFECTIVE DATE, WHICH ARE ATTACHED AS EXHIBIT C TO THE DISCLOSURE STATEMENT. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS ARE ADVISED AND ENCOURAGED TO READ THE DISCLOSURE STATEMENT AND THIS PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS PLAN AND THE DISCLOSURE STATEMENT WILL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

## INTRODUCTION

Westport Holdings Tampa, Limited Partnership and Westport Holdings Tampa II, Limited Partnership, as the Debtors and Debtors in Possession in the Bankruptcy Cases, and the Official Committee of Resident Creditors (collectively, the “**Plan Proponents**”) jointly propose this First Amended and Restated Mediated Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code dated as of December 31, 2017 (the “**Plan**,” as more particularly defined below) for the liquidation of the Purchased Assets after the Confirmation of the Plan and the resolution of the outstanding Claims against the Debtors pursuant to the provisions of Chapter 11 of the Bankruptcy Code, and request Confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code. Each of the Plan Proponents is a proponent of the Plan within the meaning of Section 1129 of the Bankruptcy Code.

**In summary, but subject to more specific details provided herein, the Plan provides for (i) the liquidation of the Purchased Assets after the Effective Date and in accordance with the Confirmation Order and a subsequent order of the Bankruptcy Court providing for the sale, under the Plan, of substantially all of the Purchased Assets free and clear of any and all Liens, except the Assumed Liabilities and the Permitted Exceptions, to a Buyer, (ii) the Distribution of the Cash Sale Proceeds to Holders of Allowed Claims in accordance with Articles 3 and 5 of the Plan at or as soon as reasonably practicable following the Closing, and (iii) the Releases and issuance of the Bar Order and injunctions as described in Article 11 of the Plan.**

Under Section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from the Holder of a Claim until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Holders of Claims. The Disclosure Statement was conditionally approved by the Bankruptcy Court in the Disclosure Statement Approval Order, which is being distributed simultaneously with the Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, (i) a discussion of the Debtors’ histories, businesses, and Assets; (ii) a summary of significant events that have occurred to date in the Bankruptcy Cases; (iii) a summary of the means of implementing and funding the Plan (including the sale of the Debtors’ Purchased Assets pursuant to an Asset Purchase Agreement); and (iv) the procedures for voting on the Plan. Other than the Disclosure Statement and any Exhibits and schedules and documents attached thereto or referenced therein (including the documents and information contained on the website of the Debtors’ bankruptcy counsel), no materials have been approved by the Plan Proponents for use in soliciting acceptances or rejections of the Plan. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THE PLAN HAS BEEN APPROVED BY THE PLAN PROPONENTS. IN THE OPINION OF THE PLAN PROPONENTS, THE TREATMENT OF CLAIMS UNDER THE PLAN CONTEMPLATES A GREATER RECOVERY THAN THAT WHICH IS LIKELY TO BE ACHIEVED UNDER OTHER ALTERNATIVES FOR THE REORGANIZATION OR LIQUIDATION OF THE DEBTORS. ACCORDINGLY, THE PLAN PROPONENTS BELIEVE

THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS, AND RECOMMEND THAT CREDITORS VOTE TO ACCEPT THE PLAN.

Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, and those provisions on modifications to the Plan set forth in Article 13 hereof, the Plan Proponents expressly reserve the right to alter, further amend, further modify, revoke or withdraw the Plan, one or more times, prior to the Plan's substantial consummation.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THE PLAN AND IN THE DISCLOSURE STATEMENT CONCERNING THE HISTORY OF THE DEBTORS' BUSINESSES, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTORS, TRANSACTIONS TO WHICH THE DEBTORS WERE OR ARE A PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS ARE ATTRIBUTABLE EXCLUSIVELY TO THE PLAN PROPONENTS AND NOT TO ANY OTHER PARTY; PROVIDED, HOWEVER, THAT THE CASH FLOW AND INCOME STATEMENT PROJECTIONS REGARDING THE FUTURE PERFORMANCE OF THE DEBTORS FOLLOWING THE EFFECTIVE DATE, WHICH ARE ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT, HAVE BEEN PROVIDED TO THE PLAN PROPONENTS BY THE FINANCIAL ADVISOR FOR THE CURRENT RESIDENT COMMITTEE AND THE PLAN PROPONENTS MAKE NO REPRESENTATIONS CONCERNING SUCH PROJECTIONS. NONE OF THE ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS RETAINED BY THE PLAN PROPONENTS MAKES ANY REPRESENTATIONS CONCERNING SUCH INFORMATION OR PROJECTIONS.

THE PLAN AND THE DISCLOSURE STATEMENT HAVE NOT BEEN REQUIRED TO BE PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. ALL PERSONS OR ENTITIES SHOULD EVALUATE THE PLAN AND THE DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.

## **Article 1**

### **DEFINED TERMS**

As used in the Plan, the following terms, which appear in this Plan as capitalized terms, will have the meanings set forth below:

**1.01** All of the definitions set forth in Section 101 of the Bankruptcy Code are incorporated herein as though set forth herein in their entirety. If a defined term contained herein is inconsistent with the definition of such defined term set forth in Section 101 of the Bankruptcy Code, the defined term set forth herein controls over the definition of such defined term set forth in Section 101 of the Bankruptcy Code.

**1.02** "**Action**" means any written action, claim, proceeding, litigation, arbitration, mediation, suit, investigation or regulatory inquiry (whether civil, criminal, administrative or

judicial), or any appeal therefrom or any material demand letter threatening the initiation of any of the foregoing.

**1.03** “*Additional Lender Documents*” has the meaning ascribed to the term in Article 8.02 of the Plan.

**1.04** “*Administrative Expense*” means—

(a) any cost or expense of administration of the Bankruptcy Cases that is allowed under Section 503(b) or 507(a)(2) of the Bankruptcy Code, to the extent the party claiming any such Administrative Expense files an application or other Bankruptcy Court-approved pleading seeking such expense in the Bankruptcy Cases on or before the applicable Administrative Expense Claim Bar Date, including—

(1) any actual and necessary costs and expenses of preserving the Estates or operating the businesses of the Debtors (including wages, salaries, or commissions for services rendered) incurred on or after the Petition Date;

(2) any Postpetition cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in Possession in the ordinary course of their businesses (excluding any Postpetition cost, indebtedness or contractual obligation assumed in connection with the Assumed Contracts);

(3) any Claim granted administrative expense priority status by a Final Order of the Bankruptcy Court;

(4) any Claim by a Governmental Unit for non-ad valorem taxes that are assessed *in personam* (and for interest and/or penalties related to such taxes) for any tax year or period, to the extent such Claim accrues Postpetition; and

(5) compensation or reimbursement of expenses of Professionals awarded or allowed pursuant to an order of the Bankruptcy Court under Section 330(a) or 331 of the Bankruptcy Code (including any amounts held back pursuant to an order of the Bankruptcy Court);

(b) any Superpriority Claim; and

(c) any and all other costs or expenses of administration of the Bankruptcy Cases that are allowed by a Final Order of the Bankruptcy Court.

The terms “Administrative Expense” and “Administrative Expense Claim” shall not include any Priority Tax Claim, any Disallowed Claim, or any of the Claims in Classes 1 through 15. In no event shall any Claim set out in a Proof of Claim be deemed to be an Administrative Expense (except for any Claim by a Governmental Unit for taxes (and for interest and/or penalties related, to such taxes) due from the Debtors for any Postpetition tax year or period).

**1.05** “*Administrative Expense Claim*” means any Claim for the payment of an Administrative Expense. The terms “Administrative Expense(s)” and “Administrative Expense Claim(s)” are used interchangeably in this Plan.

**1.06** “*Administrative Expense Claim Bar Date*” means, subject to Article 3.07 of the Plan, the date ordered by the Bankruptcy Court or the date established by the Bankruptcy Rules as the last day for filing an application or other Bankruptcy Court-approved request for allowance of an Administrative Expense. In the case of an Administrative Expense arising after the date ordered by the Bankruptcy Court or established by the Bankruptcy Rules as the last day for filing an application or other Bankruptcy Court-approved request for allowance of an Administrative Expense, the Administrative Expense Claim Bar Date will be the Effective Date.

**1.07** “*Affiliate*” means, with respect to any Person (other than the Debtors), (i) any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, (ii) any other Person that, directly or indirectly, owns or controls, whether beneficially, or as trustee, guardian or other fiduciary, twenty percent (20%) or more of the equity interests having ordinary voting power in the election of directors of such Person, or (iii) any other Person who is a director, officer, joint venturer or partner (a) of such Person, (b) of any subsidiary of such Person, or (c) of any Person described in clause (i) above. For the purposes of this definition, control of a Person shall mean the power (direct or indirect) to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, by contract or otherwise. When used in this Plan as relating to the Debtors, the term “Affiliate” has the meaning ascribed to such term in Section 101(2) of the Bankruptcy Code.

**1.08** “*AHCA*” means the Florida Agency for Health Care Administration.

**1.09** “*Allowed Amount*” means the dollar amount in which a Claim is Allowed.

**1.10** “*Allowed Claim*” means a Claim or that portion of a Claim that is not a Disputed Claim or a Disallowed Claim and (i) (a) as to which a Proof of Claim was filed with the Clerk’s Office on or before the Bar Date, or, by order of the Bankruptcy Court, was not required to be filed, or (b) as to which no Proof of Claim was filed with the Clerk’s Office on or before the Bar Date, but which has been or hereafter is listed by the Debtors in the Schedules as liquidated in amount and not disputed or contingent, and (ii) as to which either (x) no objection to the allowance thereof has been filed within the time allowed for the making of objections as fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (y) any objection made has been determined and the Claim has been allowed by a Final Order (but only to the extent so allowed). “Allowed Claim” also includes (i) a Disputed Claim which was not objected to prior to the Claims Objection Deadline and (ii) a Claim that is allowed by the Bankruptcy Court (x) in any contract, instrument, or other agreement or document entered into in connection with the Plan; (y) in a Final Order; or (z) pursuant to the terms of the Plan. “Allowed,” when used as an adjective herein (such as Allowed Administrative Expense Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Secured Claim, Allowed Secured Tax Claim, and Allowed Unsecured Claim), has a corresponding meaning.

**1.11** “*Allowed Class . . . Claim*” means an Allowed Claim in the particular Class described.

**1.12** “*Allowed Equity Interest*” means an Allowed Equity Interest in the particular Class described.

**1.13** “*Asset Purchase Agreement*” means an agreement between the Liquidating Trustee, on the one hand, and a Buyer for the acquisition of the Debtors’ Purchased Assets and the WNT Purchased Assets.

**1.14** “*Assets*” means any property or asset of any kind in which the Debtors or the Estates hold an interest, whether real, personal or mixed, tangible or intangible, whether now existing or hereafter acquired or arising, and wherever located, and any interest of any kind in such property or asset.

**1.15** “*Assumed Contracts*” means any Prepetition executory contract or unexpired lease to which either Debtor is a party and conditionally assumed by the Debtors on the Effective Date with the final assumption and assignment to a Buyer of such executory contract or unexpired lease to occur at the Closing, including the Current Resident Contracts, the Third Party Leases, and the Non-Resident Assumed Contracts (including the Union Contract).

**1.16** “*Assumed Resident Contracts*” has the meaning ascribed to such term in Article 7.02 of the Plan.

**1.17** “*Assumed Liabilities*” means those Liabilities being assumed by a Buyer pursuant to an Asset Purchase Agreement.

**1.18** “*Ballot*” means the ballot accompanying the Disclosure Statement and/or this Plan upon which Holders of Impaired Claims and Impaired Equity Interests entitled to vote on the Plan will indicate their acceptance or rejection of the Plan in accordance with the Voting Instructions.

**1.19** “*Bankruptcy Cases*” means, collectively, the jointly administered cases of the Debtors currently pending before the Bankruptcy Court under Chapter 11 of the Bankruptcy Code, which cases were commenced by the Debtors on the Petition Date and presently bear Case No. 8:16-bk-08167-MGW (In re: Westport Holdings Tampa, Limited Partnership) and Case No. 8:16-bk-08168-MGW (In re: Westport Holdings Tampa II, Limited Partnership).

**1.20** “*Bankruptcy Code*” means Title 11 of the United States Code (11 U.S.C. §§101 *et seq.*), as in effect on the Petition Date, together with all amendments and modifications to the Bankruptcy Code that were subsequently made applicable to the Bankruptcy Cases.

**1.21** “*Bankruptcy Counsel*” means Stichter, Riedel, Blain & Postler, P.A., in its Bankruptcy Court-approved capacity as Chapter 11 bankruptcy counsel to the Debtors in Possession.

**1.22** “*Bankruptcy Court*” means the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, or, as the context requires, any other court of competent jurisdiction exercising jurisdiction over the Bankruptcy Cases.

**1.23** “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court (M.D. Fla. L.B.R.), as in effect on the Petition Date, together

with all amendments and modifications to such Rules that were subsequently made applicable to the Bankruptcy Cases.

**1.24 “Bar Date”** means January 9, 2017, the bar date established by the Bankruptcy Court in the Bar Date Orders as the last day for filing Proofs of Claim against the Debtors, excluding (i) a Prepetition Claim of a Governmental Unit, for which a Proof of Claim must be filed with the Bankruptcy Court by the Governmental Unit Bar Date, (ii) an Administrative Expense Claim, for which a request for payment of an Administrative Expense must be filed with the Bankruptcy Court by the Administrative Expense Claim Bar Date, (iii) a Claim for which a bar date may have been otherwise established by a Final Order of the Bankruptcy Court, for which a Proof of Claim must be filed with the Bankruptcy Court by the date set forth in such Final Order, and (iv) a Claim with respect to an executory contract or unexpired lease that is rejected pursuant to (a) the Plan (as to which the bar date shall be as set forth in Article 7.07 hereof) or (b) a Final Order of the Bankruptcy Court (as to which the bar date shall be as set forth in such Final Order).

**1.25 “Bar Date Orders”** means, as the context may require, either (i) the Notice of Chapter 11 Bankruptcy issued by the Bankruptcy Court establishing the Bar Date of January 9, 2017 and the Governmental Unit Bar Date [Doc. No. 9 in Case No. 8:16-bk-08168-MGW and Doc. No. 14 in Case No. 8:16-bk-08167-MGW], or (ii) other Final Order(s) entered by the Bankruptcy Court establishing a bar date as to a particular Creditor(s).

**1.26 “Business Day”** means any day other than (i) a Saturday, a Sunday, or a “legal holiday” (as “legal holiday” is defined in Bankruptcy Rule 9006(a)), or (ii) a day on which commercial banks in Tampa, Florida are authorized or required to close by law.

**1.27 “Buyer”** means the purchaser of the Purchased Assets pursuant to an Asset Purchase Agreement entered into between the Liquidating Trustee and such purchaser.

**1.28 “Cash”** means cash, cash equivalents, and other readily marketable direct obligations of the United States of America, as determined in accordance with generally accepted accounting principles, including bank deposits, certificates of deposit, checks and similar items. When used in the Plan with respect to a Distribution under the Plan, the term “Cash” means lawful currency of the United States of America, a certified check, a cashier’s check, a wire transfer of immediately available funds from any source, or a check from the Liquidating Trustee drawn on a domestic bank.

**1.29 “Cash Sale Proceeds”** means the Cash portion of the purchase price received by the Liquidating Trustee at the Closing under an Asset Purchase Agreement.

**1.30 “Causes of Action”** means any and all of the Estates’ and the Debtors’ actions, claims, demands, rights, defenses, counterclaims, suits and causes of action, whether known or unknown, in law, equity or otherwise, including all actions and rights to recover transfers voidable or recoverable under Sections 502, 542, 543, 544, 545, 547, 548, 549, 550, 551, and/or 553 of the Bankruptcy Code, and any and all other claims or rights of any value whatsoever, at law or in equity, against any Creditor or other third party, including claims of the type referred to in the Disclosure Statement or in Article 8.17 of the Plan; provided, however, that, when used in the Plan, the term “Causes of Action” does not include any claims, demands, obligations, suits,



judgments, damages, rights, remedies, causes of action, charges, costs, debts, indebtedness, or liabilities released or waived pursuant to the Mediated Settlement Agreement, the Mediated Settlement Order, the Plan, the Confirmation Order, or other order of the Bankruptcy Court. When used in the Plan, the term “Causes of Action” will also specifically include any claims, demands, rights, and causes of action that may only be asserted by a Person other than the Debtors (including the Holder of a Claim) on a derivative or other basis.

**1.31** “*Causes of Action Recoveries*” means the proceeds, benefits and other recoveries received by the Liquidating Trustee or the Liquidating Estate on account of the Causes of Action.

**1.32** “*Claim*” has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code. Notwithstanding anything to the contrary contained in the Plan, when used in the Plan, the term “Claim” will be given the broadest possible meaning permitted by applicable law and will include all manner and type of claim, whenever and wherever such claim may arise. As used in the Plan, the term “Claim” also includes a Claim against any Affiliate, the Holder of which holds or believes it holds a Claim against the Debtors arising from or related to the same or similar facts and circumstances surrounding the claim against the Affiliate.

**1.33** “*Claims Objection Deadline*” means the deadline by which the Debtors, the Liquidating Trustee, or other appropriate party in interest shall object to Claims, and shall be sixty (60) days after the Effective Date, unless extended by an order of the Bankruptcy Court.

**1.34** “*Class*” means a category of Claims or Equity Interests classified together as described in Article 4 of the Plan.

**1.35** “*Clerk*” means the Clerk of the Bankruptcy Court.

**1.36** “*Clerk’s Office*” means the Office of the Clerk of the Bankruptcy Court located at the Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, 5<sup>th</sup> Floor, Tampa, Florida 33602.

**1.37** “*Closing*” means the consummation of the sale and purchase of the Purchased Assets and the other transactions contemplated by and described in an Asset Purchase Agreement.

**1.38** “*Closing Date*” means the date of the Closing as provided in an Asset Purchase Agreement.

**1.39** “*CMS*” means the Center for Medicare and Medicaid Services.

**1.40** “*CNH*” means CNH Finance Fund I, L.P. f/k/a SCM Specialty Finance Opportunities Fund, L.P.

**1.41** “*Committees*” means, collectively, (i) the Committee of Resident Creditors appointed by the United States Trustee on December 29, 2016 [Doc. No. 258], and (ii) the Ad Hoc Committee of Former Residents.

**1.42** “*Confirmation*” or “*Confirmation of the Plan*” means the approval of the Plan by the Bankruptcy Court at the Confirmation Hearing.

**1.43** “*Confirmation Date*” means the date on which the Confirmation Order is entered on the Docket pursuant to Bankruptcy Rule 5003(a).

**1.44** “*Confirmation Hearing*” means the hearing(s) which will be held before the Bankruptcy Court pursuant to Section 1128(a) of the Bankruptcy Code in which the Debtors will seek Confirmation of the Plan, as such hearing(s) may be continued from time to time.

**1.45** “*Confirmation Order*” means the order of the Bankruptcy Court in the Bankruptcy Cases confirming the Plan pursuant to Section 1129 and other applicable sections of the Bankruptcy Code, which order will be in form and substance reasonably satisfactory to the Debtors, and will include any amendments, supplements or modifications thereto made with the consent of the Debtors.

**1.46** “*Continuing Care Reserve*” has the meaning ascribed to such term in Article 7.03 of the Plan.

**1.47** “*Continuing Care Resident*” means a Resident who chooses to continue to reside at either of the Facilities after the Effective Date pursuant to an Assumed Current Resident Contract.

**1.48** “*CPIF*” means CPIF Lending, LLC, a Washington limited liability company, and shall include all of its Affiliates and their respective successors or assigns.

**1.49** “*CPIF Loan Documents*” means all of the Prepetition documents evidencing the CPIF Prepetition Claims and any and all other documents executed by the Debtors, any guarantor or CPIF in any way relating to the CPIF Prepetition Claims, as any such documents have been amended, modified or supplemented thereafter in accordance with their terms.

**1.50** “*CPIF Prepetition Claims*” means any and all Secured Claims of CPIF represented by, relating to, or arising under or in connection with the CPIF Loan Documents.

**1.51** “*Creditor*” means the Holder of a Claim, within the meaning of Section 101(10) of the Bankruptcy Code, including Creditors with Administrative Expenses, Priority Tax Claims, Priority Claims, Secured Claims, Secured Tax Claims, Unsecured Claims and Resident Claims.

**1.52** “*Cure Claim*” means any Claim of any nature whatsoever, including any Claim for any cure payment, cost or other amount, if any, due and owing by the Debtors pursuant to Section 365(b) of the Bankruptcy Code or otherwise, and any Claim for a default (monetary or non-monetary), arising from, relating to, or in connection with the assumption by the Debtors of any Assumed Contract, in each case to the extent Allowed by a Final Order of the Bankruptcy Court; provided, however, that, for purposes of the Plan, the term “Cure Claim” shall not include the Resident Obligations. In no event shall any Claim set out in a Proof of Claim be deemed to be a Cure Claim.

**1.53** “*Cure Claim Deadline*” means February 24, 2017, at 5:00 p.m., or such other deadline for the filing of a Cure Claim established by an order of the Bankruptcy Court.

**1.54** “*Current Operators*” has the meaning ascribed to such term in the Mediated Settlement Agreement.

**1.55** “*Current Resident*” means a Resident who resides at either of the Facilities and is a party to a Current Resident Contract, in each such case as of the Closing Date.

**1.56** “*Current Resident Contract*” means a contract between either Debtor and a Current Resident entered into pursuant to Chapter 651 of the Florida Statutes for the furnishing of shelter and nursing care or personal services to such Current Resident, whether such nursing care or personal services are provided in either of the Facilities or in another setting designated in the Contract for continuing care, by an individual not related by consanguinity or affinity to such Current Resident, upon payment of an Entrance Fee, as such Contract has been amended; provided, however, that for purposes of this Agreement, the term “Current Resident Contract” shall not include any PIP Contract executed by a Current Resident.

**1.57** “*Current Resident PIP Rejection Claim*” means an Allowed Unsecured Claim held by a Current Resident for payment of a PIP Obligation arising from the Debtors’ rejection of such Current Resident’s PIP Contract, as such Unsecured Claim is determined pursuant to the Resident Claims Order or any other Final Order of the Bankruptcy Court.

**1.58** “*Debt*” has the meaning ascribed to such term in Section 101(12) of the Bankruptcy Code.

**1.59** “*Debtors’ Purchased Real Property*” means the real property owned by the Debtors to be acquired by a Buyer at the Closing pursuant to an Asset Purchase Agreement.

**1.60** “*Debtors*” means, collectively, Westport Holdings Tampa, Limited Partnership and Westport Holdings Tampa II, Limited Partnership.

**1.61** “*Debtors in Possession*” means, collectively, Westport Holdings Tampa, Limited Partnership and Westport Holdings Tampa II, Limited Partnership, as debtors in possession in the Bankruptcy Cases.

**1.62** “*Debtors’ Purchased Assets*” means those Assets to be sold by the Debtors to a Buyer pursuant to an Asset Purchase Agreement.

**1.63** “*DIP Advances*” means the aggregate outstanding Postpetition advances extended to the Debtors by the DIP Lender in accordance with and subject to the terms and conditions of the DIP Financing Order and the DIP Loan Agreement.

**1.64** “*DIP Financing Order*” means the Order on (1) Debtors’ Emergency Motion for Authority to Obtain Post-Petition Financing from SCM Specialty Finance Opportunity Fund, L.P., to Grant Junior Liens on Certain Assets, Superpriority Administrative Expense Status, and to Grant Other Relief and (2) Granting Relief to Obtain Financing from USAmeriBank entered by the Bankruptcy Court on January 13, 2017 [Doc. No. 275], as amended by Order on Debtors’ Emergency Motion for Authority to Modify DIP Loan Approval Order and Enter Into Amendments to DIP Loan Documents [Doc. No. 776] and the Order Granting Debtors’ *Ore Tenus* Motion to Approve Extension of Debtor-in-Possession Financing Maturity Date [Doc. No. 798].

**1.65 “DIP Lender”** means USAmeriBank, in its capacity as lender in accordance with and subject to the terms and conditions of the DIP Financing Order, or any party who is substituted for USAmeriBank as the DIP Lender pursuant to an order of the Bankruptcy Court.

**1.66 “DIP Loan Agreement”** means that certain Debtor-in-Possession Loan and Security Agreement dated as of January 27, 2017 by and among the Debtors, as borrowers, and the DIP Lender, as lender, as amended.

**1.67 “DIP Loan Claims”** means any and all Claims of the DIP Lender represented by, relating to, or arising under or in connection with the DIP Financing Order and the DIP Loan Agreement, whether Administrative Expense Claims or Secured Claims, including the DIP Advances and accrued and unpaid interest.

**1.68 “Disallowed Claim”** means any Claim that has been disallowed by an order of the Bankruptcy Court that has not been stayed pending appeal.

**1.69 “Disclosure Statement”** means the Disclosure Statement for Mediated Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code dated as of December 31, 2017, including all Exhibits, appendices, and schedules attached thereto, as submitted and filed by the Plan Proponents pursuant to Section 1125 of the Bankruptcy Code in respect of the Bankruptcy Cases and conditionally approved by the Bankruptcy Court in the Disclosure Statement Approval Order, as such Disclosure Statement may be amended, supplemented, modified, or amended and restated from time to time.

**1.70 “Disclosure Statement Approval Order”** means the Order Conditionally Approving Disclosure Statement, Fixing Time to File Objections to the Disclosure Statement, Fixing Time to File Applications for Administrative Expenses, Setting Final Hearing and Hearing on Confirmation of the Plan, and Setting Deadlines with Respect to the Confirmation Hearing entered by the Bankruptcy Court.

**1.71 “Disputed Claim”** means any Claim or portion thereof (other than a Disallowed Claim) that is not an Allowed Claim and (i) (a) as to which a Proof of Claim has been filed with the Clerk’s Office or is deemed filed under applicable law or order of the Bankruptcy Court, or (b) which has been scheduled in the Schedules, and, (ii) as to which an objection has been or may be timely filed or deemed filed under the Plan, the Bankruptcy Code, the Bankruptcy Rules, or an order of the Bankruptcy Court and any such objection has not been (x) withdrawn, (y) overruled by an order of the Bankruptcy Court, or (z) sustained by an order of the Bankruptcy Court. In addition to the foregoing, a Disputed Claim shall also mean a Claim that is not an Allowed Claim, whether or not an objection has been or may be timely filed, if (i) the amount of the Claim specified in the Proof of Claim exceeds the amount of any corresponding Claim scheduled in the Schedules, (ii) the classification of the Claim specified in the Proof of Claim differs from the classification of any corresponding Claim scheduled in the Schedules, (iii) any corresponding Claim has been scheduled in the Schedules as disputed, contingent or unliquidated, (iv) no corresponding Claim has been scheduled in the Schedules, or (v) such Claim is reflected as unliquidated or contingent in the Proof of Claim filed in respect thereof. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection. To the extent that the amount of the Claim specified in the Proof of Claim exceeds the amount of

any corresponding Claim scheduled in the Schedules, such Claim shall be a Disputed Claim only to the extent of the amount specified in the Proof of Claim which is in excess of the amount of the Claim as scheduled. A Disputed Claim which has not been objected to prior to the Claims Objection Deadline shall cease being a Disputed Claim and shall become an Allowed Claim. “Disputed,” when used as an adjective herein (such as Disputed Administrative Expense Claim, Disputed Priority Tax Claim, Disputed Priority Claim, Disputed Secured Claim, Disputed Secured Tax Claim, and Disputed Unsecured Claim), has a corresponding meaning.

**1.72 “Distribution”** means a distribution in Cash to a Creditor on account of an Allowed Claim (or to the Holder of an Allowed Equity Interest) pursuant to the terms of the Plan.

**1.73 “Distribution Date”** means the date or dates for any Distribution to a Holder of an Allowed Claim as provided in the Plan, unless such date or dates have been otherwise established by an order of the Bankruptcy Court.

**1.74 “Doc. No.”** means the number of the referenced document reflected on the Docket.

**1.75 “Docket”** means the docket in the Bankruptcy Cases maintained by the Clerk.

**1.76 “Effective Date”** means, and shall occur on, the first Business Day on which all of the conditions precedent to the occurrence of the Effective Date contained in Article 10.02 of the Plan have been satisfied or waived by the Plan Proponents.

**1.77 “Effective Date Notice”** has the meaning ascribed to such term in Article 10.04 of the Plan.

**1.78 “Entity”** has the meaning ascribed to such term in Section 101(15) of the Bankruptcy Code.

**1.79 “Entrance Fee”** means an initial or deferred payment of a sum of money or property made pursuant to a Current Resident Contract or a Former Resident Contract as full or partial payment for continuing care or continuing care at-home, including an accommodation fee, admission fee, member fee, or other fee of similar form and application.

**1.80 “Entrance Fee Refund”** means the amount due and owing to a Resident, pursuant to a Resident Contract, for the refund of any portion of the Entrance Fee paid by such Resident less deductions provided for under such Resident Contract, as determined pursuant to the Resident Claims Order or any other Final Order of the Bankruptcy Court.

**1.81 “Equity Interests”** means, collectively, the general partnership interest and the limited partnership interests in the Debtors.

**1.82 “Estates”** means the estates created for the Debtors under Section 541 of the Bankruptcy Code upon the commencement of the Bankruptcy Cases.

**1.83 “Estimation Hearing”** means a hearing for the estimation of Claims under Section 502(e) of the Bankruptcy Code.

**1.84** “*Examiner*” means Jeffrey W. Warren of Bush Ross, P.A., in his capacity as an examiner pursuant to the Order Appointing Examiner entered by the Bankruptcy Court on November 7, 2016 [Doc. No. 133], and the Order Approving Appointment of Chapter 11 Examiner entered by the Bankruptcy Court on November 15, 2016 [Doc. No. 144].

**1.85** “*Excluded Assets*” shall mean any assets that are excluded from the Purchased Assets pursuant to the terms of an Asset Purchase Agreement between the Liquidating Trustee and a Buyer.

**1.86** “*Excluded Assets Recoveries*” means the proceeds, benefits and other recoveries received by the Liquidating Trustee or the Liquidating Estate on account of the Excluded Assets.

**1.87** “*Exculpated Parties*” has the meaning ascribed to such term in Article 11.01 of the Plan.

**1.88** “*Exhibit*” means any exhibit annexed to the Plan or to the Disclosure Statement, as the context requires.

**1.89** “*Exit Financing*” means the lending facility that may be obtained by the Debtors for the purposes of satisfying certain obligations of the Debtors, the Debtors’ Estates, and/or WNT on the Effective Date.

**1.90** “*Facilities*” means, collectively, the Independent Living Facility and the Health Center.

**1.91** “*Final Decree*” means the final decree entered by the Bankruptcy Court on or after the Effective Date pursuant to Bankruptcy Rule 3022.

**1.92** “*Final Decree Date*” means the date on which the Final Decree is entered on the Docket.

**1.93** “*Final Order*” means an order, judgment, ruling, or other decree (or any revision, modification, or amendment thereto) issued and entered by the Bankruptcy Court or by any state or other federal court that has jurisdiction over any proceeding in connection with the Bankruptcy Cases for the purpose of such proceeding, which order, judgment, ruling, or other decree has not been reversed, vacated, stayed, modified, or amended and as to which—

(i) no appeal, petition for review, reargument, rehearing, reconsideration, or certiorari has been taken and is pending and the time for the filing of such appeal, petition for review, reargument, rehearing, reconsideration, or certiorari has expired, or

(ii) such appeal or petition has been heard and dismissed or resolved and the time to further appeal or petition has expired with no further appeal or petition pending.

**1.94** “*Former Resident*” means a Person who no longer resides at either of the Facilities as of the Closing Date (including by reason of the termination of such Person’s Former Resident

Contract or due to the death of such Person) and to whom an Entrance Fee Refund and/or PIP Obligations are due and owing from either of the Debtors as of the Closing Date or thereafter pursuant to the terms of a Former Resident Contract.

**1.95** “*Former Resident Contract*” means a contract previously entered into between either Debtor and a Former Resident pursuant to Chapter 651 of the Florida Statutes for the furnishing of shelter and nursing care or personal services to such Former Resident, whether such nursing care or personal services were provided in either of the Facilities or in another setting designated in the Contract for continuing care, by an individual not related by consanguinity or affinity to such Former Resident, as such Contract has been amended and including all addendums thereto (including any PIP Contract executed by such Former Resident).

**1.96** “*General Unsecured Creditor Distribution Amount*” means one hundred percent (100%) of all Allowed Class 14 Unsecured Claims up to a total aggregate amount of the amount of Seven Hundred and Fifty Thousand and 00/100 Dollars (\$750,000.00) to be set aside from the Cash Sale Proceeds at the Closing for distribution by the Liquidating Trustee to Holders of Allowed Class 14 Unsecured Claims.

**1.97** “*Governmental Unit*” has the meaning ascribed to such term in Section 101(27) of the Bankruptcy Code.

**1.98** “*Governmental Unit Bar Date*” means March 20, 2017, the date established by Section 502(a)(9) of the Bankruptcy Code as the last day for a Governmental Unit to file a Proof of Claim against the Debtors in the Bankruptcy Cases (as fixed by the Bar Date Orders).

**1.99** “*Health Center*” means the 110-bed assisted living facility and the 120-bed skilled nursing facility located at 12250 North 22<sup>nd</sup> Street, Tampa, Florida.

**1.100** “*Holder*” means as to any Claim—

(a) the owner or Holder of such Claim as such is reflected on the Proof of Claim filed with respect to such Claim;

(b) if no Proof of Claim has been filed with respect to such Claim, the owner or Holder of such Claim as shown on the Schedules or books and records of the Debtors or as otherwise determined by order of the Bankruptcy Court; or

(c) the transferee of such Claim, if the owner or Holder of such Claim has transferred the Claim to a third party and filed notice of the transfer and transferee with the Clerk as required by Bankruptcy Rule 3001(e).

**1.101** “*Impaired*” means, when used with reference to a Claim, a Claim that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.102** “*Independent Living Facility*” means the independent living facility comprised of 446 independent living apartments located at 12401 North 22<sup>nd</sup> Street, Tampa, Florida and 46 independent living villas located at 12250 North 22<sup>nd</sup> Street, Tampa, Florida.

**1.103 “Insider Recovery Claims”** means any right or the assertion of any right to payment from a Party, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, arising from, in connection with, relating in any way to, any claim asserted or that could have been asserted by the Debtors or the Resident Committee pursuant to the Insider Recovery Order or otherwise relating to University Village; provided, however, that, for purposes of this Plan, the term “Insider Recovery Claims” shall not include any claim arising out of a breach of the Mediated Settlement Agreement by any Insider Release Party.

**1.104 “Insider Recovery Order”** means the Interim Order Granting in Part Official Committee of Resident Creditors’ Motion to (I) Appoint Chapter 11 Trustee or, Alternatively, (ii) Expand Power of Examiner to (A) Restart the Sale Process, (B) Employ a Marketing Firm, and (C) Employ an Auction Firm, and Grant Committee Standing to Pursue Fraudulent Transfer Claims (Doc. No. 770) entered on November 8, 2017.

**1.105 “Insider Release Parties”** means BVM Management, Inc., an Indiana not-for-profit corporation; BVM University Village, LLC, a Florida limited liability company; Compliance Concepts, L.L.C., an Indiana limited liability company; IMH Healthcare, LLC, a Delaware limited liability company; JF Consulting, LLC, a Delaware limited liability company; TALF, Inc., a Florida not-for-profit corporation; TR & SNF, Inc., a Florida not-for-profit corporation; John Bartle, individually; Rebecca J. Bartle, individually; Eli Freiden, individually; Shabse Fuchs, individually; and each of their respective Affiliates, successors and assigns.

**1.106 “John Deere”** means Deere & Company d/b/a John Deere Financial.

**1.107 “Liabilities”** means any and all liabilities, obligations, judgments, damages, charges, costs, Debts, and indebtedness of any and every kind and nature whatsoever, whether heretofore, now, or hereafter owing, arising, due, or payable, direct or indirect, absolute or contingent, liquidated or unliquidated, known or unknown, foreseen or unforeseen, in law, equity or otherwise, of or relating to the Debtors or any predecessor, successor or assign thereof, or otherwise based in whole or in part upon any act or omission, transaction, event or other occurrence taking place prior to the Effective Date in any way relating to the Debtors or any predecessor, successor, or assign thereof, any Assets of the Debtors, the businesses or operations of the Debtors, the Bankruptcy Cases, or the Plan, including any and all liabilities, obligations, judgments, damages, charges, costs, Debts, and indebtedness based in whole or in part upon any Claim of or relating to successor liability, transferee liability, or other similar theory; provided, however, that, as used in the Plan, the term “Liabilities” does not include (i) any obligations under the Asset Purchase Agreement of one party thereunder to another party thereunder, or (ii) any obligations of the Liquidating Estates or the Liquidating Trustee expressly set forth in the Plan.

**1.108 “Lien”** means, with respect to any Asset, all mortgages, claims (including all Claims), leases, options, hypothecations or similar restrictions, liens, pledges, security interests, and charging orders and any other encumbrance, right or interest of any kind or character, whether vested or contingent, that evidences or secures a debt or payment obligation or adverse ownership interest in the Asset in question, whether imposed by agreement, understanding, law, equity or otherwise, or liens, interests or encumbrances both now existing or hereafter arising which would encumber such Asset arising under any agreement binding on either Debtor or its Assets or arising



from any act or omission of either Debtor or arising pursuant to any right, title or interest, or any lien or encumbrance which could hereafter be asserted as a result of the transfer of the Debtors' Purchased Assets by either Debtor, whether voluntary or involuntary and whether arising by law, contract, or otherwise, and shall include "liens" as such term is defined in Section 101(37) of the Bankruptcy Code.

**1.109 "Liquidating Trustee"** means the Liquidating Trustee, or any successor thereto, appointed pursuant to the provisions of the Plan or an order of the Bankruptcy Court.

**1.110 "Liquidating Trustee Reserve Account"** means the interest-bearing reserve account established by the Liquidating Trustee on the Closing Date for the purpose of holding the Liquidating Trustee Reserve Amount.

**1.111 "Liquidating Trustee Reserve Amount"** means the amount of Cash determined by the Liquidating Trustee (subject to approval by the Bankruptcy Court) to be necessary and appropriate to reserve for future costs of administration of the Liquidating Estate following the Effective Date, including the compensation, fees and costs of the Liquidating Trustee and the professionals, consultants, agents and employees retained or to be retained by the Liquidating Trustee, in each case in connection with liquidating the assets of the Liquidating Estate, investigating, analyzing and pursuing Causes of Action, and winding up and closing the Bankruptcy Cases and the Liquidating Estate.

**1.112 "Liquidating Estate"** means the Estates of the Debtors on and after the Effective Date.

**1.113 "Marlin"** means Marlin Business Bank.

**1.114 "Mediated Settlement Agreement"** means that certain Settlement and Release Agreement dated as of December 31, 2017 between the Debtors and certain parties which is the subject of that certain Joint Motion to Approve Settlement and Release Agreement filed with the Bankruptcy Court on December 31, 2017 (Doc. No. 802).

**1.115 "Mediation Settlement Order"** means the order granting the Joint Motion to Approve Settlement and Release Agreement entered by the Bankruptcy Court on January \_\_, 2018 (Doc. No. \_\_).

**1.116 "Minimum Reserve Balance"** has the meaning ascribed to such term in Article 8.19 of the Plan.

**1.117 "New Health Center Lease"** has the meaning ascribed to such term in the Mediated Settlement Agreement.

**1.118 "New Health Center Operators"** has the meaning ascribed to such term in the Mediated Settlement Agreement.

**1.119 "Non-Resident Assumed Contract"** means any Prepetition executory contract or unexpired lease to which either Debtor is a party, which is not a Current Resident Contract or a Former Resident Contract, conditionally assumed by the Debtors on the Effective Date with the

final assumption and assignment to a Buyer of such executory contract or unexpired lease to occur at the Closing.

**1.120 “Non-Resident Rejected Contract”** has the meaning ascribed to such term in Article 7.04 of the Plan.

**1.121 “Notice Parties”** means the Debtors, Bankruptcy Counsel, the United States Trustee, the Liquidating Trustee, the Committees (if they are in existence), counsel to any Buyer, and all parties listed on the Local Rule 1007-2 Parties in Interest List (as such list is maintained in accordance with the Local Rules of the Bankruptcy Court).

**1.122 “OIR”** means the State of Florida Department of Financial Services, Office of Insurance Regulation.

**1.123 “Permitted Exceptions”** has the meaning ascribed to the term “Permitted Exceptions” in any Asset Purchase Agreement.

**1.124 “Person”** means any person, individual, sole proprietorship, corporation, association, partnership, limited liability company, joint venture, trust, organization, unincorporated organization, institution, joint stock company, business, government, governmental agency or political subdivision thereof, Governmental Unit within the meaning of Section 101(41) of the Bankruptcy Code, or any other entity or institution of any type whatsoever, including any “person” as such term is defined in Section 101(41) of the Bankruptcy Code.

**1.125 “Petition Date”** means September 22, 2016, the date on which the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

**1.126 “PIP Contract”** means a separate addendum to a Resident Contract which provides for a personal income protection plan.

**1.127 “PIP Obligations”** means the amount due and owing to a Resident pursuant to a PIP Contract, as determined pursuant to the Resident Claims Order or any other Final Order of the Bankruptcy Court.

**1.128 “Plan”, “the Plan”, or “this Plan”** means this First Amended and Restated Mediated Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code dated as of December 31, 2017 (together with all Exhibits to the Plan), as the Plan may be amended, supplemented, modified, or amended and restated from time to time in accordance with the provisions of the Plan and the Bankruptcy Code.

**1.129 “Plan Documents”** means the proposed form of all documents necessary to consummate the transactions contemplated under the Plan to occur on the Effective Date including, but not limited to the transfers and other actions set forth in Article 8.03 of the Plan.

**1.130 “Plan Release Parties”** means, collectively, (i) the Debtors, the Estates (including any potential chapter 7 trustee, a Liquidating Trustee, or other fiduciary of the Estates to be appointed pursuant to this Plan or the Bankruptcy Code), the Committees, and each of their subsidiaries and Affiliates and the successors and assigns of any of them and any other Person that

claims or might claim through, on behalf of or for the benefit of any of the foregoing; (ii) the Residents; (iii) any Holder of a Claim against the Debtors; and (iv) any creditor of WNT or the Current Operators.

**1.131 “Plan Supplement”** means the compilation of documents and forms of documents, schedules, and exhibits to the Plan and the Plan Documents to be filed by the Plan Proponents no later than seven (7) days before the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court.

**1.132 “Postpetition”** means arising or accruing on or after the Petition Date and before the Effective Date.

**1.133 “Prepetition”** means arising or accruing prior to the Petition Date.

**1.134 “Priority Claim”** means a Claim that is entitled to a priority in payment pursuant to subparagraphs (3) through (7) of Section 507(a) of the Bankruptcy Code and that is not an Administrative Expense, Priority Tax Claim, Secured Claim, Secured Tax Claim, or Unsecured Claim.

**1.135 “Priority Tax Claim”** means a Claim of a Governmental Unit that is entitled to a priority in payment pursuant to Section 507(a)(8) of the Bankruptcy Code and that is not an Administrative Expense, Priority Claim, Secured Claim, Secured Tax Claim, or Unsecured Claim.

**1.136 “Pro Rata Share”** means, with respect to any Distribution to the Holder of an Allowed Claim in a particular Class or otherwise, a fraction, the numerator of which will be the amount of such Holder’s Allowed Claim and the denominator of which will be the sum of all Allowed Claims and all Reserved Claims in such Class and, if applicable, other Classes, all determined as of the applicable Distribution Date. The term “Pro Rata Share” will also be applied in respect of Administrative Expenses and Priority Tax Claims as the context requires in the Plan.

**1.137 “Professional”** means any professional employed in the Bankruptcy Cases with the approval of the Bankruptcy Court pursuant to Section 327 or 1103 of the Bankruptcy Code.

**1.138 “Proof of Claim”** means a proof of claim filed with the Bankruptcy Court with respect to the Debtors pursuant to Bankruptcy Rule 3001, 3002, or 3003.

**1.139 “Purchased Assets”** means, collectively, the Debtors’ Purchased Assets and the WNT Purchased Assets.

**1.140 “Reserved Claims”** means all Disputed Claims as of the applicable determination date (i) in the full amount listed in the Schedules, or (ii) if a Proof of Claim was timely filed with respect to such Claim, in the face amount of such Proof of Claim, or (iii) if the Claim has been estimated by the Bankruptcy Court for the purpose of allowance pursuant to Section 502(c) of the Bankruptcy Code, in the estimated amount, or (iv) if a Resident Unsecured Claim, the amount determined in accordance with the Resident Claims Order. Unless an order of the Bankruptcy Court estimating a Claim provides otherwise, the amount so estimated will apply both for voting purposes and for purposes of computing Reserved Claims. As used in the Plan, the term “Reserved Claims” will not include any Disallowed Claims.

**1.141 “Resident”** means a Person who is or was either (i) a purchaser of, a nominee of, or a subscriber to a continuing care or continuing care at-home contract to which either Debtor is or was a party or (ii) a tenant or third party to any Third Party Lease with either Debtor.

**1.142 “Resident Care Claims”** means any Action by any Resident against the Debtors, or any Liability to any Resident, arising out of or related to services or care provided to, or statutory violation of law related to, such Resident at the Independent Living Facility prior to the Closing Date, whether such Action is known or unknown, asserted or not yet asserted. For the avoidance of doubt, the term “Resident Care Claims” shall not include the Resident Obligations or any claims in respect to Entrance Fee Refunds or PIP Obligations. For purposes of this Plan, any Resident Care Claim Allowed by a Final Order of the Bankruptcy Court shall be classified as an Allowed Class 14 Unsecured Claim.

**1.143 “Resident Claims Order”** means the Order on Motion to Approve Alternative Claim Form and Cure Notice in Connection with Sales Process and Procedures to Fix Amounts Owed to Current and Former Residents entered by the Bankruptcy Court on January 30, 2017 [Doc. No. 309].

**1.144 “Resident Contracts”** means, collectively, the Current Resident Contracts and the Former Resident Contracts.

**1.145 “Resident Obligations”** means all Liabilities to Current Residents, or their respective estates, executors, heirs, assignees, personal representatives and successors, arising under the Current Resident Contracts, including Liabilities for Entrance Fee Refunds, as determined pursuant to the Resident Claims Order or any other Final Order of the Bankruptcy Court, provided, however, that, for purposes of this Agreement the term “Resident Obligations” shall not include the Current Resident PIP Rejection Claims or Resident Care Claims.

**1.146 “Resident Parties”** means, collectively, the Current Residents and the Former Residents.

**1.147 “Resident Unsecured Claims”** has the meaning ascribed to such term in Article 5.15 of the Plan.

**1.148 “Schedules”** means, collectively, the Schedules and Statements of Financial Affairs filed by the Debtors in the Bankruptcy Cases pursuant to Bankruptcy Rule 1007, as amended or supplemented from time to time.

**1.149 “Secured Claim”** means any Claim that is—

(a) secured in whole or in part, as of the Petition Date, by a Lien which is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law; or

(b) subject to setoff under Section 553 of the Bankruptcy Code;

but, with respect to both subparagraphs (a) and (b) above, only to the extent of the Estates’ interest in the value of the Assets securing any such Claim or the amount subject to setoff, as the case may

be. Except as otherwise provided in the Plan, if the value of a Creditor's interest in the Estates' interest in the Assets securing such Claim or the amount subject to setoff is less than the amount of the Allowed Claim, the resulting deficiency constitutes an Unsecured Claim.

**1.150** *"Secured Creditor"* means any Creditor holding a Secured Claim.

**1.151** *"Secured Tax Claim"* means a Secured Claim of a Governmental Unit for Prepetition taxes.

**1.152** *"Superpriority Claim"* means any Claim created by a Final Order of the Bankruptcy Court providing for a priority senior to that provided in Section 507(a)(1) of the Bankruptcy Code, including any such Claims granted under Sections 364(c)(1) and 365 of the Bankruptcy Code.

**1.153** *"Third Party Lease"* means any real property lease or other type of contract, whether commercial or residential, (i) entered into by and between either of the Debtors and any Person for the rental of space at the Independent Living Facility as set forth on Exhibit B hereto or (ii) entered into by and between either of the Debtors and any Person after July 31, 2017 for the rental of space at the Independent Living Facility.

**1.154** *"Trust Advisory Board"* has the meaning ascribed to such term in Article 8.22 of the Plan.

**1.155** *"Unimpaired"* means that a Claim is not Impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.156** *"Union Contract"* means the 1199 SEIU, United Healthcare Workers East Collective Bargaining Contract with an execution date of July 30, 2014, by and between Westport Holdings Tampa, Limited Partnership and 1199SEIU United Healthcare Workers East Florida Healthcare Union.

**1.157** *"Union Pension Plan"* means the Service Employees International Union National Industry Pension Plan.

**1.158** *"United States Trustee"* means the United States Trustee for Region 21.

**1.159** *"University Village"* means the continuing care retirement community comprising the Independent Living Facility and the Health Center.

**1.160** *"Unsecured Claim"* means any Claim that is not an Administrative Expense, Priority Tax Claim, Priority Claim, Secured Tax Claim, or Secured Claim, including (i) any Claim arising from the rejection of an executory contract or unexpired lease under Section 365 of the Bankruptcy Code, (ii) any portion of a Claim to the extent the value of the Holder's interest in the Estates' interest in the Assets securing such Claim is less than the amount of the Claim, or to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to Section 506(a) of the Bankruptcy Code, and (iii) any Claim designated as an Unsecured Claim elsewhere in the Plan.

**1.161** “*Unsecured Creditor*” means any Creditor holding an Unsecured Claim.

**1.162** “*USAmeriBank*” means USAmeriBank, a Florida state banking corporation, and shall include all of its Affiliates and their respective successors or assigns.

**1.163** “*Voting Deadline*” means the last day to file, with the Bankruptcy Court, a Ballot accepting or rejecting the Plan as fixed by an order of the Bankruptcy Court.

**1.164** “*Voting Instructions*” means the instructions for voting on the Plan contained in the section of the Disclosure Statement entitled “Voting Instructions” and in the Ballot.

**1.165** “*WNT*” means Westport Nursing Tampa, L.L.C., a Florida limited liability company.

**1.166** “*WNT Purchased Assets*” means those certain assets of WNT to be sold by the Liquidating Trustee to a Buyer.

## **Article 2**

### **CONTROLLING LAW AND RULES OF CONSTRUCTION**

**2.01** *Reference to Bankruptcy Code and Bankruptcy Rules.* Any capitalized term used in the Plan that is not defined in the Plan or in the Asset Purchase Agreement, but which is defined in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be. In the instance of a conflict or ambiguity, the definitions in the Plan or in the Asset Purchase Agreement control over the definitions set forth in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**2.02** *Rules of Construction.* For purposes of the Plan, the following rules of construction will apply:

(a) Whenever from the context it is appropriate, (i) each term, whether stated in the singular or the plural, will include both the singular and the plural, and (ii) the gender of all words herein will include the masculine, feminine and neuter.

(b) Any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such contract, instrument, release, indenture or other agreement or document will be substantially in such form or substantially on such terms and conditions.

(c) Any reference in the Plan to an existing document or Exhibit means such document or Exhibit as it may have been or may be amended, modified or supplemented.

(d) If the description in the Plan of the terms of an Exhibit is inconsistent with the terms of the Exhibit, the terms of the Exhibit will control.

(e) Unless otherwise specified, all references in the Plan to Articles and Exhibits are references to Articles and Exhibits of or to the Plan.

(f) Unless the context requires otherwise, the words “herein”, “hereunder”, “hereof”, and “hereto” refer to the Plan in its entirety rather than to a particular article or section or subsection of the Plan.

(g) Any phrase containing the term “include” or “including” will mean including without limitation.

(h) All of the Exhibits attached to this Plan will be deemed incorporated herein by such reference and made a part hereof for all purposes.

(i) Any reference to a Person or an Entity as a Holder of a Claim or Equity Interest includes such Person’s or Entity’s heirs, personal representatives, successors and assigns.

### **Article 3**

#### **TREATMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

**3.01 *Nonclassification.*** In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expenses and Priority Tax Claims have not been classified in the Plan. The treatment accorded to Administrative Expenses and Priority Tax Claims is set forth in this Article 3.

**3.02 *Administrative Expenses.*** Except as otherwise provided in Articles 3.03 through 3.07 below, each Holder of an Allowed Administrative Expense shall be paid (a) on the Closing Date an amount, in Cash, equal to the Allowed Amount of its Administrative Expense less any portion of such Allowed Administrative Expense that has already been satisfied pursuant to the Exit Financing, or (b) under such other terms as may be agreed to by the Holder of such Allowed Administrative Expense.

**3.03 *DIP Loan Claims.*** All amounts owed to the DIP Lender for the DIP Loan Claims shall receive on the Closing Date an amount, in Cash, equal to the DIP Loan Claims less any portion of such DIP Loan Claims that has already been satisfied pursuant to the Exit Financing.

**3.04 *Fees and Charges.*** All fees and charges assessed against the Estates under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§ 1911-1930, through the Confirmation Date, as determined by the Bankruptcy Court in the Confirmation Order, will be paid no later than thirty (30) days after the Effective Date.

**3.05 *Ordinary Course Liabilities.*** All Allowed Administrative Expenses with respect to Liabilities incurred by the Debtors in the ordinary course of business during the Bankruptcy Cases shall be paid by the Liquidating Trustee in the ordinary course of business in accordance with contract terms or as may be otherwise agreed upon by both the Holder of such Allowed Administrative Expense and the Liquidating Trustee.

**3.06 Assumed Liabilities.** All Allowed Administrative Expenses representing Assumed Liabilities shall not be the responsibility of the Debtors or the Liquidating Estate or the Liquidating Trustee or be paid under Article 3 of the Plan, but shall be paid by the Buyer in accordance with the terms and conditions of an Asset Purchase Agreement.

**3.07 Applications for Allowance of Administrative Expenses.** Except as provided in Articles 3.04 through 3.06 above, all Holders of Administrative Expenses (including Holders of any Claims for non-ad valorem Postpetition federal, state, or local taxes) that do not file an application or other Bankruptcy Court-approved pleading by the Administrative Expense Claim Bar Date will be forever barred from asserting such Administrative Expense against the Debtors, the Liquidating Estate, the Liquidating Trustee, or any of their respective assets or properties.

**3.08 Priority Tax Claims.** Each Holder of an Allowed Priority Tax Claim shall be paid (a) on the Closing Date, an amount, in Cash, equal to the Allowed Amount of its Priority Tax Claim by the Liquidating Trustee out of the Cash Sale Proceeds, or (b) under such other terms as may be agreed upon by both the Holder of such Allowed Priority Tax Claim and the Debtors or the Liquidating Trustee.

## Article 4

### DESIGNATION OF CLASSES OF CLAIMS AND EQUITY INTERESTS

**4.01 In General.** Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Equity Interests. A Claim is classified (a) in a particular Class of Claims only to the extent the Claim qualifies within the description of that Class and (b) in a different Class to the extent the Claim qualifies within the description of that different Class. Unless otherwise expressly stated, the Classes of Claims set forth below include all Claims against each of the Debtors that qualify within the description of that Class.

**4.02 Classes.** For purposes of this Plan, Claims and Equity Interests are classified as follows:

- (a) Class 1 consists of all Allowed Priority Claims.
- (b) Class 2 consists of all Allowed Secured Claims of CPIF.
- (c) [Intentionally omitted]
- (d) Class 4 consists of all Allowed Secured Tax Claims of Governmental Units.
- (e) Class 5 consists of all Allowed Secured Claims of Drywizard Drywall Services, Inc.
- (f) Class 6 consists of all Allowed Secured Claims of Geiger.
- (g) Class 7 consists of all Allowed Secured Claims of Flood Pros of SWFL Corp.



- (h) Class 8 consists of all Allowed Secured Claims of Prospect Construction & Development Group.
- (i) Class 9 consists of all Allowed Secured Claims of Team Construction Services, LLC.
- (j) Class 10 consists of all Allowed Secured Claims of John Deere.
- (k) Class 11 consists of all Allowed Secured Claims of Marlin.
- (l) Class 12 consists of all Allowed Secured Claims not otherwise specifically classified in the Plan.
- (m) Class 13 consists of all Allowed Unsecured Claims of the Resident Parties.
- (n) Class 14 consists of all Allowed Unsecured Claims not otherwise specifically classified in the Plan.
- (o) Class 15 consists of all Allowed Subordinated Unsecured Claims of the Current Operators.
- (p) Class 16 consists of all Allowed Equity Interests.

## **Article 5**

### **TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**5.01 *In General.*** Claims and Equity Interests will be treated under the Plan in the manner set forth in this Article 5. Except as otherwise specifically provided in the Plan, the treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Equity Interests pursuant to the Plan will be in full and final satisfaction, settlement, release, extinguishment, and discharge of their respective Allowed Claims (of any nature whatsoever) and Allowed Equity Interests.

**5.02 *Unclassified Claims.*** Each Holder of an Allowed Administrative Expense or an Allowed Priority Tax Claim will receive the treatment set forth in Article 3 of the Plan.

**5.03 *Class 1: Allowed Priority Claims.*** Class 1 consists of all Allowed Priority Claims. Each Holder of an Allowed Priority Claim shall be paid (a) on the Closing Date, an amount, in Cash, equal to the Allowed Amount of its Priority Claim by the Liquidating Trustee out of the Cash Sale Proceeds, in accordance with Section 1129(a)(9)(B) of the Bankruptcy Code, or (b) under such other terms as may be agreed upon by the Holder of such Allowed Priority Claim and the Debtors or the Liquidating Trustee. Class 1 is Unimpaired and, therefore, is not entitled to vote to accept or reject the Plan. Class 1 is presumed to have accepted the Plan.

**5.04 *Class 2: Allowed Secured Claims of CPIF.*** Class 2 consists of the Allowed Secured Claims of CPIF. The Secured Claims asserted by CPIF are disputed by the Official Committee of Resident Creditors and, unless such dispute can be resolved by consensual agreement with CPIF, the Official Committee of Resident Creditors intends to file and prosecute

an objection to the Secured Claims asserted by CPIF and counterclaims against CPIF. Unless otherwise paid from the Exit Financing on the Effective Date, the Allowed Secured Claims of CPIF shall be paid as follows:

(a) If the Closing on an Asset Purchase Agreement occurs on or before June 30, 2018, then on the Closing Date either:

(1) CPIF shall be paid in Cash by the Liquidating Trustee out of the Cash Sale Proceeds in an amount equal to the agreed amount of the Allowed Secured Claims of CPIF determined by the Liquidating Trustee and CPIF as of the Closing Date, which payment shall be in full and final satisfaction of CPIF's Liens on the Debtors' Purchased Assets; or

(2) To the extent that the amount of the Secured Claims of CPIF remain Disputed as of the Closing Date, then CPIF's Liens shall attach to the Cash Sale Proceeds and CPIF shall be paid the amount determined by the Bankruptcy Court upon entry of a Final Order determining the amount of the Allowed Secured Claims of CPIF; or

(b) If the Closing on an Asset Purchase Agreement does not occur on or before June 30, 2018, then upon the later of July 1, 2018 or entry of a Final Order determining the amount of the Allowed Secured Claims of CPIF, the Liquidating Trustee shall pay CPIF deferred cash payments as follows: equal monthly payments of interest only for the first twelve months, followed by equal monthly payments of principal and interest based upon a 25-year amortization for the next one hundred and seven months, with a balloon payment of the outstanding principal amount of the Allowed Secured Claims of CPIF and accrued interest on the one hundred and twentieth month. The interest rate for purposes of calculating the payments on the Allowed Secured Claims of CPIF under this Article 5.04(b) of the Plan shall be either 3.5% per annum or such other interest rate determined by the Court in accordance with *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

Until paid in full or otherwise disallowed, CPIF shall retain its Liens. Class 2 is Impaired and entitled to vote to accept or reject the Plan.

**5.05 [Intentionally omitted]**

**5.06 Class 4: Allowed Secured Tax Claims of Governmental Units.** Class 4 consists of all Allowed Secured Tax Claims of Governmental Units. The Holders of Allowed Secured Tax Claims shall be paid an amount, in Cash, equal to their Allowed Class 4 Secured Tax Claims by the Liquidating Trustee out of the Cash Sale Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. Class 4 is Impaired and is entitled to vote to accept or reject the Plan.

**5.07 Class 5: Allowed Secured Claims of Drywizard Drywall Services, Inc.** Class 5 consists of all Allowed Secured Claims of Drywizard Drywall Services, Inc., if any, represented by, related to, or arising under or in connection with its Claim of Lien recorded against the Debtors' Purchased Real Property. Drywizard Drywall Services, Inc. shall be paid an amount, in Cash, equal to its Allowed Class 5 Secured Claim by the Liquidating Trustee out of the Cash Sale

Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. To the extent any amounts claimed by Drywizard Drywall Services, Inc. are determined to be Allowed Unsecured Claims, such Allowed Unsecured Claims shall be paid under the Plan pursuant to the treatment for Allowed Class 14 Unsecured Claims. Class 5 is Impaired and is entitled to vote to accept or reject the Plan.

**5.08 Class 6: Allowed Secured Claims of Geiger.** Class 6 consists of all Allowed Secured Claims of Geiger, if any, represented by, related to, or arising under or in connection with its final judgment recorded against the Debtors' Purchased Real Property. Geiger shall be paid an amount, in Cash, equal to its Allowed Class 6 Secured Claim by the Liquidating Trustee out of the Cash Sale Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. To the extent any amounts claimed by Geiger are determined to be Allowed Unsecured Claims, such Allowed Unsecured Claims shall be paid under the Plan pursuant to the treatment for Allowed Class 14 Unsecured Claims. Class 6 is Impaired and is entitled to vote to accept or reject the Plan.

**5.09 Class 7: Allowed Secured Claims of Flood Pros of SWFL Corp.** Class 7 consists of all Allowed Secured Claims of Flood Pros of SWFL Corp., if any, represented by, related to, or arising under or in connection with its Claim of Lien recorded against the Debtors' Purchased Real Property. Flood Pros of SWFL Corp. shall be paid an amount, in Cash, equal to its Allowed Class 7 Secured Claim by the Liquidating Trustee out of the Cash Sale Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. To the extent any amounts claimed by Flood Pros of SWFL Corp. are determined to be Allowed Unsecured Claims, such Allowed Unsecured Claims shall be paid under the Plan pursuant to the treatment for Allowed Class 14 Unsecured Claims. Class 7 is Impaired and is entitled to vote to accept or reject the Plan.

**5.10 Class 8: Allowed Secured Claims of Prospect Construction & Development Group.** Class 8 consists of all Allowed Secured Claims of Prospect Construction & Development Group, if any, represented by, related to, or arising under or in connection with its Claim of Lien recorded against the Debtors' Purchased Real Property. Prospect Construction & Development Group shall be paid an amount, in Cash, equal to its Allowed Class 8 Secured Claim by the Liquidating Trustee out of the Cash Sale Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. To the extent any amounts claimed by Prospect Construction & Development Group are determined to be Allowed Unsecured Claims, such Allowed Unsecured Claims shall be paid under the Plan pursuant to the treatment for Allowed Class 14 Unsecured Claims. Class 8 is Impaired and is entitled to vote to accept or reject the Plan.

**5.11 Class 9: Allowed Secured Claims of Team Construction Services, LLC.** Class 9 consists of all Allowed Secured Claims of Team Construction Services, LLC, if any, represented by, related to, or arising under or in connection with its Claim of Lien recorded against the Debtors' Purchased Real Property. Team Construction Services, LLC shall be paid an amount, in Cash, equal to its Allowed Class 9 Secured Claim by the Liquidating Trustee out of the Cash Sale Proceeds on the Closing Date, unless otherwise agreed with the Plan Proponents or the Liquidating Trustee. To the extent any amounts claimed by Team Construction Services, LLC are determined to be Allowed Unsecured Claims, such Allowed Unsecured Claims shall be paid under the Plan pursuant to the treatment for Allowed Class 14 Unsecured Claims. Class 9 is Impaired and is entitled to vote to accept or reject the Plan.

**5.12 Class 10: Allowed Secured Claims of John Deere.** Class 10 consists of all Allowed Secured Claims of John Deere, if any. The Allowed Class 10 Secured Claims of John Deere shall be treated as follows:

(a) If a Buyer wishes to purchase the collateral securing the Allowed Class 10 Secured Claims of John Deere, then the Buyer shall pay the Allowed Class 10 Secured Claims of John Deere at the Closing; or

(b) If a Buyer does not wish to purchase the collateral securing the Allowed Class 10 Secured Claims of John Deere, then such collateral shall be abandoned to John Deere in full satisfaction of John Deere's Allowed Class 10 Secured Claims.

Class 10 is Unimpaired and, therefore, is not entitled to vote to accept or reject the Plan. Class 10 is presumed to have accepted the Plan.

**5.13 Class 11: Allowed Secured Claims of Marlin.** Class 11 consists of all Allowed Secured Claims of Marlin, if any. The Allowed Class 11 Secured Claims of Marlin shall be treated as follows:

(a) If a Buyer wishes to purchase the collateral securing the Allowed Class 11 Secured Claims of Marlin, then the Buyer shall pay the Allowed Class 11 Secured Claims of Marlin at the Closing; or

(b) If a Buyer does not wish to purchase the collateral securing the Allowed Class 11 Secured Claims of Marlin, then such collateral shall be abandoned to Marlin in full satisfaction of Allowed Class 11 Secured Claims of Marlin.

Class 11 is Unimpaired and, therefore, is not entitled to vote to accept or reject the Plan. Class 11 is presumed to have accepted the Plan.

**5.14 Class 12: Other Allowed Secured Claims.** Class 12 consists of all Allowed Secured Claims not otherwise specifically classified in the Plan. In the event there is more than one Secured Claim in this Class, such Secured Claims shall be separated into subclasses in Class 12. Within ten (10) days following the Effective Date, the Holder of a Class 12 Secured Claim shall be satisfied by the Debtors returning to the Secured Creditor any Assets (to the extent such Assets are not part of the Debtors' Purchased Assets) determined by the Bankruptcy Court to secure its Secured Claim in full and final satisfaction of such Secured Claim. Any deficiency owing to a Secured Creditor with respect to a Class 12 Claim shall be classified and treated as a Class 14 Unsecured Claim to the extent Allowed by a Final Order of the Bankruptcy Court. Notwithstanding the foregoing, all Class 12 Secured Claims representing Assumed Liabilities or secured by any of the Debtors' Purchased Assets shall not be the responsibility of the Plan Proponents or the Liquidating Estates or the Liquidating Trustee or be paid under this Article 5.14, but shall be paid by the Buyer in accordance with the terms and conditions of the Asset Purchase Agreement. Class 12 is Unimpaired and, therefore, is not entitled to vote to accept or reject the Plan. Class 12 is presumed to have accepted the Plan.

**5.15 Class 13: Allowed Unsecured Claims of the Resident Parties.** Class 13 consists of (a) all Allowed Unsecured Claims of the Former Residents under the Former Resident Contracts and (b) all Allowed Current Resident PIP Rejection Claims (collectively, the “**Resident Unsecured Claims**”). Each Holder of an Allowed Resident Unsecured Claim shall receive, in full and final satisfaction of such Holder’s Allowed Resident Unsecured Claim, equal quarterly cash payments beginning on the last Business Day of the first full calendar quarter following the second anniversary of the Effective Date and continuing on the last Business Day of each subsequent calendar quarter until the twelfth anniversary of the Effective Date, together with interest at 3% per annum beginning on the second anniversary of the Effective Date. Class 13 is Impaired and is entitled to vote to accept or reject the Plan.

**5.16 Class 14: Other Allowed Unsecured Claims.** Class 14 consists of all Allowed Unsecured Claims not otherwise specifically classified in the Plan. Each Holder of an Allowed Class 14 Unsecured Claim shall receive, in full and final satisfaction of such Holder’s Allowed Class 14 Unsecured Claim, either:

(a) In the event there is not a Closing under the Asset Purchase Agreement, such Holder’s Pro Rata Share of the lesser of (i) one hundred percent (100%) of all Allowed Class 14 Unsecured Claims or (ii) Seven Hundred and Fifty Thousand and 00/100 Dollars (\$750,000.00), in equal quarterly cash payments beginning on the last Business Day of the first full calendar quarter following the second anniversary of the Effective Date and continuing on the last Business Day of each subsequent calendar quarter until the twelfth anniversary of the Effective Date, together with interest at 3% per annum beginning on the second anniversary of the Effective Date; or

(b) In the event there is a Closing under an Asset Purchase Agreement, such Holder’s Pro Rata Share of the General Unsecured Creditor Distribution Amount, such amount to be paid to such Holder by the Liquidating Trustee from the Cash Sale Proceeds within ten (10) Business Days following the Closing.

Class 14 is Impaired and entitled to vote to accept or reject the Plan.

**5.17 Class 15: Allowed Subordinated Unsecured Claims of Current Operators.** Class 15 consists of all Allowed Unsecured Claims of the Current Operators for the Collection Difference in accordance with the Mediated Settlement Agreement. Each Holder of an Allowed Class 15 Subordinated Unsecured Claim shall receive, in full and final satisfaction of such Holder’s Allowed Class 15 Subordinated Unsecured Claim, such Holder’s Pro Rata Share of the Collection Difference from any cash remaining in the Estates after satisfaction in full of all allowed claims in Classes 1 through 14. Class 15 is Impaired and is entitled to vote to accept or reject the Plan.

**5.18 Class 16: Allowed Equity Interests.** Class 16 consists of all Allowed Equity Interests. On the Effective Date, except as otherwise expressly provided in the Plan, all Holders of Allowed Equity Interests shall be entitled to retain all legal, equitable, and contractual rights in such Allowed Equity Interests; provided, however, that such Holders of Allowed Equity Interests shall not be entitled to any distributions from the Estates until (a) the satisfaction in full of all

allowed claims in Classes 1 through 15, and (b) the satisfaction of all allowed expenses of the Liquidating Trustee, any professionals employed by the Liquidating Trustee, or any member of the Trust Advisory Board in accordance with the Plan, including but not limited to Sections 8.14 and 8.22 of the Plan. Class 16 is Unimpaired and, therefore, is not entitled to vote to accept or reject the Plan. Class 16 is presumed to have accepted the Plan.

## Article 6

### ACCEPTANCE OR REJECTION OF THE PLAN

**6.01** *Each Impaired Class Entitled to Vote Separately.* The Holders of Claims in each Impaired Class of Claims will be entitled to vote separately to accept or reject the Plan.

**6.02** *Acceptance by Impaired Classes.* Classes 2, 4, 5, 6, 7, 8, 9, 13, 14, and 15 are Impaired under the Plan, and Holders of Claims in such Classes are entitled to vote to accept or reject the Plan. Pursuant to Section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims will have accepted the Plan if (a) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Pursuant to Section 1126(d) of the Bankruptcy Code, an Impaired Class of Equity Interests will have accepted the Plan if the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in amount of the Allowed Equity Interests actually voting in such Class have voted to accept the Plan.

**6.03** *Presumed Acceptance of Plan by Unimpaired Classes.* Classes 1, 10, 11, 12, and 16 are Unimpaired. Pursuant to Section 1126(f) of the Bankruptcy Code, each such Class and the Holders of Claims and Equity Interests in such Classes are conclusively presumed to have accepted the Plan and, thus, are not entitled to vote on the Plan. Except as otherwise expressly provided in the Plan, nothing contained in the Plan or otherwise will affect the Plan Proponents' or the Liquidating Trustee's rights and legal and equitable claims or defenses in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

**6.04** *Impairment Controversies.* If a controversy arises as to whether any Claim or Equity Interest, or any Class of Claims or Class of Equity Interests, is Impaired under the Plan, such Claim, Equity Interest or Class shall be treated as specified in the Plan unless the Bankruptcy Court shall determine such controversy upon motion of the party challenging the characterization of a particular Claim or Equity Interest, or a particular Class of Claims or Class of Equity Interests, under the Plan.

## Article 7

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**7.01** *Assumption and Assignment of Assumed Contracts.* Exhibit A attached to the Plan identifies the Assumed Contracts, which consist of all Prepetition executory contracts and

unexpired leases, other than Assumed Resident Contracts, to which either Debtor is a party. On the Effective Date, the Debtors will conditionally assume the Assumed Contracts, with the final assumption of the Assumed Contracts and assignment of the Assumed Contracts to a Buyer to occur at the Closing, subject to the discretion of a Buyer. Until the Closing, the Debtors shall comply with the terms of the Assumed Contracts. Until such assumption becomes final upon the Closing, the subsequent termination of any conditionally assumed Assumed Contract between the Effective Date and the Closing shall not result in any claims arising from such termination becoming an administrative expense of the Debtors' Estates.

**7.02 Assumption and Assignment of Current Resident Contracts and Third Party Leases.** On the Effective Date, the Debtors will conditionally assume any Current Resident Contracts and Third Party Leases (the "**Assumed Resident Contracts**"), with the final assumption of the Assumed Resident Contracts and assignment of the Assumed Resident Contracts to a Buyer to occur at the Closing, subject to the discretion of a Buyer. Until the Closing, the Debtors shall comply with the terms of the Assumed Resident Contracts. Until such assumption becomes final upon the Closing, the subsequent termination of any conditionally assumed Assumed Resident Contract between the Effective Date and the Closing shall not result in any claims arising from such termination becoming an Administrative Expense of the Debtors' Estates. Notwithstanding the foregoing, any claims arising from the termination of any conditionally assumed Assumed Resident Contract by either the voluntary termination or death of the respective Current Resident on or before the later of (a) a Closing or (b) the second anniversary of the Effective Date, shall be treated in accordance with the Allowed Resident Unsecured Claims in Class 13 of the Plan.

**7.03 Adequate Assurance of Future Performance of Assumed Resident Contracts.** The amount of minimum liquid reserve required and approved by OIR as of the Closing, as calculated in accordance with Rule 690-19.050 of the Florida Administrative Code (the "**Continuing Care Reserve**"), shall serve as adequate assurance of the Buyer's future performance under the Assumed Resident Contracts, as contemplated under Section 365(b)(1)(C) of the Bankruptcy Code. To the extent that the Debtors' existing Cash set aside for regulatory reserves is insufficient to fund the Continuing Care Reserve at the Closing, then the Buyer must fund the difference in Cash at the Closing.

**7.04 Rejection of Other Executory Contracts and Unexpired Leases.** All other executory contracts and unexpired leases that exist between either of the Debtors and another Person or Entity and that (a) are not Assumed Contracts or Assumed Resident Contracts, or (b) have not been expressly rejected or assumed by the Debtors with Bankruptcy Court approval on or before the Effective Date, shall be deemed rejected by the Debtors as of the Effective Date (the "**Non-Resident Rejected Contracts**").

**7.05 Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases and Adequate Assurance of Future Performance of Assumed Contracts.** Entry of the Confirmation Order shall, subject to and upon the occurrence of the Closing, constitute (i) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the conditional assumption of the executory contracts and unexpired leases assumed pursuant to Articles 7.01 and 7.02 hereof, (ii) the approval, pursuant to Section 365(b)(1)(C) of the Bankruptcy Code, of the Continuing Care Reserve Amount and other consideration provided under the Plan as the Buyer's adequate assurance of future performance of any Assumed Contracts or Assumed Resident

Contracts; (iii) the approval, pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Articles 7.04 hereof, and (iv) the extension of time, pursuant to Section 365(d)(4) of the Bankruptcy Code, within which the Debtors may finally assume, assign, or reject any unexpired lease of nonresidential real property through the date of entry of an order approving the final assumption, assignment, or rejection of such unexpired lease. The final assumption and assignment by the Debtors of any conditionally assumed Assumed Contract or Assumed Resident Contract shall be binding upon any and all parties to such Assumed Contract or Assumed Resident Contract as a matter of law, and each such Assumed Contract or Assumed Resident Contract shall be fully enforceable by the Buyer in accordance with its terms, except as modified by the provisions of the Plan or an order of the Bankruptcy Court.

**7.06 *Cure Claims Under Assumed Contracts.*** Any lessor, lessee, or other party to an Assumed Contract asserting a Cure Claim in connection with the assumption of any unexpired lease or executory contract under Articles 7.01 and 7.02 hereof, as contemplated by Section 365(b) of the Bankruptcy Code, must have filed such Cure Claim with the Bankruptcy Court on or before the Cure Claim Deadline (unless a late Cure Claim is specifically allowed by the consent of the Debtors or order of the Bankruptcy Court) asserting all alleged amounts accrued or alleged defaults through the Effective Date. Any lessor, lessee or other party to an Assumed Contract or Assumed Resident Contract who fails to file a Cure Claim by the Cure Claim Deadline shall be forever barred from asserting, collecting or seeking to collect any amounts or defaults relating thereto against the Debtors, the Liquidating Trustee, or the Buyer. The Liquidating Trustee or a Buyer, as applicable, shall have sixty (60) days from the entry of the Confirmation Order to file an objection to any Cure Claim filed in connection with any Assumed Contract or Assumed Resident Contract. Any disputed Cure Claims shall be resolved either consensually or by the Bankruptcy Court. Unless otherwise agreed to by the parties, any allowed Cure Claim shall be paid by the Liquidating Trustee in equal quarterly cash payments beginning on the last Business Day of the first full calendar quarter following the Effective Date and continuing on the last Business Day of each subsequent calendar quarter until the fifth anniversary of the Effective Date; provided, however, that, at the sole discretion of a Buyer, such Buyer may elect to either (a) continue such quarterly payments after the assignment of the respective Assumed Contract or Assumed Resident Contract to the Buyer at the Closing or (b) pay 90% of the remaining allowed Cure Claim in cash at the Closing. With respect to any disputed Cure Claim, no payments shall be made by the Liquidating Trustee or a Buyer on any such disputed Cure Claims until a Final Order has been entered by the Bankruptcy Court allowing all or a portion of such disputed Cure Claim.

**7.07 *Claims Under Non-Resident Rejected Contracts.*** Unless otherwise ordered by the Bankruptcy Court, any Claim for damages arising by reason of the rejection of any Non-Resident Rejected Contract must be filed with the Bankruptcy Court on or before the Bar Date for rejection damage Claims in respect of such Non-Resident Rejected Contract or such Claim shall be forever barred and unenforceable against the Debtors, the Liquidating Estates, the Liquidating Trustee, or the Buyer. With respect to any Non-Resident Rejected Contracts, the Bar Date for filing rejection damage and other Claims with the Bankruptcy Court shall be the Voting Deadline. The Plan and any other order of the Bankruptcy Court providing for the rejection of a Non-Resident Rejected Contract shall constitute adequate and sufficient notice to Persons or Entities which may assert a Claim for damages from the rejection of a Non-Resident Rejected Contract of the Bar Date for filing a Claim in connection therewith. All Claims for damages from the rejection of a Non-



Resident Rejected Contract, once fixed and liquidated by the Bankruptcy Court and determined to be Allowed Claims, shall be Allowed Class 14 Unsecured Claims. Any such Claims that become Disputed Class 14 Claims shall be Disputed Claims for purposes of administration of Distributions under the Plan to Holders of Allowed Class 14 Unsecured Claims.

**7.08 Inclusiveness.** Unless otherwise specified in the Plan or an Asset Purchase Agreement, each executory contract and unexpired lease that is rejected or assumed shall include all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease, without regard to whether such agreement, instrument or other document is specifically referenced in this Plan or in a notice of assumption provided under this Plan.

## **Article 8**

### **MEANS OF IMPLEMENTATION OF THE PLAN**

**8.01 General Overview of the Plan.** The Plan provides for the implementation of the Mediated Settlement Agreement between the Debtors, their principals and Affiliates, and the Official Committee of Resident Creditors, and the Insider Release Parties, by the transfer of all operations of the Health Center to the New Health Center Operators and the appointment of the Liquidating Trustee to oversee the operations of the Facilities, market and sell the Facilities, and otherwise manage the orderly liquidation of the remaining assets of the Debtors' Estates and WNT for the benefit of creditors. The Liquidating Trustee will use the Cash Sale Proceeds to fund Distributions to Holders of Allowed Claims under the Plan. On the Effective Date, and pending the Closing of the sale of the Purchased Assets, all of the Debtors' assets shall be vested in the Liquidating Trustee, who shall enter into such contracts with a Buyer and other third-parties as are necessary to permit the continuing operation of the Facilities while honoring the Current Residents' and parties to Third Party Leases continued use and occupancy of the Facilities in accordance with their existing residency agreements. At the Closing, a Buyer will acquire the real estate and other assets subject to the existing residency agreements of the Current Residents as provided in this Plan. On or after the Closing, to the extent applicable, any Buyer will comply with Chapter 651 of the Florida Statutes.

**8.02 Maintenance of Existing Lien Rights Under Mediation Settlement Order.** The Plan incorporates the terms of the Mediated Settlement Agreement and the Mediation Settlement Order. The Confirmation Order shall provide that, upon the Effective Date, all existing lenders to the Debtors, WNT and the Current Operators, including CPIX, USAmeriBank, and CNH, and all holders of Secured Claims shall maintain their existing lien rights to the same extent, validity, and priority as provided in the Mediation Settlement Order.

**8.03 Effective Date Transactions.** Subject to the approval of the Bankruptcy Court and the satisfaction or waiver of the conditions precedent to the occurrence of the Effective Date contained in Article 10.02 of the Plan, on or as of the Effective Date: (a) the appointment of the Liquidating Trustee shall become effective and the Liquidating Estate shall be automatically substituted for the Debtors as a party to all contested matters, adversary proceedings, and lawsuits, both within and outside of the Bankruptcy Court, involving the assets of the Liquidating Estate;

and (b) the Liquidating Trustee shall have carried out the other Effective Date responsibilities under the Plan, including the execution and delivery of all documentation contemplated by the Plan and any Asset Purchase Agreement.

**8.04 *Sale of Assets of the Debtors and WNT.*** On the Effective Date, the Liquidating Trustee is authorized without further order of the Bankruptcy Court to market and sell the Independent Living Facility and the Health Center to a Buyer pursuant to an Asset Purchase Agreement. After the Effective Date, the Closing of the purchase and sale of the Purchased Assets pursuant to an Asset Purchase Agreement shall occur on the Closing Date, with the disbursement of the Cash Sale Proceeds to be made in accordance with the Plan. At the Closing, the New Health Center Operators shall, to the extent necessary, terminate or transfer (a) the full financial and operational control of the Health Center, (b) the New Health Center Lease, and (c) any and all licenses, permits, provider agreements, and other additional documents to turn over full financial and operational control of the Health Center from the New Health Center Operators to any Buyer under the Plan.

**8.05 *Vesting of Certain Assets of the Estates in the Liquidating Estate.*** On the Effective Date, except as otherwise expressly provided in the Plan, all Assets of the Estates (including the Excluded Assets and the Causes of Action) shall vest in, and become assets of, the Liquidating Estate, free and clear of any and all Liens, Debts, obligations, Claims, Cure Claims, Liabilities, Equity Interests, and all other interests of every kind and nature, and the Confirmation Order shall so provide.

**8.06 *Continued Limited Partnership Existence.*** The Debtors will continue to exist after the Effective Date as Delaware limited partnerships, with all of the powers of for profit limited partnerships under applicable law in the State of Delaware and pursuant to their respective limited partnership agreements, articles of organization or other organizational documents in effect prior to the Effective Date, without prejudice to any right to terminate such existence (whether by merger, dissolution or otherwise) under applicable law after the Effective Date.

**8.07 *Management of the Debtors Following the Effective Date.*** On and after the Effective Date, the Debtors will be operated and managed solely by and through the Liquidating Trustee, through HMS of Tampa, Inc. or such other qualified managers appointed in the Liquidating Trustee's business judgment, and the operations of the Health Center shall be managed consistent with the terms of the Mediated Settlement Agreement, subject to the oversight of the Liquidating Trustee as provided in the Mediated Settlement Agreement and any lease or management agreement contemplated therein, all in accordance with the irrevocable delegations of authority contemplated in Articles 8.03(a) and (b) hereof and, notwithstanding anything in the partnership agreements of the Debtors, no Holders of Equity Interests in the Debtors shall have any power to direct or remove the Liquidating Trustee or otherwise manage the affairs of the Debtors after the Effective Date.

**8.08 *Limited Partnership Actions.*** All matters provided for under the Plan involving the limited partnership structure of the Debtors, or any limited partnership action to be taken by or required of the Debtors, shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement for further action by the partners of the Debtors. From and after the Confirmation Date and until

the Effective Date, the Liquidating Trustee shall have all powers accorded by law of the State of Delaware to put into effect and carry out the Plan and the Confirmation Order.

**8.09 Section 1146 Exemption.** Any Asset Purchase Agreement shall provide for and require the simultaneous sale to a Buyer of the Debtors' Purchased Assets and the WNT Purchased Assets. The sale of the WNT Purchased Assets is necessary for the consummation of the Plan. Pursuant to Section 1146(a) of the Bankruptcy Code, the issuance, distribution, transfer or exchange of any security or the making, delivery or recording of any instrument of transfer pursuant to, in implementation of or as contemplated by the Plan or the Asset Purchase Agreement, or the vesting, re-vesting, transfer or sale of any Assets of, by or in the Debtors or their Estates or any assets of, by or in WNT pursuant to, in implementation of or as contemplated by the Plan or the Asset Purchase Agreement, or any transaction arising out of, contemplated by or in any way related to the foregoing, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangible or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, sales tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents or Governmental Units shall be, and hereby are, directed to forego the collection of any such tax or governmental assessment and to accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**8.10 Effectuating Documents; Further Transactions.** The Liquidating Trustee shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, mortgages, and other agreements or documents, and take such actions as may be necessary or appropriate on behalf of the Debtors, to effectuate and further evidence the terms and conditions of the Plan or an Asset Purchase Agreement or to otherwise comply with applicable law.

**8.11 Selection of the Liquidating Trustee.** Jeffrey W. Warren shall be appointed as the initial Liquidating Trustee by the Bankruptcy Court at the Confirmation Hearing. The Liquidating Trustee shall serve from and after the Effective Date until his or her successor is duly appointed and qualified or until his or her earlier death, resignation or removal. In the event of the death, resignation or removal of the Liquidating Trustee, any successor thereto shall be selected following notice to the Notice Parties and a hearing before the Bankruptcy Court.

**8.12 Indemnification and Limitation of Liability of Liquidating Trustee.** The Liquidating Trustee shall be indemnified by and be entitled to receive reimbursement from the Debtors' Estates, upon approval by the Bankruptcy Court, against and from any and all loss, cost, expense, liability or damage which the Liquidating Trustee may actually incur or sustain in the exercise and performance of any of the powers and duties under this Plan, excepting those acts of the Liquidating Trustee arising from its own gross negligence, fraud or willful misconduct. The Liquidating Trustee shall not have any personal obligation to satisfy any liability of the Debtors or their Estates. No recourse shall ever be had, directly or indirectly, against the Liquidating Trustee, individually, or his or her representatives, agents, or professionals, by legal or equitable proceedings or by virtue of any statute or otherwise, or any acts taken by the Liquidating Trustee under the Joint Plan.

### 8.13 *Powers and Limitations of Liquidating Trustee.*

(a) The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and in the Confirmation Order. The responsibilities of the Liquidating Trustee shall include (i) the receipt, management, supervision, and protection of the assets of the Liquidating Estate on behalf of and for the benefit of the Creditors, including authority to establish such accounts as the Liquidating Trustee deems appropriate and to make all Distributions required under the Plan; (ii) the investigation, analysis, prosecution and, if necessary and appropriate, compromise of the claims and Causes of Action included among the assets of the Liquidating Estate; (iii) the marketing, selling, leasing, or otherwise disposing of any of the assets of the Liquidating Estate; (iv) filing all required tax returns and paying taxes and all other obligations of the Liquidating Estate; and (v) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, by orders of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan.

(b) The Liquidating Trustee shall be deemed to be for all purposes the “representative” of the Liquidating Estate as set forth in Section 1123(b) of the Bankruptcy Code to retain, enforce, settle and prosecute all Causes of Action. The Liquidating Trustee shall use its best efforts to promptly liquidate the assets of the Liquidating Estate as soon as practicable at minimal cost and to distribute the proceeds thereof (including any Causes of Action Recoveries and Excluded Assets Recoveries) as soon as practicable pursuant to this Plan. The powers of the Liquidating Trustee shall include the power to (i) invest funds; (ii) make Distributions; (iii) pay taxes and other obligations owed by the Liquidating Estate; (iv) engage and compensate, from the assets of the Liquidating Estate, consultants, agents, employees and professional persons to assist the Liquidating Trustee with respect to the Liquidating Trustee’s responsibilities; (v) retain and compensate, from the assets of the Liquidating Estate, the services of experienced auctioneers, brokers, and/or marketing agents to assist and/or advise in the sale or other disposition of the assets of the Liquidating Estate; (vi) liquidate and dispose of the assets of the Liquidating Estate; (vii) prosecute, compromise and settle Causes of Action, with approval of the Bankruptcy Court being required only as stated in the Plan or in the Confirmation Order; (viii) act on behalf of the Liquidating Estate in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere, including any appeals; (ix) commence and/or pursue any and all Causes of Action involving assets of the Liquidating Estate that could arise or be asserted at any time, unless otherwise waived or relinquished in this Plan or in a Final Order of the Bankruptcy Court; (x) sue and be sued, including the filing and defending of any contested matters and adversary proceedings in the Bankruptcy Court and actions or other proceedings in any other court, and pursue or defend any appeal from any judgment or order therefrom; (xi) utilize assets of the Liquidating Estate to purchase appropriate insurance to insure the acts and omissions of the Liquidating Trustee; and (xii) act and implement this Plan and orders of the Bankruptcy Court. The Liquidating Trustee shall exercise such powers in accordance with the provisions of this Plan

and the Confirmation Order. The Liquidating Trustee shall be entitled to retain any of the Professionals, in its sole discretion, that have been employed by the Debtors or other parties in interest in the Bankruptcy Cases. The Liquidating Trustee shall obtain the approval of the Bankruptcy Court prior to retention and engagement of any professional who has not previously been approved by the Bankruptcy Court as a professional for the Debtors in the Bankruptcy Cases. The provision of services by a Professional to the Debtors in the Bankruptcy Cases shall not disqualify such Professional from employment by the Liquidating Trustee.

(c) The Liquidating Trustee shall not do any act or undertake any activity unless it determines, in good faith, that such act or activity is desirable, necessary or appropriate for the management, conservation, and protection of the Debtors' Estates.

(d) The Liquidating Trustee shall not be deemed to make any representations or warranties as to the value or condition of the Assets of the Debtors' Estates, or as to the validity, execution, enforceability, legality, or sufficiency of this Plan, and the Liquidating Trustee shall incur no liability or responsibility in respect of such matters. Persons dealing with the Liquidating Trustee shall look only to the Assets of the Debtors' Estates to satisfy any liability incurred by the Liquidating Trustee to such Person in carrying out the terms of this Plan, and the Liquidating Trustee shall have no personal or individual obligation to satisfy any such liability, unless it is proven that the Liquidating Trustee was grossly negligent or acted with willful misconduct in ascertaining the pertinent facts or in performing any of the rights, powers or duties hereunder.

#### **8.14 *Compensation of Liquidating Trustee.***

(a) The initial compensation of the Liquidating Trustee shall be on an hourly rate basis as established by the Bankruptcy Court, plus reimbursement for actual, reasonable and necessary expenses incurred by the Liquidating Trustee, and such amounts shall be paid by the Liquidating Estate. The Liquidating Trustee shall not be entitled to increase such hourly rate absent an order of the Bankruptcy Court. From and after the Effective Date, any professionals engaged or retained by the Liquidating Trustee shall be entitled to reasonable compensation to perform services for the Liquidating Trustee. The fees and expenses of the Liquidating Trustee and any professionals employed by the Liquidating Trustee shall be subject to review and approval by the Bankruptcy Court. Unless otherwise provided in an order of the Bankruptcy Court, the Liquidating Trustee and any professionals engaged or retained by the Liquidating Trustee shall be required to file interim applications for approval of fees and expenses with the Bankruptcy Court every sixty (60) days following the Effective Date.

(b) Subject to Bankruptcy Court approval, all costs and expenses and obligations incurred by the Liquidating Trustee in administrating the Plan or any manner connected, incidental, or related thereto shall be a claim against the Assets

of the Debtors' Estates, including payments to the Liquidating Trustee for its services as Liquidating Trustee.

**8.15 *Resignation of Liquidating Trustee.*** The Liquidating Trustee shall, after written notice filed with the Bankruptcy Court, be entitled to resign as Liquidating Trustee for any reason. The Liquidating Trustee shall be obligated to perform its duties under this Plan, and shall be entitled to compensation (under terms previously approved by the Bankruptcy Court) through and including the date a replacement is approved by the Bankruptcy Court. In the event of such resignation, the Liquidating Trustee shall file a notice of replacement Liquidating Trustee with the Bankruptcy Court, whose appointment shall be subject to Bankruptcy Court approval.

**8.16 *No Bond Required of Liquidating Trustee.*** The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. If otherwise so ordered, all costs and expenses of procuring any such bond shall be paid by the Liquidating Estate.

**8.17 *Pursuit of Causes of Action.***

(a) On the Effective Date, the Causes of Action shall vest in, and become assets of, the Liquidating Estate as provided in Article 8.04 of the Plan, except to the extent a Creditor or other third party has been specifically released from any Cause of Action by the terms of the Plan or by a Final Order of the Bankruptcy Court, including the Mediation Settlement Order. The Causes of Action shall be pursued by the Liquidating Trustee. Except as otherwise provided in the Plan, the Liquidating Trustee will have the rights, powers and privileges, in its sole and absolute discretion, to pursue, not pursue, settle, release or enforce any Causes of Action without seeking any approval from the Bankruptcy Court. The Plan Proponents are not currently in a position to express an opinion on the merits of any of the Causes of Action or on the recoverability of any amounts as a result of any such Causes of Action. For purposes of providing notice, the Plan Proponents state that any party in interest that engaged in business or other transactions with the Debtors Prepetition or that received payments from the Debtors Prepetition may be subject to litigation to the extent that applicable bankruptcy or non-bankruptcy law supports such litigation. In this regard, notice is hereby given that the Causes of Action shall include any avoidance actions relating to preferential transfers and possible fraudulent transfers under various provisions of the Bankruptcy Code against various trade Creditors and other Prepetition Creditors, as more particularly listed in the Statement of Financial Affairs, Part 2, Item 3 [Doc. No. 91]. The Liquidating Trustee Reserve Amount will fund the expenses of the Liquidating Trustee to pursue the Causes of Action, including fees of counsel for the Liquidating Trustee.

(b) No Creditor or other party should vote for the Plan or otherwise rely on the Confirmation of the Plan or the entry of the Confirmation Order in order to obtain, or on the belief that it will obtain, any defense to any Cause of Action. No Creditor or other party should act or refrain from acting on the belief that it will obtain any defense to any Cause of Action. **ADDITIONALLY, EXCEPT AS**

OTHERWISE PROVIDED IN ARTICLE 11, THE PLAN DOES NOT, AND IS NOT INTENDED TO, RELEASE ANY CAUSES OF ACTION, AND ALL SUCH RIGHTS ARE SPECIFICALLY RESERVED IN FAVOR OF THE LIQUIDATING TRUSTEE AND THE LIQUIDATING ESTATE. Creditors are advised that legal rights, claims and rights of action the Debtors may have against them, if they exist, are retained under the Plan for prosecution unless a specific order of the Bankruptcy Court authorizes the Debtors to release such claims. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim or right of action against a particular Creditor in the Disclosure Statement, the Plan, or the Schedules, or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Plan Proponents or the Liquidating Trustee do not possess or do not intend to prosecute a particular claim or Cause of Action if a particular Creditor votes to accept the Plan. Except as otherwise provided in Article 11, it is the expressed intention of the Plan to preserve rights, claims, and rights of action of the Debtors, whether now known or unknown, for the benefit of the Liquidating Estate and the Debtors' Creditors. A Cause of Action shall not, under any circumstances, be waived as a result of the failure of the Plan Proponents to describe such Cause of Action with specificity in the Plan or the Disclosure Statement; nor shall the Liquidating Trustee, as a result of such failure, be estopped or precluded under any theory from pursuing such Cause of Action. Nothing in the Plan operates as a release of any of the Causes of Action, except as expressly provided otherwise.

(c) The Plan Proponents do not presently know the full extent of the Causes of Action, and, for purposes of voting on the Plan, all Creditors are advised that the Liquidating Trustee will have substantially the same rights that a Chapter 7 trustee would have with respect to the Causes of Action. Accordingly, except as otherwise provided in Article 11, neither a vote to accept the Plan by any Creditor nor the entry of the Confirmation Order will act as a release, waiver, bar or estoppel of any Cause of Action against such Creditor or any other Person or Entity, unless such Creditor, Person or Entity is specifically identified by name as a released party in the Plan, in the Confirmation Order, or in any other Final Order of the Bankruptcy Court. Confirmation of the Plan and entry of the Confirmation Order is not intended to and shall not be deemed to have any *res judicata* or collateral estoppel or other preclusive effect that would precede, preclude, or inhibit prosecution of such Causes of Action following Confirmation of the Plan.

(d) The Liquidating Estate shall remain open, even if the Bankruptcy Cases shall have been closed, as to any and all Causes of Action until such time as the Causes of Action have been fully administered and the assets of the Liquidating Estate have been distributed as provided in this Plan.

**8.18 Prosecution and Settlement of Causes of Action.** The Liquidating Trustee (a) may commence or continue in any appropriate court or tribunal any suit or other proceeding for the enforcement of any Cause of Action which the Debtors had or had power to assert immediately prior to the Confirmation Date, and (b) may settle or adjust such Cause of Action. From and after the Effective Date, the Liquidating Trustee shall be authorized pursuant to Bankruptcy Rule

9019(b) and Section 105(a) of the Bankruptcy Code to compromise and settle any Cause of Action in accordance with the following procedures, which shall constitute sufficient notice in accordance with the Bankruptcy Code and the Bankruptcy Rules for compromises and settlements: (i) if the resulting settlement provides for settlement of a Cause of Action originally asserted in an amount equal to or less than \$25,000.00, then the Liquidating Trustee may settle the Cause of Action upon notice to the Notice Parties and execute necessary documents, including a stipulation of settlement or release, in its sole discretion and without notice to any other party; and (ii) if the resulting settlement involves a Cause of Action initially asserted in an amount exceeding \$25,000.00, then the Liquidating Trustee shall, upon written notice to the Notice Parties, be authorized and empowered to settle such Cause of Action only upon Bankruptcy Court approval in accordance with Bankruptcy Rule 9019.

**8.19 Establishment of Liquidating Trustee Reserve Amount.** As soon as reasonably practicable (as determined by the Liquidating Trustee) after the Effective Date, the Liquidating Trustee shall deposit the Cash assets of the Liquidating Estate into the Liquidating Trustee Reserve Account. The Liquidating Trustee shall be entitled to always maintain a balance in the Liquidating Trustee Reserve Account equal to the Liquidating Trustee Reserve Amount (the “**Minimum Reserve Balance**”).

**8.20 Deposits and Disbursements as to Liquidating Trustee Reserve Account.** Upon the receipt by the Liquidating Estate of any Cash assets, including any Causes of Action Recoveries and any Excluded Assets Recoveries, the Liquidating Trustee shall promptly deposit such Cash assets into the Liquidating Trustee Reserve Account. If, at the end of any calendar month following the Closing Date, the balance in the Liquidating Trustee Reserve Account exceeds the Minimum Reserve Balance by \$25,000.00, the Liquidating Trustee may transfer such excess balance to such distribution accounts as the Liquidating Trustee deems appropriate. All funds transferred to the Liquidating Trustee pursuant to this Article 8.20 shall be made available for Distributions in accordance with the provisions of Article 9.02 of this Plan.

**8.21 Dissolution of the Committees.** Upon the Effective Date, the Committees shall be dissolved.

**8.22 Trust Advisory Board.** On the Effective Date, an advisory board (the “**Trust Advisory Board**”) shall be established and, until the Bankruptcy Cases are closed, the Liquidating Trustee shall consult regularly with the Trust Advisory Board when carrying out the purpose and intent of this Plan. The Trust Advisory Board shall be initially comprised of five (5) members, each of whom shall be Holders of Allowed Claims against the Debtors. Subject to the approval of the Bankruptcy Court, three (3) of the initial members of the Trust Advisory Board shall be jointly nominated by the Committees, and two (2) of the initial members of the Trust Advisory Board shall be jointly nominated by the Holders of Allowed Claims in Classes 2 and 3. Until the Bankruptcy Cases are closed, the Liquidating Trustee shall consult regularly with the Trust Advisory Board when carrying out the purpose and intent of this Plan; provided, however, that the Liquidating Trustee is not required to abide by any advice or recommendations of the Trust Advisory Board. The members of the Trust Advisory Board shall be entitled to compensation and reimbursement of the reasonable and necessary expenses incurred by them in carrying out the purposes of the Trust Advisory Board, subject to the approval of the Bankruptcy Court and payable as an expense of the Liquidating Estates in the same manner as the expenses of the Liquidating



Trustee accordance with the provisions of Article 8.14 of this Plan. In the case of an inability or unwillingness of any member of the Trust Advisory Board to serve, such member shall be replaced by designation of the remaining members of the Trust Advisory Board. Upon certification by the Liquidating Trustee that all assets of the Estates have been liquidated, distributed, abandoned, or otherwise disposed of, the members of the Trust Advisory Board shall resign their positions, whereupon they shall be discharged from any further duties and responsibilities.

## **Article 9**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

**9.01 *Closing Distributions.*** At the Closing, the Liquidating Trustee shall pay, from the Cash Sale Proceeds, (a) Allowed Administrative Expense Claims (including Allowed Administrative Expense Claims of Professionals), Allowed Priority Tax Claims, and Allowed Priority Claims, and (b) the Allowed Claims in Classes 2, 4, 5, 6, 7, 8, and 9. Thereafter, the Liquidating Trustee shall make additional Distributions to Holders of Allowed Claims and Holders of Allowed Equity Interests as and when required by the terms of the Plan.

**9.02 *Distributions as to Allowed Claims in Class 13 and Class 14.***

(a) Notwithstanding any provision herein to the contrary, no Distribution shall be made to the Holder of a Disputed Claim in Class 13 unless and until such Disputed Claim becomes an Allowed Claim. If, on any applicable Distribution Date, any Disputed Claims in Class 13 remain, then the Liquidating Trustee shall withhold from any Distribution to the Holders of Allowed Class 13 Claims the amount of funds that would be necessary to make the same proportionate distribution to the Holders of all Class 13 Claims which are Disputed Claims as if each such Disputed Claim were an Allowed Class 13 Claim. At such time that such Disputed Claim becomes an Allowed Class 13 Claim, the Holder of such Allowed Class 13 Claim shall receive the Distribution to which such Holder is then entitled under the Plan.

(b) Notwithstanding any provision herein to the contrary, no Distribution shall be made to the Holder of a Disputed Claim in Class 14 unless and until such Disputed Claim becomes an Allowed Claim. If, on any applicable Distribution Date, any Disputed Claims in Class 14 remain, then the Liquidating Trustee shall withhold from any Distribution to the Holders of Allowed Class 14 Claims the amount of funds that would be necessary to make the same proportionate distribution to the Holders of all Class 14 Claims which are Disputed Claims as if each such Disputed Claim were an Allowed Class 14 Claim. At such time that such Disputed Claim becomes an Allowed Class 14 Claim, the Holder of such Allowed Class 14 Claim shall receive the Distribution to which such Holder is then entitled under the Plan.

(c) Notwithstanding any provision herein to the contrary, if, on any applicable Distribution Date, the Holder of a Class 13 Claim or a Class 14 Claim is subject to an Action against it by the Liquidating Trustee, the Liquidating Trustee

(in its sole discretion) may withhold a Distribution to such Holder until the final resolution of such Action.

(d) Distributions to a Holder of an Allowed Class 13 Claim or an Allowed Class 14 Claim shall be made at the address of such Holder set forth in the Schedules or on the books and records of the Debtors or the Liquidating Trustee at the time of the Distribution, unless the Liquidating Trustee has been notified in writing of a change of address, including by the filing of a Proof of Claim or statement pursuant to Bankruptcy Rule 3003(e) by such Holder that contains an address for such Holder different than the address for such Holder as set forth in the Schedules. The Liquidating Trustee shall not be liable for any Distribution sent to the address of record of a Holder in the absence of the written change thereof as provided herein.

### **9.03 *Determination of Claims.***

(a) Unless otherwise provided in an order of the Bankruptcy Court, the Plan Proponents or the Liquidating Trustee, as applicable, shall have the exclusive authority to, and shall, file, settle, compromise, withdraw, or litigate to judgment all objections to Claims. Except as to any late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases, if any, all objections to Claims shall be filed with the Bankruptcy Court by no later than the Claims Objection Deadline, and the Confirmation Order shall contain appropriate language to that effect. Holders of Class 14 Unsecured Claims that have not filed such Claims on or before the Bar Date shall serve notice on the Notice Parties of any request to the Bankruptcy Court for allowance to file late Unsecured Claims. If the Bankruptcy Court grants the request to file a late Unsecured Claim, such Unsecured Claim shall be treated in all respects as a Class 14 Unsecured Claim. Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of (i) sixty (60) days following the Effective Date or (ii) the date 60 days after the Debtors receive actual notice of the filing of such Claim.

(b) Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the Plan Proponents or the Liquidating Trustee as applicable effect service in any of the following manners: (i) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, (ii) to the extent counsel for the Holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory on the Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto, or (iii) by first class mail, postage prepaid, on any counsel that has filed a notice of appearance in the Bankruptcy Cases on behalf of the Holder of a Claim.

(c) Disputed Claims shall be fixed or liquidated in the Bankruptcy Court as core proceedings within the meaning of 28 U.S.C. § 157(b)(2)(B) unless the Bankruptcy Court orders otherwise. If the fixing or liquidation of a contingent or

unliquidated Claim would cause undue delay in the administration of the Bankruptcy Cases, such Claim shall be estimated by the Bankruptcy Court for purposes of allowance and distribution. The Plan Proponents or the Liquidating Trustee as applicable may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Plan Proponents or the Liquidating Trustee as applicable previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Plan Proponents or the Liquidating Trustee as applicable may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. The determination of Claims in Estimation Hearings shall be binding for purposes of establishing the maximum amount of the Claim for purposes of allowance and distribution. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Procedures for specific Estimation Hearings, including provisions for discovery, shall be set by the Bankruptcy Court giving due consideration to applicable Bankruptcy Rules and the need for prompt determination of the Disputed Claim.

#### **9.04 *Unclaimed Distributions.***

(a) If the Holder of an Allowed Claim fails to negotiate a check for a Distribution issued to such Holder within sixty (60) days of the date such check was issued, then the Liquidating Trustee shall provide written notice to such Holder stating that, unless such Holder negotiates such check within thirty (30) days of the date of such notice, the amount of Cash attributable to such check shall be deemed to be unclaimed, such Holder shall be deemed to have no further Claim in respect of such check, and such Holder shall not be entitled to participate in any further Distributions under the Plan in respect of such Claim.

(b) If a check for a Distribution made pursuant to the Plan to any Holder of an Allowed Claim is returned to the Liquidating Trustee due to an incorrect or incomplete address for the Holder of such Allowed Claim, and no claim is made in writing to the Liquidating Trustee as to such check within thirty (30) days of the date such Distribution was made, then the amount of Cash attributable to such check shall be deemed to be unclaimed, such Holder shall be deemed to have no further Claim in respect of such check, and such Holder shall not be entitled to participate in any further Distributions under the Plan in respect of such Claim.

(c) Any unclaimed Distribution as described above shall be property of the Liquidating Trustee available for further Distributions as required by Article 9.02 of the Plan.

**9.05 *Transfer of Claim.*** In the event that the Holder of any Claim shall transfer such Claim on and after the Effective Date, such Holder shall immediately advise the Liquidating Trustee in writing of such transfer and provide sufficient written evidence of such transfer. The Liquidating Trustee shall be entitled to assume that no transfer of any Claim has been made by any Holder unless and until the Liquidating Trustee shall have received written notice to the contrary. Each transferee of any Claim shall take such Claim subject to the provisions of the Plan and to any request made, waiver or consent given or other action taken hereunder and, except as otherwise expressly provided in such notice, the Liquidating Trustee shall be entitled to assume conclusively that the transferee named in such notice shall thereafter be vested with all rights and powers of the transferor under the Plan.

**9.06 *One Distribution per Holder.*** If the Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one Claim for purposes of Distributions hereunder, and only one Distribution shall be made with respect to the single aggregated Claim.

**9.07 *Effect of Pre-Confirmation Distributions.*** Nothing in the Plan shall be deemed to entitle the Holder of a Claim that received, prior to the Effective Date, full or partial payment of such Holder's Claim, by way of settlement or otherwise, pursuant to an order of the Bankruptcy Court, provision of the Bankruptcy Code, or other means, to receive a duplicate payment in full or in part pursuant to the Plan. All such full or partial payments shall be deemed to be payments made under the Plan for purposes of satisfying the obligations of the Debtors or the Liquidating Trustee as applicable to such Holder under the Plan.

**9.08 *No Interest on Claims.*** Except as expressly stated in the Plan or otherwise Allowed by a Final Order of the Bankruptcy Court, no Holder of an Allowed Claim shall be entitled to the accrual of Postpetition interest or the payment of Postpetition interest, penalties, or late charges on account of such Allowed Claim for any purpose. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a Distribution is made when and if such Disputed Claim becomes an Allowed Claim.

**9.09 *Compliance with Tax Requirements.*** In connection with the Plan, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities, and all Distributions hereunder shall be subject to such withholding and reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim or an Allowed Equity Interest that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Distribution.

## **Article 10**

### **CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE**

**10.01 *Condition Precedent to Confirmation of the Plan.*** The following are conditions precedent to Confirmation of the Plan: (i) the Bankruptcy Court shall have made such findings and

determinations regarding the Plan as shall enable the entry of the Confirmation Order in a manner consistent with the provisions of the Plan; and (ii) the Plan Proponents shall have timely filed the Plan Supplement containing, among other things, the Plan Documents. For the avoidance of doubt, the approval of the releases and injunctions in Articles 11.05, 11.06, and 11.08 of the Plan shall not be conditions precedent to Confirmation of the Plan.

**10.02 *Conditions Precedent to the Effective Date.*** The Plan shall not be consummated and the Effective Date shall not occur unless (a) the Confirmation Order shall be a Final Order and (b) the Additional Lender Documents have been executed by all parties thereto.

**10.03 *Waiver.*** The Plan Proponents retain the right to waive any condition precedent to the Confirmation of the Plan or the Effective Date by filing a notice in the Bankruptcy Cases. Any such waiver shall be effective immediately.

**10.04 *Notice of the Effective Date.*** Promptly following the satisfaction, or the waiver by the Plan Proponents, of all of the conditions set forth in Article 10.02, the Plan Proponents or the Liquidating Trustee shall file a notice (the “**Effective Date Notice**”) with the Bankruptcy Court designating the Effective Date. The Liquidating Trustee shall serve the Effective Date Notice on all of the Notice Parties.

## Article 11

### EXCULPATION FROM LIABILITY, GENERAL INJUNCTION, AND RELEASES

**11.01 *Exculpation from Liability.*** The Debtors and their officers, directors, partners, employees, and Professionals (acting in such capacity), the Committees and their members and Professionals (acting in such capacity), the Buyer and its officers, directors, members, managers, employees, and professionals (acting in such capacity), and the Examiner and his Professionals (acting in such capacity) (collectively, the “Exculpated Parties”) shall neither have nor incur any liability whatsoever to any Person or Entity for any act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, or Confirmation of the Plan, the Disclosure Statement, the Asset Purchase Agreement, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the Bankruptcy Cases, for the period on and after the Petition Date and through the Effective Date; provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud or the willful misconduct or gross negligence of any such party or breach of any contract or any fiduciary duty. With respect to Professionals, the foregoing exculpation from liability provision shall also include claims of professional negligence arising from the services provided by such Professionals during the Bankruptcy Cases. Any such claims shall be governed by the standard of care otherwise applicable to the standard of negligence claims outside of bankruptcy. The rights granted under this Article 11.01 are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Exculpated Parties have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. In furtherance of the foregoing, the Exculpated Parties shall have the fullest protection afforded under Section 1125(e) of the Bankruptcy Code and all applicable law from liability for violation of any applicable law, rule or regulation governing the solicitation of acceptance or

**rejection of a plan. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. This exculpation from liability provision is not intended to, and does not, release any Prepetition Causes of Action.**

**11.02 General Injunction. Pursuant to Sections 105, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, Liability or Equity Interest shall be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such Claims, Debts, Liabilities or Equity Interests, other than actions brought to enforce any rights or obligations under the Plan: (a) commencing or continuing in any manner any action or other proceeding against the Debtors, their Assets or their Estates, or the Buyer or the Purchased Assets, or the Liquidating Trustee or the Liquidating Estate; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors, their Assets or their Estates, or the Buyer or the Purchased Assets, or the Liquidating Trustee or the Liquidating Estate; (c) creating, perfecting or enforcing any Lien against the Debtors, their Assets or their Estates, or the Buyer or the Purchased Assets, or the Liquidating Trustee or the Liquidating Estate; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors or their Estates or the Liquidating Estate; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order; or (f) interfering with or in any manner whatsoever disturbing the rights and remedies of the Debtors or their Estates, the Liquidating Trustee or the Liquidating Estate under the Plan and the documents executed in connection therewith. The Plan Proponents, or the Buyer, the Liquidating Trustee or the Liquidating Estate, shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation.**

***11.03 Term of Certain Injunctions and Automatic Stay.***

(a) All injunctions or automatic stays provided for in the Bankruptcy Cases pursuant to Sections 105, 362 or other applicable provisions of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date or the Effective Date, shall remain in full force and effect following the Confirmation Date or the Effective Date, as applicable, and until the Final Decree Date, unless otherwise ordered by the Bankruptcy Court.

(b) With respect to all lawsuits or Actions pending in courts in any jurisdiction (other than the Bankruptcy Court) in which the Debtors were listed as a defendant and that seek to establish the Debtors' liability on Prepetition Claims asserted therein and that are stayed pursuant to Section 362 of the Bankruptcy Code, such lawsuits or Actions shall be deemed dismissed as of the Effective Date, unless the Debtors or the Liquidating Trustee as applicable affirmatively elect to have the Debtors' liability established by such other courts, and any pending motions seeking relief from the automatic stay for purposes of continuing any such

lawsuits or Actions in such other courts shall be deemed denied as of the Effective Date, and the automatic stay shall continue in effect, unless the Plan Proponents or the Liquidating Trustee as applicable affirmatively elect to have the automatic stay lifted and to have the Debtors' liability established by such other courts; and the Prepetition Claims at issue in such lawsuits or Actions shall be determined and either Allowed or disallowed in whole or part by the Bankruptcy Court pursuant to the applicable provisions of the Plan, unless otherwise elected by the Plan Proponents or the Liquidating Trustee as applicable as provided herein. To be clear, any lawsuits or Actions pending in courts in any jurisdiction in which the Plan Proponents or the Liquidating Trustee as applicable are a plaintiff or seek to establish a claim against another party are not subject to this Article 11.03 and shall not be deemed dismissed.

**11.04 *No Liability for Tax Claims.*** Unless a taxing Governmental Unit has asserted a Claim against the Debtors before the Governmental Unit Bar Date or Administrative Expense Claim Bar Date established therefor, no Claim of such Governmental Unit shall be Allowed against the Debtors, the Liquidating Trustee or the Liquidating Estates, the Buyer or the Purchased Assets, or any of the Plan Proponents', the Liquidating Trustee's or the Buyer's officers, directors, partners, members, or agents, for taxes, penalties, interest, additions to tax or other charges arising out of (i) the failure, if any, of the Plan Proponents, any of their Affiliates, or any other Person or Entity to have paid tax or to have filed any tax return (including any income tax return or franchise tax return) in or for any prior year or period or (ii) an audit of any return for a period before the Petition Date.

**11.05 *Release of Plan Release Parties.*** Upon the occurrence of the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, except as expressly provided in this Plan, the Insider Release Parties shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Plan Release Parties from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever, whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, in law, at equity or otherwise, which the Insider Release Parties, or anyone claiming through them, on their behalf or for their benefit, may have or claim to have as of the Effective Date, against the Plan Release Parties that are based upon, relate to, or arise out of, in connection with or pertain to (a)(i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended), or (b) any act, fact, transaction, event, occurrence, statement or omission in connection with (i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended), or (c) anything alleged in any complaint asserted by a Plan Release Party against an Insider Release Parties, including but not limited to, anything alleged in a draft complaint made part of the record in the Bankruptcy Cases, or that could have been alleged in any complaint or other similar proceedings; provided, however, the release of the Plan Release Parties shall not effect a release of any claims the Insider Release Parties may hold against Timothy Parker, Kathleen

Burkholder, Lawrence Landry, Agewell Senior Living LLC, John McCoy, David Mills, Mark Lichtenwalner, Westport Senior Living Investment Fund and their individual members and/or limited partners (collectively, the “Excluded Parties”). Notwithstanding anything contained in this Section 11.05 or elsewhere in this Plan to the contrary, the foregoing is not intended to release, nor shall it have the effect of (w) releasing any Plan Release Party or the Liquidating Trustee from the performance of their respective obligations in accordance with this Plan or the Mediated Settlement Agreement, (x) releasing any Plan Release Party or the Liquidating Trustee from making any Distribution to any Insider Release Party that is authorized and provided for in this Plan, (y) releasing or otherwise prohibiting any Insider Release Party from asserting any released claim defensively or in response to any claim brought against the Insider Release Party by any Entity, or (z) releasing any Plan Release Party from any claim arising after the Effective Date.

11.06 *Release of Insider Release Parties.* Upon the occurrence of the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the Bankruptcy Court, except as expressly provided in this Plan, the Plan Release Parties shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived, released, acquitted and discharged the Insider Release Parties from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies and demands, of any and every kind, character or nature whatsoever (including Unknown Claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, in law, at equity or otherwise, which the Plan Release Parties, or any of them, or anyone claiming through them, on their behalf or for their benefit may have or claim to have as of the Effective Date, against any Insider Release Party that are based upon, relate to, or arise out of, in connection with or pertain to (a)(i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended), or (b) any act, fact, transaction, event, occurrence, statement or omission in connection with (i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended), or (c) the Insider Recovery Claims or the Insider Causes of Action, or (d) anything alleged in any complaint asserted by a Plan Release Party against an Insider Release Party, including but not limited to, anything alleged in a draft complaint made part of the record in the Bankruptcy Cases, or that could have been alleged in any complaint or other similar proceedings, including Unknown Claims (collectively, the “Released Claims”); provided, however, the release of the Insider Release Parties described herein shall not apply to (x) any claims that may be asserted by any Excluded Party against an Insider Release Party or (y) any claims that may be asserted by any party in defense or in response to a claim asserted by an Insider Release Party or (z) any claims arising after the Effective Date. Notwithstanding anything contained in this Section 11.06 or elsewhere in this Plan to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing the Insider Release Party from the performance of their obligations in accordance with the Mediated Settlement Agreement.



**11.07 Unknown Claims.** An “Unknown Claim” is any Released Claim that any Plan Release Party does not know or suspect to exist in its favor at the time of giving the release required by Article 11.06 of this Plan that if known by it might have affected its agreement to the settlement and release provided in the Mediated Settlement Agreement or in this Plan. With respect to any and all Released Claims, each Plan Release Party shall expressly waive or be deemed to have waived, and by operation of the Confirmation Order shall have waived the provisions, rights and benefits of California Civil Code § 1542 (to the extent it applies herein), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Each Plan Release Party expressly waives, and shall be deemed to have waived, and by operation of the Confirmation Order shall have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code § 1542. The Plan Release Parties may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but each Plan Release Party shall expressly have and shall be deemed to have, and by operation of the Confirmation Order shall have fully, finally and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery of existence of such different or additional facts. Each Plan Release Party acknowledges and shall be deemed to have acknowledged, and by operation of the Confirmation Order shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Plan of which this release is a part.

**11.08 Insider Release Party Injunction and Bar Order.** Upon the occurrence of the Effective Date, the Confirmation Order shall act as an injunction against each and every Entity, and shall permanently enjoin, bar, and restrain each and every Entity from instituting, prosecuting, continuing, pursuing or litigating in any manner any Released Claim or any action, suit or proceeding against any Insider Release Party, or from (in each case, whether pre-judgment or post-judgment) enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering by any means or in any manner from any Insider Release Party based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, of any Insider Release Party to or for the benefit of any Entity arising from, in any way related to, based upon, arising in connection with (a)(i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended), or (b) the Released Claims, or (c) the Insider Recovery Claims, or (d) any other claims, acts, facts, transactions, events, occurrences, statements or omissions that are or could have been alleged in any complaint asserted by a Plan Release Party against an Insider Release Party, including

**but not limited to, anything alleged in a draft complaint made part of the record in the Bankruptcy Cases, or in any other complaint, action, suit or proceeding brought or that might be brought by, through, on behalf of, or for the benefit of any Entity (whether arising under federal, state or foreign law and regardless of where asserted), that is in any way related to (i) the Bankruptcy Cases, (ii) the Debtors, (iii) WNT, (iv) University Village, (v) the Independent Living Facility, (vi) the Health Center, (vii) this Plan (as may be amended); provided, however, the relief provided in this Section 11.08 shall not apply to (x) any claims that may be asserted by any Excluded Party against an Insider Release Party or (y) any claims that may be asserted by any party in defense or in response to a claim asserted by an Insider Release Party; or (z) any claims arising after the Effective Date.**

## Article 12

### RETENTION OF JURISDICTION

**12.01 General Retention.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, until the Bankruptcy Cases are closed, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction of the Bankruptcy Cases that is permitted by applicable law, including that necessary to ensure that the purposes and intent of the Plan are carried out.

**12.02 Specific Purposes.** In addition to the general retention of jurisdiction set forth in Article 12.01, after Confirmation of the Plan and until the Bankruptcy Cases are closed, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Cases for the following specific purposes:

- (a) to approve the sale of the Purchased Assets pursuant to the terms of an Asset Purchase Agreement to be entered into between the Liquidating Trustee and the Buyer;
- (b) to approve any procedures related to the sale of the Purchased Assets;
- (c) to allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any application for an Administrative Expense Claim, and to determine any and all objections to the allowance or priority of Claims;
- (d) to determine any and all cases, controversies, suits or disputes arising under or relating to the Bankruptcy Cases, the Plan or the Confirmation Order (including regarding the effect of any discharge, exculpation, limitation of liability, or injunction provisions provided for herein or affected hereby and regarding whether the conditions to the consummation and/or Effective Date of the Plan have been satisfied);
- (e) to determine any and all applications for allowance of compensation of Professionals and reimbursement of expenses under Sections 330, 331 or 503(b) of the Bankruptcy Code arising out of or relating to the Bankruptcy Cases;

provided, however, that this retention of jurisdiction shall not require prior Bankruptcy Court approval of the payment of fees and reimbursement of expenses of Professionals after the Effective Date unless an objection to such fees and expenses has been made by the Plan Proponents or the Liquidating Trustee;

(f) to determine any and all motions pending as of the Effective Date (including pursuant to the Plan) for the rejection, assumption, or assignment of executory contracts or unexpired leases to which the Plan Proponents as applicable are a party or with respect to which the Debtors may be liable, and to determine the allowance of any Claims resulting from the rejection thereof or any Cure Claims;

(g) to determine any and all motions, applications, adversary proceedings, contested or litigated matters, Causes of Action, and any other matters involving the Plan Proponents or the Liquidating Trustee as applicable commenced in connection with, or arising during, the Bankruptcy Cases and pending on the Effective Date, including approval of proposed settlements thereof;

(h) to determine any and all matters, disputes and proceedings relating to any union the Debtors have or formerly had a relationship with through a collective bargaining agreement, including with respect to the Union Contract and the Union Pension Plan;

(i) to determine any and all matters, disputes and proceedings relating to the Resident Obligations or other Assumed Liabilities;

(j) to enforce, interpret and administer the terms and provisions of the Plan;

(k) to modify any provisions of the Plan to the fullest extent permitted by the Bankruptcy Code and the Bankruptcy Rules;

(l) to consider and act on the compromise and settlement of any Claim against the Debtors or the Estates or the Liquidating Estate;

(m) to assure the performance by the Debtors or the Liquidating Trustee of their obligations under the Plan;

(n) to correct any defect, cure any omission, reconcile any inconsistency or make any other necessary changes or modifications in or to the Disclosure Statement, the Plan, the Confirmation Order, or any exhibits or schedules to the foregoing, as may be necessary or appropriate to carry out the purposes and intent of the Plan, including the adjustment of the date(s) of performance under the Plan in the event the Effective Date does not occur as provided herein so that the intended effect of the Plan may be substantially realized thereby;

(o) to enforce all orders, judgments, injunctions and rulings entered in connection with the Bankruptcy Cases;

(p) to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, the Disclosure Statement, the Confirmation Order, or an Asset Purchase Agreement;

(q) to determine all questions and disputes regarding title to the Assets of the Debtors or their Estates or the assets of the Liquidating Estate;

(r) to determine any motions or contested matters involving taxes, tax refunds, tax attributes, tax benefits and similar or related matters with respect to the Debtors arising on or prior to the Effective Date or arising on account of transactions contemplated by the Asset Purchase Agreement or the Plan, including any matters, disputes, or proceedings related to homestead exemption liabilities;

(s) to resolve any determinations which may be requested by the Plan Proponents or the Liquidating Trustee as applicable or the Buyer of any unpaid or potential tax liability or any matters relating thereto under Sections 505 and 1146 of the Bankruptcy Code, including tax liability or such related matters for any taxable year or portion thereof ending on or before the Effective Date;

(t) to resolve any disputes concerning any exculpation of or limitation of liability as to a nondebtor hereunder or the injunction against acts, employment of process or actions against such nondebtor arising hereunder;

(u) to determine any and all matters, disputes and proceedings relating to the Excluded Assets or the Causes of Action, whether arising before or after the Effective Date;

(v) to issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity or Governmental Unit with consummation, implementation or enforcement of the Plan, the Confirmation Order, or an Asset Purchase Agreement;

(w) to enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(x) to determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, or the Confirmation Order, whether arising before or after the Effective Date;

(y) to enter such orders as are necessary to implement and enforce the injunctions described herein;

(z) to enforce the obligations of any purchaser of any Assets of the Debtors under an Asset Purchase Agreement;

(aa) to determine such other matters and for such other purposes as may be provided for in the Confirmation Order or as may from time to time be authorized under the provisions of the Bankruptcy Code or any other applicable law;

(bb) to enter an order concluding and terminating the Bankruptcy Cases.

**12.03 Closing of the Bankruptcy Cases.** In addition to the retention of jurisdiction set forth in Articles 12.01 and 12.02, the Bankruptcy Court shall retain jurisdiction of the Bankruptcy Cases to enter an order reopening the Bankruptcy Cases after they have been closed.

### **Article 13**

#### **MODIFICATION OF PLAN AND CONFIRMATION OVER OBJECTIONS**

#### **13.01 Modification of Plan.**

(a) The Plan Proponents retain the exclusive right to amend or modify the Plan, and to solicit acceptances of any amendments to or modifications of the Plan, through and until the Effective Date, provided that the Plan, as modified, and the Disclosure Statement meet applicable Bankruptcy Code and Bankruptcy Rules requirements.

(b) After the entry of the Confirmation Order, the Liquidating Trustee may modify the Plan to remedy any defect or omission herein, or to reconcile any inconsistencies between the Plan and the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided that (i) the Liquidating Trustee obtain Bankruptcy Court approval for such modification, after notice to the Notice Parties and a hearing; and (ii) such modification does not materially adversely affect the interests, rights, or treatment of any Class of Claims under the Plan.

(c) After the entry of the Confirmation Order and before substantial consummation of the Plan, the Liquidating Trustee may modify the Plan in a way that materially adversely affects the interests, rights, or treatment of a Class of Claims, provided that (i) the Plan, as modified, meets applicable Bankruptcy Code requirements; (ii) the Liquidating Trustee obtains Bankruptcy Court approval for such modification, after notice to the Notice Parties and a hearing; (iii) such modification is accepted by at least two-thirds in dollar amount, and more than one-half in number, of Allowed Claims actually voting in each Class adversely affected by such modification; and (iv) the Liquidating Trustee complies with Section 1125 of the Bankruptcy Code with respect to the Plan, as modified.

(d) Notwithstanding anything to the contrary contained in this Article 13.01 or elsewhere in the Plan, the Plan may not be altered, amended or modified

without the written consent of the Plan Proponents or the Liquidating Trustee as applicable.

**13.02 Confirmation Over Objections.** If any Impaired Class of Claims votes against the Plan, the Plan Proponents request, and shall be allowed, to modify the terms of the Plan to effect a “cramdown” on such dissenting Class by (a) restructuring the treatment of any Class on terms consistent with Section 1129(b)(2)(B) of the Bankruptcy Code, or (b) deleting Distributions to all Classes at or below the level of the objecting Class, or reallocating such Distributions, until such Impaired senior Classes are paid in accordance with the absolute priority rule of Section 1129(b) of the Bankruptcy Code. The Plan Proponents may make such modifications or amendments to the Plan and such modifications or amendments shall be filed with the Bankruptcy Court and served on all parties in interest entitled to receive notice prior to the Confirmation Hearing. No such modifications shall require any resolicitation of acceptances as to the Plan by any Class of Claims unless the Bankruptcy Court shall require otherwise. Notwithstanding any provision of the Plan to the contrary, the Plan Proponents reserve any and all rights they may have to challenge the validity, perfection, priority, scope and extent of any Liens in respect to any Secured Claims and the amount of any Secured Claims, the Holders of which have not accepted the Plan.

## **Article 14**

### **MISCELLANEOUS PROVISIONS**

**14.01 No Admissions.** The Plan provides for the resolution, settlement and compromise of Claims against and Equity Interests in the Debtors. Nothing herein shall be construed to be an admission of any fact or otherwise binding upon the Debtors as applicable in any manner prior to the Effective Date.

**14.02 Revocation or Withdrawal of the Plan.** Solely to the extent not inconsistent with the Asset Purchase Agreement, the Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan Proponents revoke or withdraw the Plan, or if Confirmation of the Plan does not occur, then the Plan shall be deemed null and void in all respects and nothing contained in the Plan shall be deemed to (a) constitute a waiver or release of any Claims against, or Equity Interests in, the Debtors or any other Person, or (b) prejudice in any manner the rights of the Debtors or any other Person in any further proceedings involving the Debtors.

**14.03 Standard for Approval of the Bankruptcy Court.** In the event any of the matters described herein are brought for approval before the Bankruptcy Court, then any such approval shall mean the entry of an order by the Bankruptcy Court approving the matter using the standards for approval of similar matters by a Chapter 11 debtor in possession.

**14.04 Further Assurances.** The Plan Proponents agree, and are hereby authorized, to execute and deliver any and all papers, documents, contracts, agreements and instruments that may be necessary to carry out and implement the terms and conditions of the Plan and the Asset Purchase Agreement.

**14.05 Headings.** The headings used in the Plan are for convenience and reference only and shall not constitute a part of the Plan for any other purpose or in any manner affect the construction of the provisions of the Plan.

**14.06 Notices.** All notices, requests, or other communications or documents in connection with, or required to be served by, the Plan shall be in writing and shall be sent by first class United States mail, postage prepaid, or by overnight delivery by a recognized courier service, to (i) the Debtors, c/o Charles A. Postler and Scott A. Stichter, Stichter, Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602, (ii) Jeffrey Warren, as Examiner, c/o Jeffrey W. Warren and Adam Lawton Alpert, Bush Ross, P.A., 1801 N. Highland Avenue, Tampa, Florida 33602, (iii) the Official Committee of Resident Creditors, c/o David S. Jennis, Jennis Law Firm, 606 East Madison Street, Tampa, Florida 33602, and (iv) the Ad Hoc Committee of Former Residents, c/o Lynn Sherman, Adams and Reese LLP, 101 East Kennedy Boulevard, Suite 4000, Tampa, Florida 33602

**14.07 Governing Law.** Except to the extent that federal law (including the Bankruptcy Code or the Bankruptcy Rules) is applicable, or where the Plan or the provision of any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to the principles of conflicts of law thereof.

**14.08 Limitation on Allowance.** No attorneys' fees, punitive damages, penalties, exemplary damages, or interest shall be paid with respect to any Claim except as otherwise specified in the Plan or as Allowed by a Final Order of the Bankruptcy Court.

**14.09 Estimated Claims.** To the extent any Claim is estimated for any purpose other than for voting on the Plan, then in no event shall such Claim be Allowed in an amount greater than the estimated amount.

**14.10 Consent to Jurisdiction.** Upon any default under the Plan, the Plan Proponents and the Liquidating Trustee, as applicable, consent to the jurisdiction of the Bankruptcy Court and agree that the Bankruptcy Court shall be the preferred forum for all proceedings relating to any such default. By accepting any Distribution or payment under or in connection with the Plan, by filing any Proof of Claim, by filing any Administrative Expense Claim, by voting on the Plan, by reason of being served with notice of the filing of the Bankruptcy Cases or the Confirmation Hearing, or by entering an appearance in the Bankruptcy Cases, all Creditors, Holders of Equity Interests, and other parties in interest, including Governmental Units and foreign Creditors and foreign parties in interest, have consented, and shall be deemed to have expressly consented, to the jurisdiction of the Bankruptcy Court for all purposes with respect to any and all matters relating to, arising under or in connection with the Plan Proponents or the Liquidating Trustee, as applicable, the Plan or the Bankruptcy Cases or the Asset Purchase Agreement, including the matters and purposes set forth in Article 12 hereof. The Bankruptcy Court shall maintain jurisdiction to the fullest extent allowed under applicable law over all matters set forth in Article 12 hereof.

**14.11 *Setoffs.*** Subject to the limitations provided in Section 553 of the Bankruptcy Code, the Debtors or the Liquidating Trustee, as applicable, may, but shall not be required to, set off against any Claim and any Distribution to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever the Debtors may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trustee, as applicable, of any such claim that the Debtors may have against the Holder of such Claim.

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

**14.13 *Modification of Payment Terms.*** The Plan Proponents or the Liquidating Trustee, as applicable, reserve the right to modify the treatment of any Allowed Claim, as provided in Section 1123(a)(4) of the Bankruptcy Code, at any time after the Effective Date, upon the consent of the Holder of such Allowed Claim.

**14.14 *Entire Agreement.*** Subject to the terms of the Asset Purchase Agreement (which are incorporated herein in their entirety), the Plan sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. No Person or Entity shall be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by such Person or Entity in writing.

**14.15 *Severability of Plan Provisions.*** If, prior to Confirmation of the Plan, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Plan Proponents, shall have the power to alter or interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term or provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

**14.16 *Confirmation Order and Plan Control.*** To the extent the Confirmation Order or the Plan is inconsistent with the Disclosure Statement or any agreement entered into between the Debtors and any third party, unless otherwise expressly provided in the Plan or the Confirmation Order, the Confirmation Order and the Plan shall control over the Disclosure Statement and any such agreement. The Confirmation Order (and any other Final Orders of the Bankruptcy Court) shall be construed together and consistent with the terms of the Plan; provided, however, to the extent the Confirmation Order is inconsistent with the Plan, the Confirmation Order shall control over the Plan.

**14.17 *Computation of Time.*** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.



**14.18 *Substantial Consummation.*** The Plan shall be deemed to be substantially consummated within the meaning of Section 1101 of the Bankruptcy Code upon the Closing of the sale and purchase of the Purchased Assets.

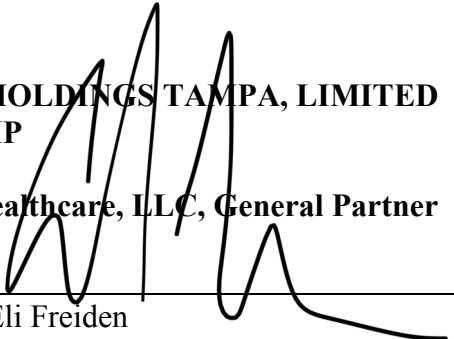
**14.19 *No Liability for Solicitation.*** Pursuant to Section 1125(e) of the Bankruptcy Code, any Person that solicits acceptances or rejections of the Plan, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account of such solicitation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

*[SIGNATURE PAGE FOLLOWS]*

Tampa, Florida  
Dated as of December 31, 2017

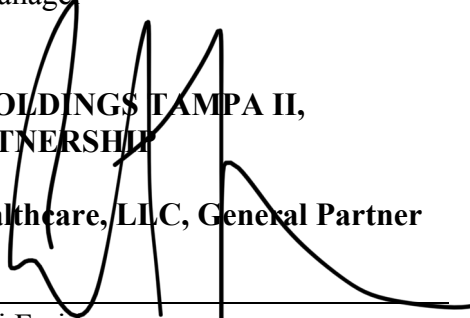
**WESTPORT HOLDINGS TAMPA, LIMITED  
PARTNERSHIP**

By: **IMH Healthcare, LLC, General Partner**

By:   
Name: Eli Freiden  
Title: Manager

**WESTPORT HOLDINGS TAMPA II,  
LIMITED PARTNERSHIP**

By: **IMH Healthcare, LLC, General Partner**

By:   
Name: Eli Freiden  
Title: Manager

/s/ Charles A. Postler


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Attorneys for the Debtors

12999.1972879v2

[Signature Page to First Amended and Restated Mediated Joint Plan of Liquidation]

Tampa, Florida  
Dated as of December 31, 2017

**THE OFFICIAL COMMITTEE OF RESIDENT  
CREDITORS OF WESTPORT HOLDINGS  
TAMPA, LIMITED PARTNERSHIP AND  
WESTPORT HOLDINGS TAMPA II,  
LIMITED PARTNERSHIP**

By:   
Name: Stephen K. Miller  
Title: Chairperson

/s/ David S. Jennis  
David S. Jennis (FBN 775940)  
Eric D. Jacobs (FBN 0058512)  
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Attorneys for the Official Committee of Resident  
Creditors

[Signature Page to First Amended and Restated Mediated Joint Plan of Liquidation]

**Exhibit A**

**List of Assumed Contracts**

1. Current Resident Contracts as of the Closing Date
2. Third Party Leases as of the Closing Date
3. The following Non-Resident Assumed Contracts:
  - a. Software License Agreement dated June 30, 2001 between Advanced Answers on Demand, Inc. and Westport Holdings Tampa, Limited Partnership d/b/a University Village and all exhibits, schedules, amendments and addendums thereto
  - b. Master Lease Agreement dated January 13, 2015 between Westport Holdings Tampa, Limited Partnership and VAR Resources, Inc., as assigned to Balboa Capital Corporation, and all exhibits, schedules, amendments and addendums thereto
  - c. Independent Contractor Agreement dated August 20, 2004 between Westport Holdings Tampa, Limited Partnership d/b/a University Village and Salon Services Corporation
  - d. System Agreement dated December 20, 2010 between Westport Holdings Tampa, Limited Partnership d/b/a University Village and Verizon Select Services, Inc.
  - e. 1199 SEIU, United Healthcare Workers East Collective Bargaining Contract with an execution date of July 30, 2014, by and between Westport Holdings Tampa, Limited Partnership and 1199SEIU United Healthcare Workers East Florida Healthcare Union
  - f. Washer/Dryer Lease Agreement with an execution date of July 24, 2014, by and between Westport Holdings Tampa, Limited Partnership and Commercial Laundries of West Florida, Inc.

**Exhibit B****Third Party Leases**

<b>Unit #</b>	<b>Last Name</b>	<b>First Name</b>	<b>Contract Date</b>	<b>Contract Name</b>
C301	Barrar	Jean	12/1/2014	Trial Life Agreement
B104	Belisle, Jr.	Raymond Paul	9/25/2014	Trial Life Agreement
D110	Brooks	Evangeline	5/24/2012	Trial Life Agreement
F105	Catalano & Schwab	Mary & Virginia	7/12/2016	Unknown - do not have copy of contract
D606	Clark	Philip	5/4/2016	Occupancy and Use Agreement (PLP)
A303	Doyle	Antoinette	9/21/2012	Trial Life Agreement
B607	Edwards	Grace	4/6/2015	Trial Life Agreement
D402	Eiler	Marie	6/30/2014	Trial Life Agreement
E104	Flackman	Martin & Jutta	5/16/2013	Trial Life Agreement
B708	Hooten	Julia	12/23/2014	Trial Life Agreement
E204	Hughes	Charles, Jr.	8/27/2013	Trial Life Agreement
D502	Jackson	Kenneth	8/28/2015	Trial Life Agreement
D407	Kenin	Marjorie	10/31/2014	Trial Life Agreement
C501	Kirkbak	Barbara	2/2/2016	Trial Life Agreement
C604	Kohake	Jerry	10/16/2014	Trial Life Agreement
C408	Lazzara	Ralph III & Mary Pittman-Lazzara	6/30/2015	Trial Life Agreement
C610	Lehrer	Sandra	8/9/2013	Trial Life Agreement
A103	Lombardo	Lydia	3/27/2012	Trial Life Agreement
C203	MacMillan	Harold	5/3/2016	Trial Life Agreement
A304	Maher	Margaret	4/13/2015	Trial Life Agreement
D410	Manes	Robert	7/29/2014	Trial Life Agreement
C204	Marrero	Maria	5/23/2014	Trial Life Agreement
D603	Meaza	Teru	6/30/2015	Trial Life Agreement
C103	Michael	Joyce	10/13/2015	Trial Life Agreement
B508	Miller	June	12/30/2014	Trial Life Agreement
D405	Miller	Stephen B.	7/29/2014	Trial Life Agreement
B502	Noonan	Jane	1/10/2015	Trial Life Agreement
B205	Rognes	Ray & Loretta	8/26/2013	Trial Life Agreement
C407	Rosen	Helen	8/26/2016	Occupancy and Use Agreement (PLP)
B702	Salter	Jim	10/6/2016	Occupancy and Use Agreement (PLP)
B305	Silvernail	Roger & Evelyn	10/1/2014	Trial Life Agreement

A507	Sperry	Eligia	5/18/2016	Premier Program Contract
A403	Stansell	Martha	8/14/2015	Trial Life Agreement
A102	Taylor	Spafford & Nancy	7/2/2016	Occupancy and Use Agreement (PLP)
D303	Trejbal	Alta	3/7/2014	Trial Life Agreement
G603	Vitale	James & Gertrude	5/30/2016	Occupancy and Use Agreement (PLP)
C603	Walker	Cynthia	8/22/2016	Premier Program Contract
A703	White	H. Elizabeth	6/12/2015	Trial Life Agreement
C209	Wyche	Collier	9/25/2015	Trial Life Agreement
E407	Zimmerer	Joseph & Irene	6/3/2014	Trial Life Agreement