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Counsel for UBS Securities LLC and UBS AG, London Branch

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	

UBS'S AMENDED WITNESS AND EXHIBIT LIST FOR OCTOBER 20, 2020 HEARING

UBS Securities LLC and UBS AG, London Branch (together, "UBS"), by and through their undersigned counsel, submit *UBS's Amended Witness and Exhibit List for October 20, 2020*

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Hearing for the hearing set for 9:30 am Central Time on October 20, 2020 in connection with the *Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1089].

A. Witnesses:

1. W. Kevin Moentmann;
2. Any witness called or designated by any other party; and
3. Any witness necessary for impeachment or rebuttal.

B. Exhibits:

No.	Exhibit	Offered	Admitted
1	Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith [**Docket No. 1089**]		
2	Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; and Exhibits [**Docket No. 1090**] Note: Ex. 2, 3, and 4 and Ex. B to Ex. 1 were filed under seal at **Docket Nos. 1128, 1129, 1130, and 1127** respectively		
3	Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81); and Exhibits [**Docket No. 1190**] Note: Objection, Exs. A, B, and C are pending the Court's ruling on a motion to seal		
4	Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving		

	Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81); and Exhibits and Attachments [**Docket No. 1192**] Note: Unredacted versions of the Declaration; Exs. 4, 5, and 6; and Attachments A, B, and C are pending the Court's ruling on a motion to seal		
5	UBS's Motion for Leave to File Documents under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81) [**Docket No. 1188**]		
6	Exhibits to the October 17, 2020 Deposition of James Seery, Jr. Note: Certain of these items were designated as "Confidential"		
7	Redline Comparing Amended and Restated Shareholders Agreement to original Stockholders' Agreement (dated March 24, 2010) Note: Designated as "Confidential" by the Debtor		
8	Cornerstone Healthcare Group Holding, Inc., Valuation Analysis as of July 31, 2020 Note: Designated as "Confidential" by the Debtor		
9	Cornerstone Healthcare Group Holding, Inc., Valuation Analysis as of August 31, 2020 Note: Designated as "Confidential" by the Debtor		
10	Certain reports related to the value of Cornerstone provided by the Debtor to UBS Note: Designated as "Confidential" by the Debtor		
11	Any pleadings, reports, or other documents entered or filed in this action, including any exhibits thereto		
12	All exhibits identified by or offered by any other party at the hearing		

13	All exhibits necessary for impeachment and/or rebuttal purposes		

UBS reserves the right to amend or supplement this witness and exhibit list prior to the hearing.

DATED this 20th day of October, 2020.

LATHAM & WATKINS LLP

By /s/ Sarah Tomkowiak

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Counsel for UBS Securities LLC and UBS AG, London Branch

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that *UBS's Amended Witness and Exhibit List for October 20, 2020 Hearing* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: October 20, 2020.

/s/ *Martin A. Sosland*
MARTIN A. SOSLAND

Exhibit 1

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1934054200923000000000003

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT THE EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE THE CLOSE OF BUSINESS ON OCTOBER 19, 2020, WHICH IS AT LEAST 24 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtor and debtor-in-possession (the "Debtor" or "HCMLP") files this motion (the "Motion") for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement agreement (the "Stipulation"), a copy of which is attached as **Exhibit 1** to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith*, executed on September 23, 2020 (the "Morris Dec."), that fully and finally resolves the proofs of claim filed by (A) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), and (B) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland

Crusader Fund II, Ltd. (collectively, the "Crusader Funds"). In support of this Motion, the Debtor represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Bankruptcy Rules.

RELEVANT BACKGROUND

A. Procedural Background

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the official committee of unsecured creditors (the "Committee") was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's bankruptcy case to this Court [Docket No. 186].[2]

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No.

[2] All docket numbers refer to the docket maintained by this Court.

281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor's general partner, Strand Advisors, Inc. (the "Independent Board"), and certain operating protocols were instituted (the "Protocols").

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor's chief executive officer and chief financial officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

B. The Redeemer Committee's Claim

10. The Crusader Funds were formed between 2000 and 2002. HCMLP served as the Crusader Funds' investment manager until August 2016.

11. In October 2008, at the height of the financial crisis, HCMLP commenced wind-down proceedings on behalf of the Crusader Funds.

12. The Redeemer Committee was formed pursuant to a *Joint Plan of Distribution of the Crusader Funds* (the "Plan") and a *Scheme of Arrangement Between the Crusader Funds and Their Scheme Creditors* (the "Scheme") that were adopted in 2011 to resolve certain disputes arising in connection with the Crusader Funds' wind-down proceedings.

13. HCMLP served as the investment manager for the Crusader Funds until August 4, 2016, as of which date the Redeemer Committee, as set forth in a letter and notice dated July 5, 2016, terminated HCMLP.

14. On July 5, 2016, the Redeemer Committee commenced an arbitration against HCMLP by filing a Notice of Claim with the American Arbitration Association (the "AAA") in which it asserted various claims arising from HCMLP's service as the investment manager for the Crusader Funds (the "Arbitration").[3]

15. Following an evidentiary hearing, the panel of arbitrators (the "Panel") issued (a) a *Partial Final Award,* dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award,* dated March 14, 2019 (the "Modification Award"), and (c) a *Final Award,* dated May 9, 2019 (the "Final Award," and together with the March Award and the Modification Award, the "Arbitration Award"). Morris Dec. Exhibits 2, 3, and 4, respectively.

16. Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages in the aggregate amount of $136,808,302.00; as of the Petition Date, the total value of the Arbitration Award was $190,824,557.00, inclusive of interest (the "Damage Award").

17. Prior to the Petition Date, the Redeemer Committee timely moved in the Chancery Court to confirm the Arbitration Award. For its part, HCMLP moved to vacate parts of the Final Award contending that the following aspects of the Awards were procedurally improper: (a) the award of damages and equitable relief arising in connection with the "Barclays Claim" (as such term is used in the Arbitration Award); (b) the award of prejudgment interest

[3] The Redeemer Committee and the Debtor subsequently became engaged in additional lawsuits and actions, the following of which were pending as of the Petition Date: (a) *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, Chancery Court, Delaware, C.A. No. 12533-VCG (the "Delaware Action"); (b) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Supreme Court of Bermuda, Civil Jurisdiction, Case No. 01-16-0002-6927 ("Bermuda Action No. 1"); (c) *Highland Capital Management, L.P. and Redeemer Committee of the Highland Crusader Fund*, Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2017: No. 308 ("Bermuda Action No. 2"); and (d) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Grand Court of Cayman Islands, Financial Services Division, Cause No. 153 of 2019 (CRJ) (the "Grand Cayman Action" and together with the Delaware Action and Bermuda Action No. 1, are referred to as the "Redeemer Actions" and the Redeemer Actions and Bermuda Action No. 2 are collectively referred to as the "Pending Actions").

after March 6, 2019, including that the interest be compounded; and (c) the addition of attorneys' and experts' fees based on evidence admitted after the record was purportedly closed.

18. HCMLP's procedural challenges were largely based on the argument that the March Award should have been treated as the "final" award such that the Panel was without authority to render the Modification Award and the Final Award and the relief granted therein ("HCMLP's Motion to Vacate").[4] Notably, HCMLP did not challenge any of the factual findings, credibility assessments, or substantive legal conclusions rendered by the Panel.

19. The Redeemer Committee's motion to confirm the Arbitration Award and HCMLP's Motion to Vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day Highland filed for bankruptcy.

20. On April 3, 2020, the Redeemer Committee filed a general unsecured claim in the amount of $190,824,557.00, plus "post-petition interest, attorneys' fees, costs and other expenses that [allegedly] continue[d] to accrue." *See* Morris Dec. Exhibit 5 (Proof of Claim No. 72, Rider at 1-2).

C. The Crusader Fund's Claim

21. On April 6, 2020, the Crusader Funds filed a general unsecured claim in the amount of $23,483,446.00, plus "post-petition interest, attorneys' fees, costs and other expenses

[4] The Award was subject to the Federal Arbitration Act, under which an award will only be vacated upon a showing that:

> (1) . . . the award was procured by corruption, fraud, or undue means; (2) . . . there was evident partiality or corruption in the arbitrators, or either of them; (3) . . . the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10. To challenge an award, a party must move to vacate within three months of delivery of the Award to the parties. 9 U.S.C. § 12.

that [allegedly] continue[d] to accrue." *See* Morris Dec. Exhibit 6 (Proof of Claim No. 81, Rider at 1-2).[5]

22. The Crusader Funds' claim sought the disgorgement of all management, distribution, and deferred fees paid to HCMLP based on the so-called "faithless servant" doctrine.

D. Summary of Settlement Terms[6]

23. The Stipulation contains the following material terms:

- The Redeemer Committee's claim (Claim No. 72) shall be allowed in the amount of $136,696,610.00 as a general unsecured claim;
- The Crusader Funds' claim (Claim No. 81) shall be allowed in the amount of $50,000.00 as a general unsecured claim;
- The Debtor and Eames will each (a) consent to the cancellation of certain interests in the Crusader Funds held by them that the Panel found were wrongfully acquired, and (b) agree that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable DAF that the Panel also found were wrongfully acquired;
- The Debtor and Eames will each acknowledge that they will not receive any portion of the Reserved Distributions, and the Debtor will further acknowledge that, beginning as of the Stipulation Effective Date, it will not receive any payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees;
- The Debtor and the Redeemer Committee agreed to a form of amendment to the Cornerstone Shareholders' Agreement and to a process whereby the Debtor shall, in good faith, use commercially reasonable efforts to

[5] The Crusader Funds also asserted a right to recover the damages granted under the Arbitration Award, but expressly acknowledged that they would "withdraw this portion of their claim if and to the extent that the Redeemer Committee's claim is allowed." Morris Dec. Exhibit 6 at 2.

[6] For purposes of convenience, set forth herein is a summary of the material terms of the Stipulation. If there is an actual or perceived conflict or inconsistency between the summary and the Stipulation, the terms of the Stipulation shall govern. Capitalized terms not defined herein shall have the meanings ascribed to them in the Stipulation.

monetize all shares of capital stock of Cornerstone held by the Debtor, any funds managed by the Debtor, and the Crusader Funds;[7]

- Upon the Stipulation Effective Date, the Parties and the Additional Release Parties shall exchange releases as set forth in the Stipulation; and[8]

- The Debtor shall dismiss Bermuda Action No. 2 with prejudice, and the Redeemer Committee and the Crusader Funds covenant not to prosecute, and shall not prosecute, any of the Redeemer Actions against the Debtor, Eames, or any of the Additional Highland Release Parties.

24. As discussed below, the Stipulation incorporates certain compromises between the Debtor, the Redeemer Committee, and the Crusader Funds with respect to, among other things, the disposition of Deferred Fees and the treatment of the Cornerstone Shares held by the Crusader Funds.

25. Under the Plan and Scheme, HCMLP agreed to defer receipt of certain Deferred Fees until the liquidation of the Crusader Funds was completed. Despite the terms of the Plan and Scheme, HCMLP transferred to itself $32,313,000.00 in Deferred Fees from the Crusader Funds' accounts in early 2016. The Redeemer Committee asserted that the Deferred Fees were prematurely taken and had to be returned. The Panel agreed and the $32,313,000.00 is included as part of the Damage Award.

26. During its negotiations with the Redeemer Committee and the Crusader Funds, the Debtor contended that while the Deferred Fees were found to have been prematurely taken, HCMLP would ultimately be entitled to recover the Deferred Fees upon the completion of the Crusader Funds' liquidation. The Redeemer Committee and the Crusader Funds, on the other

[7] The parties continue to discuss the terms of the schedule that was to be attached as Exhibit B to the Stipulation and will file the final version of Exhibit B after the Court rules on the Debtor's motion to file certain documents (including Exhibit B) under seal.

[8] The Stipulation, as filed, has not been executed by two of the Additional Highland Release Parties, Highland Financial Partners, L.P. and Highland Special Opportunities Holding Company. The Stipulation provides that the Debtor will use commercially reasonable efforts to cause these entities to execute the Stipulation no later than the date on which this Court enters an order confirming a plan. In the event such an Additional Highland Release Party does not execute the Stipulation, it will not receive any of the releases set forth in the Stipulation.

hand, contended that (a) the Redeemer Committee was entitled to recover all of the Deferred Fees found by the Panel to have been wrongfully taken, (b) the earliest the Debtor could seek to recover those Deferred Fees is upon complete liquidation of the Crusader Funds, which has not yet occurred, and (c) the Debtor is precluded from recovering any of those Fees—even upon the completion of the Crusader Funds' liquidation—from the Crusader Funds under the "faithless servant" doctrine. The Debtor disputed the latter contention on the basis of waiver and estoppel since the Redeemer Committee had failed to raise the defense in the Arbitration, but the Redeemer Committee contended that it had no obligation to raise that defense given the procedural posture that existed at the time and that the Crusader Funds, from which any Deferred Fees would ultimately be paid, had not been a party to the Arbitration and hold their own claim relating to the Deferred Fees.[9]

27. After extensive, arm's-length negotiations, the Debtor and the Redeemer Committee agreed to reduce the Damage Award by $21,592,000.00, or approximately two-thirds of the Deferred Fees that the Panel found HCMLP had prematurely taken but that the Debtor contended it would have nevertheless been entitled to recover upon the completion of the Crusader Funds' liquidation.

28. The other substantial compromise concerned the treatment of the Cornerstone Shares held by the Crusader Funds.

29. Cornerstone Healthcare Group ("Cornerstone") owns hospitals and other healthcare-related entities. HCMLP directly and indirectly controlled 100% of Cornerstone's common stock, some of which was held by the Crusader Funds.

[9] Specifically, the Redeemer Committee contended that because it sought to affirmatively recover the Deferred Fees in the Arbitration under theories of breach of contract and breach of fiduciary duty, it was not required to raise the "faithless servant" doctrine because that is a defense that would only be required to be asserted when HCMLP made a claim for the Deferred Fees—as it did during the negotiations.

30. During the Arbitration, the Redeemer Committee established that (a) HCMLP covertly purchased certain shares in Cornerstone from another HCMLP-managed Fund at what the Panel found was a below market price, and that (b) HCMLP had otherwise breached its fiduciary duty to the Crusader Funds by failing to liquidate the Crusader Funds' shares in Cornerstone. The Panel found in favor of the Redeemer Committee on this claim and ordered HCMLP to purchase the Crusader Funds' shares in Cornerstone at a fixed price of $48,070,407.00, plus pre-judgment interest.

31. After extensive, arm's-length negotiations, the parties agreed to treat the Cornerstone Shares differently from the process required under the Arbitration Award. Specifically, rather than having the Debtor purchase the Crusader Funds' shares in Cornerstone for approximately $48 million, pursuant to the Stipulation (a) the Crusader Funds will retain their shares in Cornerstone, (b) the Damage Award will be reduced by approximately $30.5 million to account for the perceived fair market value of those shares, (c) the Cornerstone Shareholders' Agreement will be amended to, among other things, remove certain restrictions, and (d) the parties have agreed upon a process to market and sell Cornerstone.

32. In addition to the forgoing, the parties also agreed on other modest reductions to the Damage Award resulting in an agreement by which the Redeemer Committee shall receive an allowed, general unsecured claim in the amount of $136,696,610.00 and the other consideration provided under the Stipulation.

E. UBS's Objection to the Redeemer Committee's Claim

33. On August 26, 2020, UBS Securities LLC and UBS AG, London Branch (together, "UBS") filed their *Objection to the Proof of Claim Filed by Redeemer Committee of*

the Highland Crusader Fund [Docket No. 996] (the "UBS Objection").[10] UBS challenges the Redeemer Committee's claim in three respects.

34. First, UBS raises the same procedural arguments asserted in HCMLP's Motion to Vacate. Specifically, UBS contends that the "arbitration panel impermissibly substantively (and unilaterally) modified several aspects of its first 'final' arbitral award ***after*** that award had already been issued" such that any relief granted pursuant to the Modification Award and the Final Award is barred by the "long-standing common law doctrine of *functus officio*" and the AAA's own rules. UBS Objection at 1; *see also id*. ¶¶ 12-16, 23-32. As discussed in detail below, the Panel considered and rejected these arguments as part of the Final Award.[11]

35. Second, UBS asserts that the value of the settlement must take into account certain obligations that the Redeemer Committee owes to the Debtor, specifically as they relate to the Cornerstone Shares that were to be surrendered under the Arbitration Award and the Deferred Fees that the Debtor would arguably be entitled to upon the completion of the Crusader Funds' liquidation. UBS Objection ¶¶ 33-37. As set forth above, however, these obligations were fully considered by the Debtor and form the basis for substantial compromises embedded in the Stipulation. *See supra* ¶¶ 24-31.

36. Finally, UBS takes issue with the Redeemer Committee's characterization of the Arbitration Award as an executory contract. UBS Objection ¶¶ 21-22.

37. Each of these objections is addressed below.

---

[10] The UBS Objection is the only objection lodged against the proofs of claim filed by the Redeemer Committee and the Crusader Funds.

[11] The Panel was comprised of three highly regarded attorneys: John S. Martin, Jr., a former United States Attorney for the Southern District of New York and a former United States District Court Judge for the Southern District of New York; David Brodsky, a former federal prosecutor and partner at Latham & Watkins and Schulte Roth & Zabel and a Fellow of the American College of Trial Lawyers; and Michael D. Young, one of the most highly-regarded arbitrators in the country who has been a full-time neutral for more than thirty years and who has presided over more than 300 arbitrations, appraisals, or other binding dispute resolution proceedings.

BASIS FOR RELIEF REQUESTED

38. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

39. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, "approval of a compromise is within the sound discretion of the bankruptcy court." *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

40. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, "with a focus on comparing 'the terms of the compromise with the rewards of litigation.'" *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any attendant expense,

inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise." *Id.*

41. Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider "the paramount interest of creditors with proper deference to their reasonable views." *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

42. There is ample basis to approve the proposed Stipulation with the Redeemer Committee and the Crusader Funds based on the Bankruptcy Rule 9019 factors set forth by the Fifth Circuit.

A. Probability of Success in the Litigation

43. The Debtor is unlikely to succeed in contesting the Redeemer Committee's claim because the claim is based on the Arbitration Award, which itself was the product of the following circumstances:

- The proceedings began in July 2016 and concluded in April 2019, almost three years later;
- The arbitration was presided over by a highly regarded Panel (*see supra* n.9);
- The Panel held an evidentiary hearing spanning nine days in September 2018;
- The Panel heard testimony from eleven fact witnesses and four expert witnesses; and

- The Arbitration Award addressed every claim and argument asserted by the parties and the Panel resolved each with detailed legal and factual findings and credibility determinations.

See Morris Dec. Exhibit 2 §§ E, F at 4-7.

44. Thus, there can be no dispute that the Arbitration Award was the product of an adversarial but deliberative process where the parties were afforded the opportunity to present their evidence and arguments. Consequently, there is virtually no likelihood that the Arbitration Award—and hence the Redeemer Committee's claim—could be subject to a wholesale attack.

45. The three issues raised by UBS are either unlikely to succeed, have been mooted by the terms of the Stipulation, or are legally irrelevant.

46. First, UBS disputes the Redeemer Committee's contention that the Arbitration Award is an executory contract. *Compare* UBS Objection ¶¶ 21-22 *with* Morris Dec. Exhibit 5 (Rider at 1). This issue is (a) moot because the Stipulation does not treat the Arbitration Award as an executory contract, and (b) legally irrelevant because even if the Debtor successfully challenged the Redeemer Committee's characterization of the Arbitration Award as an executory contract, the Redeemer Committee could simply move to lift the automatic stay for the sole purpose of having the Arbitration Award confirmed, thereby eliminating the alleged "contingent" nature of the claim.

47. Second, UBS challenges the Redeemer Committee's claim on the ground that it "must take into account reciprocal obligations Redeemer owes to the Debtor." UBS Objection ¶¶ 33-37. As set forth above, this issue is also moot because these obligations were taken into account by the Debtor and form the basis for substantial compromises exceeding $40 million in value embedded in the Stipulation. *See* supra ¶¶ 24-31.

48. Finally, UBS's remaining challenge to the Redeemer Committee's claim repeats the arguments made in HCMLP's Motion to Vacate. Specifically, UBS contends that the "arbitration panel impermissibly substantively (and unilaterally) modified several aspects of its first 'final' arbitral award ***after*** that award had already been issued" such that any relief granted pursuant to the Modification Award and the Final Award is barred by the "long-standing common law doctrine of *functus officio*" and the AAA's own rules. UBS Objection at 1; *see also id*. ¶¶ 12-16, 23-32.

49. These procedural attacks on the Arbitration Award were considered and rejected by the Panel and are unlikely to succeed in undermining the Redeemer Committee's claim here (or in the Chancery Court if the stay were lifted for the purpose of allowing the Redeemer Committee to confirm its award).

50. Specifically, the Panel found that the March Award was not a "final" award, observing that it had "explicitly denominated the award of March 6 as a 'Partial Final Award,' making clear to the Parties that the arbitral proceeding was still ongoing. We also explicitly left the hearing open so the parties could meet and confer or make submissions, including providing additional evidence, 'until *all issues* set forth . . . have been agreed to by the Parties or decided by the Tribunal.' Under these circumstances, the doctrine of *functus officio* does not apply." Morris Dec. Exhibit 4 at 4-5 (emphasis in original).

51. Given that (a) the March Award was explicitly labeled a "Partial Final Award," (b) the parties were directed to confer on issues of damages, interest, and the value of the attorneys' fees awarded to the Redeemer Committee, and (c) the Panel expressly determined to "leave the hearing open until all issues set forth above have been agreed upon by the Parties or

decided by the Tribunal," it is difficult to understand how the March Award could be treated as a "final" award that fully and finally resolved all issues.[12]

52. UBS specifically attacks those portions of the Modification Award and Final Award concerning the treatment of prejudgment interest and the so-called "Barclays Claim." UBS Objection ¶ 12. These attacks are unlikely to succeed.

53. On the issue of interest, the Panel found that the parties had been directed in the March Award to confer on the issue and that the Panel would decide if the parties could not agree.[13] Because the parties could not reach an agreement, the Panel ruled (a) in the Redeemer Committee's favor by awarding interest through the earlier of the date of payment or the entry of judgment, but (b) in HCMLP's favor by rejecting the Redeemer Committee's request for compounded interest. Morris Dec. Exhibit 4, Section E.b.v at 14-15.

54. On the issue of the "Barclay's Claim," UBS conflates two separate and distinct issues arising from HCMLP's settlement of Barclays' lawsuit against the Crusader Funds and otherwise fails to properly acknowledge the Panel's ruling on the Redeemer Committee's Barclays Claim. UBS asserts that "the Panel did not treat HCM's transfers of the Barclays LP Interests to Eames as an independent wrongdoing. Instead, the Partial Final Award only ever discussed the transfer of the Barclays LP Interests in the context of one of Redeemer's broader sets of claims, known as its "Distribution Fee Claim.'" UBS Objection ¶ 12. UBS is mistaken.

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[12] The AAA Rules specifically permit an arbitral panel to issue a partial award and leave the record open for further submissions. AAA R-47(b) ("In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders and awards"); AAA R-40 ("The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made.") The Rules also give to the arbitrators the power to interpret the Rules. AAA R-8.

[13] In the March Award, the Panel stated, among other things, that "[w]ith respect to the claims below for which we find liability and direct the payment of damages and interest, if the parties are not able to agree on the amount of damages and interest, we direct them to submit simultaneous briefs to the Panel on the issues within thirty (30) days of the date of this Partial Final Award." Morris Dec. Exhibit 2 at 53. The parties were unable to agree on all issues concerning interest and complied with the March Award by timely submitting briefs on the topic. Morris Dec. Exhibit 4 at 2-3.

55. In the Arbitration, the Redeemer Committee raised two separate claims arising from the Barclays settlement. The Redeemer Committee claimed that HCMLP breached the Plan and its fiduciary duties by transferring Barclay's limited partnership interests in the Crusader Funds to HCMLP's wholly-owned affiliate, Eames, over the Redeemer Committee's refusal to approve that transfer and sought disgorgement of those partnership interests and of the distributions Eames had received from the Crusader Fund made on account of those interests. Morris Dec. Exhibit 2 § F.6 at 21 (the "Barclays Claim"). In addition, as part of its claim to recover distribution fees improperly paid to HCMLP, the Redeemer Committee sought to recover fees that HCMLP had paid itself based upon distributions to those ill-gotten LP interests. *Id.* § C.3 at 15 (the "Distribution Fee Claim").

56. The Panel found in the Redeemer Committee's favor on both claims. In the March Award—and contrary to UBS's mistaken assertion—the Panel independently found the Debtor liable for the Barclays Claim: "We find that Highland breached the Plan and Scheme by transferring the LP interests to a wholly-controlled affiliate [*i.e.*, Eames] after the Committee had specifically disapproved of the transfer." *Id.* § F.7 at 21. But unlike the other claims on which it found the Debtor liable, the Panel omitted a discussion of the relief awarded for the Barclays Claim.

57. The Redeemer Committee filed a timely motion under AAA Arbitration Rule 50 seeking (a) clarification from the Panel whether a discussion of the relief awarded for the Barclays Claim was inadvertently omitted from the March Award, and (b) modification of the March Award to include the Panel's findings regarding that relief. Morris Dec. Exhibit 4 at 8-10. That Motion was fully briefed. *Id.* at 2, 8-10. The Panel granted the Motion, specifically rejecting the same argument that UBS makes in its Objection. The Panel found, among other

things, that "we are not adding an 'additional award,' as it is clear from the structure of the Partial Final Award that a paragraph was missing from the damages portion; all other findings of liability were accompanied by a section delineating the applicable damages except for the finding of a breach of the Plan and Scheme by reason of the transfer of LP interests to Eames . . . . [W]e found liability in two respects [*i.e.*, with respect to the Distribution Fee Claim and the Barclays Claim] but omitted a paragraph regarding the remedy for Respondent's breach of the Plan and Scheme that we had found with respect to the transfer, without the required Committee approval, of Barclays' fund interests to itself through entities it controlled as part of the settlement. That omission is a classic example of a clerical error." *Id.* § E.b ¶ 5 at 9.

58. Under the AAA Rules which were incorporated into the parties' arbitration agreement, "[t]he arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties." AAA Rule 8; *see also* AAA Rule 7(a) ("The arbitrator shall have the power to rule on his or her own jurisdiction.") Thus, the Panel had discretion to decide whether the modification of the March Award was warranted and to modify that Award to include the additional relief which UBS now seeks to challenge. Under the Federal Arbitration Act, this Court would be required to defer to the Panel's exercise of that discretion. *Commc'ns Workers of Am., AFL-CIO v. Sw. Bell Tel. Co.*, 953 F.3d 822, 827 (5th Cir. 2020) (holding that the AAA rule "authoriz[ing] an arbitrator to 'interpret and apply [the AAA] rules' binds the parties to the arbitrator's interpretation so long as it is 'within reasonable limits' . . . even where 'reasonable judges and arbitrators could interpret the AAA rules differently"); *Troegel v. Performance Energy Servs., LLC*, 2020 WL 4370881, at *8 (M.D. La. July 30, 2020)

("Similarly, the Arbitrator has the power to interpret the arbitration rules, so that is also not a ground for vacating the attorneys' fee award.")[14]

B. The Complexity, Duration, Expense, and Delay Related to Litigation

59. The issues relating to the Redeemer Committee are fairly complex; litigation would require meaningful resources, would take time, and would delay the Debtor's efforts to get to a confirmable plan.

60. Among the issues the settlement avoids are those relating to setoff. Setoff issues are notoriously complex and would arise with respect to the Deferred Fees and Cornerstone issues.[15]

61. Litigation of these issues, among others, would take time and would either delay confirmation of the Debtor's plan or leave another substantial dispute to be litigated through a post-confirmation trust to the prejudice of all stakeholders.

C. The Stipulation Is in the Creditors' Best Interests

62. The proposed settlement is in the best interests of the Debtor's creditors.

63. The Stipulation resolves what is likely the largest claim against the Debtor; it does so on reasonable terms; and it is supported by sound business reasons.

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[14] The Crusader Funds' claim can be succinctly addressed. As mentioned above, the Crusader Funds assert a claim for over $23 million in management and distribution fees based on the "faithless servant" doctrine. *See supra* ¶¶ 21-22. The Debtor believes it is very likely to defeat this claim based on, among other things, affirmative defenses including the statute of limitations, waiver, laches, and estoppel. However, given that the Crusader Funds have agreed to accept an allowed general unsecured claim in the amount $50,000 and exchange releases as part of the Stipulation, the cost of realizing a successfully litigated outcome would be greatly outweigh the benefit of disallowing the Crusader Funds' claim.

[15] UBS speculates that "[i]n all likelihood, Redeemer will tender more in value to HCM when it is forced to turn over the Cornerstone shares than it could ever recover on this portion of its prepetition claim." UBS's speculation should be rejected for at least the following reasons: (a) if general unsecured claims recover just 60%, then the value of the Redeemer Committee's claim will exceed the value of the Crusader Funds' Cornerstone shares, even using UBS's unsupported valuation; and (b) under principles of setoff, the Redeemer Committee may have only been required to tender shares equal in value to the recovery on its claim.

64. Pursuant to the Stipulation, among other things, the Debtor's estate (a)will immediately receive the benefit of the value of two-thirds of the Deferred Fees (through the reduction of the Damage Award by approximately $21 million), rather than waiting for the completion of the Crusader Funds' liquidation and litigating at some future date the merits of the Crusader Funds' and Redeemer Committee's "faithless servant" defense; (b) is relieved of the obligation of paying $48 million for the Crusader Fund's minority interest in Cornerstone (when even UBS speculates that the shares are worth less than that);[16] (c) is giving no consideration on account of the Redeemer Committee's claim for post-petition interest, fees, and expenses; (d) is receiving a release of all claims by the Redeemer Committee and the Crusader Funds; (e) will avoid incurring any additional expenses opposing the Redeemer Committee's claim; (f) has obtained the Redeemer Committee's cooperation to sell the Crusader Funds' minority interest in Cornerstone along with the controlling interests held by the Debtor and other affiliates, so that the company may be sold as a whole, to the likely benefit of all creditors; and (g) all of the Pending Actions involving the Debtor will end, thereby eliminating substantial costs and disruptions.[17]

65. The compromises that led to these benefits are clear, and the Independent Board's decision to accept these terms is a sound exercise of its discretion.

D. The Stipulation Is the Product of Good-Faith, Arm's-Length Negotiations

66. The Stipulation is the product of good-faith, arm's-length negotiations.

[16] Notably, the Debtor does not have $48 million in cash to pay the Redeemer Committee for the Cornerstone shares.

[17] Another collateral benefit of the Stipulation is that CLO Holdco, Ltd. ("CLO Holdco") has agreed to withdraw its general unsecured claim in the amount of $11,340,751.26. *See* Claim No. 133. CLO Holdco's claim was based on "participation interests and tracking interests" in the Crusader Funds that were held by the Debtor. However, the Panel found that the Debtor improperly acquired those interests, and the Debtor has agreed to their cancellation in accordance with the Arbitration Award.

67. Negotiations between the parties began in earnest in the late winter and only recently concluded. At various times, the principals negotiated directly, counsel for the parties negotiated directly, and, on several occasions, lawyers and clients participated in joint negotiating sessions.

68. Over these many months, the parties and their counsel met in person (before COVID), participated in Zoom calls (after COVID), spoke telephonically, and exchanged countless written communications.

69. Numerous versions of a Term Sheet were exchanged, and the Stipulation went through multiple drafts.

70. Throughout the process, the parties acted in good faith while vigorously advocating for their respective positions.

71. In short, the process proceeded exactly as it should have.

NO PRIOR REQUEST

72. No previous request for the relief sought herein has been made to this, or any other, Court.

NOTICE

73. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for the Redeemer Committee and the Crusader Funds; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; (f) counsel to UBS; and (g) parties requesting notice pursuant to Bankruptcy Rule 2002. The

Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

PRAYER

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

[Remainder of Page Intentionally Blank]

Dated: September 23, 2020.

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Debtor.	§	Related to Docket No. _____

ORDER APPROVING DEBTOR'S SETTLEMENT WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

Upon the *Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* (the "Motion")[2] filed by the above-captioned debtor and debtor-in-possession (the "Debtor"); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion, any and all other documents filed in support of the Motion, and the UBS Objection; and this Court having determined that the legal and factual bases set forth in the

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is granted as set forth herein.

2. The Settlement, attached as **Exhibit 1** to the Morris Declaration, is approved in all respects pursuant to Bankruptcy Rule 9019.

3. The UBS Objection is overruled in its entirety.

4. The Debtor and its agents are authorized to take any and all actions necessary or desirable to implement the Settlement without need of further Court approval or notice.

5. The Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order

END OF ORDER

Exhibit 2

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	)	Case No. 19-34054-sgj11
Debtor.	)	

DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1934054200923000000000004

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit 1** is a true and correct copy of a Stipulation entered between and among (i) Highland Capital Management, L.P. ("HCMLP"), (ii) Eames, Ltd., (iii) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), and (iv) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (together, the "Crusader Funds").

3. Attached as **Exhibit 2** is a true and correct copy of a *Partial Final Award*, dated March 6, 2019, and rendered in the arbitration between the Redeemer Committee and HCMLP, Case No. 1-16-0002-6927 (the "Arbitration").

4. Attached as **Exhibit 3** is a true and correct copy of a *Disposition of Application of Modification of Award*, dated March 14, 2019, and rendered in the Arbitration.

5. Attached as **Exhibit 4** is a true and correct copy of a *Final Award*, dated as of April 29, 2019, and rendered in the Arbitration.

6. Attached as **Exhibit 5** is a true and correct copy of a proof of claim filed by the Redeemer Committee on April 3, 2020 and denoted by the Debtor's claims agent as claim number 72.

7. Attached as **Exhibit 6** is a true and correct copy of a proof of claim filed by the Crusader Funds on April 6, 2020 and denoted by the Debtor's claims agent as claim number 81.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: September 23, 2020.

/s/ John A. Morris
John A. Morris

EXHIBIT 1

This stipulation (the "Stipulation") is made and entered into by and among (i) Highland Capital Management, L.P., as debtor and debtor-in-possession (the "Debtor"), (ii) Eames, Ltd., ("Eames"), (iii) the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee"), (iv) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Crusader Funds" and together with the Debtor, Eames, and the Redeemer Committee, the "Parties"), (v) solely with respect to paragraphs 10 through 15 of this Stipulation, Hockney, Ltd., Strand Advisors, Inc., Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P., Highland Financial Partners, L.P. ("HFPLP" and together with SOHC, the "Contingent Parties"), Highland Credit Strategies Master Fund, L.P., and Highland Credit Opportunities CDO, L.P. (collectively, the "Highland Additional Release Parties"), and (vi) solely with respect to paragraphs 10 through 15 of this Stipulation, House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC, (collectively, the "Crusader Additional Release Parties," and together with the Highland Additional Release Parties, the "Additional Release Parties"). This Stipulation provides for the allowance of general unsecured claims against the Debtor, for the Debtor and Eames to consent to the Redeemer Committee and the Crusader Funds implementing certain terms of the Arbitration Award (as defined below), and for the Debtor to take certain actions in connection with such implementation.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is managing and operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtor's chapter 11 case is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, the Debtor served as the investment manager for the Crusader Funds until August 4, 2016, as of which date the Redeemer Committee, as set forth in a letter and notice dated July 5, 2016, terminated the Debtor;

WHEREAS, on July 5, 2016, the Redeemer Committee commenced an arbitration against the Debtor by filing a Notice of Claim with the American Arbitration Association in which it asserted various claims arising from the Debtor's service as the investment manager for the Crusader Funds (the "Arbitration");

WHEREAS, following an evidentiary hearing during the Arbitration, the panel of arbitrators issued (a) a *Partial Final Award*, dated March 6, 2019 (the "March Award"), (b) a *Disposition of Application for Modification of Award,* dated March 14, 2019 (the "Modification Award"); and (c) a *Final Award,* dated May 9, 2019 (the "Final Award," and together with the March Award and the Modification Award, the "Arbitration Award");

WHEREAS, as of the Petition Date, the aggregate amount of the damages awarded under the Arbitration Award, including the accrual of pre-judgment interest but before applying any offsets, was $190,824,557, which amount includes the Debtor's obligation to purchase the shares of Cornerstone Healthcare Group ("Cornerstone") that are held by the Crusader Funds in exchange for the sum of (a) $48,070,407 million in cash, and (b) accrued pre-judgment interest on such amount;

WHEREAS, in addition to awarding monetary damages, the Arbitration Award also provided for, among other things, (i) the cancellation of all limited partnership interests or shares in the Crusader Funds that are held by the Debtor, Eames, and Charitable DAF Fund, L.P.

("Charitable DAF"), respectively, and (ii) the Crusader Fund to disburse the funds held in the Deferred Fee Account[1] to the Consenting Compulsory Redeemers;

WHEREAS, on April 3, 2020, the Redeemer Committee filed a proof of claim in respect of the Arbitration Award, Proof of Claim number 72 ("Claim 72");

WHEREAS, on April 6, 2020, the Crusader Funds filed a proof of claim, Proof of Claim number 81 ("Claim 81") that asserted a claim in the alternative to the Redeemer Committee Proof of Claim for at least $23,483,446 in respect of certain fees that the Crusader Funds had paid to the Debtor prior to the Debtor being terminated (the "Crusader Funds Fee Claim");

WHEREAS, the Debtor has asserted that it is entitled to certain credits or offsets with respect to the damages provided in the Arbitration Award, and that it is has certain meritorious defenses with respect to the Crusader Funds Fee Claim;

WHEREAS, the Parties have agreed to settle and resolve all claims and disputes between and among them, including Claim 72 and Claim 81, and for the Redeemer Committee and the Crusader Funds to implement certain relief granted in the Arbitration Award on the terms and conditions set forth in this Stipulation, and the Parties and the Additional Release Parties have agreed to exchange the mutual releases set forth herein:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Claim 72 shall be allowed in the amount of $137,696,610 as a general unsecured claim.

[1] All capitalized terms not defined herein shall have the meanings given to such terms in (i) the Arbitration Award and (ii) the Joint Plan of Distribution of the Crusader Funds, and the Scheme of Arrangement between Highland Crusader Fund II, Ltd. and its Scheme Creditors (together, the "Crusader Plan").

2. Claim 81 shall be allowed in the amount of $50,000 as a general unsecured claim.

3. The Debtor and Eames each consent to the Crusader Funds, on or after the date an order of the Bankruptcy Court approving this Stipulation pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code becomes a final and non-appealable order (the "Stipulation Effective Date"), cancelling or extinguishing all of the limited partnership interests and shares in the Crusader Funds held by each of them respectively (collectively, the "Cancelled Highland and Eames Interests"), as provided for in the Arbitration Award. Each of the Debtor and Eames represents solely for itself that (a) it has the authority to consent to the cancellation or extinguishment of the Cancelled Highland and Eames Interests that it holds, and (b) upon the occurrence of the Stipulation Effective Date, no other actions by or on behalf of it are necessary for such cancellation or extinguishment. Each of the Debtor and Eames agrees that it will not object to the Crusader Funds, on or after the Stipulation Effective Date, cancelling or extinguishing the limited partnership interests or shares in the Crusader Funds held by Charitable DAF (the "Cancelled DAF Interests," and together with the Cancelled Highland and Eames Interests, the "Cancelled LP Interests"). Each of the Debtor and Eames acknowledges that the cancellation or extinguishment of the Cancelled LP Interests is intended to implement Sections F.a.v and F.a.x.2 of the Final Award.[2]

4. The Parties acknowledge that the limited partnership interests or shares in the Crusader Funds held by the following entities and individuals shall not be extinguished pursuant to this Stipulation: Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.; Highland Capital Management Services; Highland 401(k) Plan; Highland 401(k) Plan Retirement Plan and Trust; Highland 401(k) Plan Retirement Plan and Trust II; James Dondero;

[2] *See also* March Award §§ III(H)(25), VII(C)(2).

and Mark Okada (collectively, the "Retained LP Interests").

5. Each of the Debtor and Eames acknowledges and agrees that (a) the Crusader Funds have reserved (i) distributions that, absent the Arbitration Award, would have been payable in respect of the Cancelled LP Interests, (ii) funds in respect of Deferred Fees and the Deferred Fee Account that, absent the Debtor's termination as investment manager for the Crusader Funds and the Arbitration Award, may have been payable to the Debtor in accordance with the Crusader Plan and (iii) certain other monies as to which the Debtor and Eames may have had an interest in the absence of this Stipulation (the reserved distributions and funds described in subparagraphs (i), (ii) and (iii), collectively, the "Reserved Distributions"); (b) the Crusader Funds, after the Stipulation Effective Date, intend to distribute in accordance with the Crusader Plan to the applicable holders of limited partnership interests or shares in the Crusader Funds the Reserved Distributions, and that the Debtor, Eames, and Charitable DAF shall not receive any part of such distribution; and (c) after giving effect to the cancellation or extinguishment of the Cancelled LP Interests, none of the Debtor, Eames, or Charitable DAF shall receive any further distributions, payments or fees from the Crusader Funds, including without limitation the Reserved Distributions, on account of any of the Cancelled LP Interests or any other role or position of the Debtor with respect to the Crusader Funds (including but not limited to its role as the investment manager for the Crusader Funds until August 4, 2016). The Debtor acknowledges and agrees that, beginning as of the Stipulation Effective Date, it will not receive any payments from the Crusader Funds in respect of any Deferred Fees, Distribution Fees, or Management Fees. Without limiting the foregoing, the Parties acknowledge and agree that the funds described in the first sentence of this paragraph include monies held in reserve with respect to the Reserved Distributions, the Deferred Fee Account, any Deferred Fees currently accrued or that might have

accrued in the future, any Distribution Fees, and any Management Fees.

6. The Debtor represents that, to its actual knowledge and subject to paragraph 4 above, it does not control any fund, or hold any equity interest in any entity, that holds a claim against the Crusader Funds or the Redeemer Committee (including any claims in respect of the Cornerstone shares held by the Crusader Funds, but excluding, with respect to the Crusader Funds, the right to receive distributions with respect to the Retained LP Interests).

7. On the Stipulation Effective Date, the Amended and Restated Shareholders Agreement, substantially in the form attached as Exhibit A, which shall have been executed by all parties thereto, shall be jointly released by the Parties from escrow and become effective (as executed, the "Cornerstone Shareholders Agreement"). In the event that such fully executed agreement is not released from escrow on the Stipulation Effective Date for any reason other than the Redeemer Committee or the Crusader Funds not authorizing such agreement's release from escrow, then this Stipulation shall be of no force and effect, and this Stipulation (including the agreements and settlements incorporated herein) may not be used by any Party for any purpose.

8. Except as otherwise provided in a plan of reorganization proposed by the Debtor and or other entities and agreed to by the Redeemer Committee, the Debtor shall, in good faith, use commercially reasonable efforts to monetize all shares of capital stock of Cornerstone held by the Debtor, any funds that the Debtor manages, and the Crusader Funds (collectively, the "Cornerstone Shares"), in accordance with the schedule attached hereto as Exhibit B (the "Schedule"), in order to maximize, to the extent possible under the circumstances, the proceeds of such monetization to each such entity. [redacted]

[redacted]

9. The Debtor shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Stipulation.

10. On the Stipulation Effective Date, the following releases shall take effect:

A. To the maximum extent permitted by applicable law, the Debtor, and each Highland Additional Release Party, irrevocably releases, acquits, exonerates, and forever discharges (i) the Redeemer Committee, each of the Crusader Funds, and each of the Crusader Additional Release Parties, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted

[redacted]

with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) Alvarez & Marsal CRF Management, LLC's service as replacement manager of the Crusader Funds, (iv) House Hanover, LLC, as General Partner of the Crusader Funds, (v) the Cancelled LP Interests, and (vi) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Debtor or any Additional Highland Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that such release shall not apply with respect to the obligations of the Redeemer Committee, each of the Crusader Funds, or each of the Crusader Additional Release Parties pursuant to this Stipulation, including Exhibit B hereto, and the Cornerstone Shareholders Agreement.

B. To the maximum extent permitted by applicable law, the Redeemer Committee, each of the Crusader Funds, and each Crusader Additional Release Party irrevocably releases, acquits, exonerates, and forever discharges (i) the Debtor, Eames, and each Highland Additional Release Party, and (ii) with respect to each such person set forth in (i) above, such person's predecessors, successors, assigns and affiliates (whether by operation of law or otherwise), and each of their respective present and former members, officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case acting in such capacity, from all manner of actions, whether in law, in equity, or statutory, and whether presently known or unknown, matured or contingent, liquidated or unliquidated, including any claims, defenses, and affirmative defenses which were or could have been asserted with respect to: (a) the Crusader Funds, including but not limited to any claims, defenses, and affirmative defenses which were or could have been brought, or which otherwise concern or are related to: (i) the Arbitration, (ii) the Debtor's service as investment manager or General Partner for the Crusader Funds, (iii) the Cancelled LP Interests, and (iv) any distributions or payments with respect to the Deferred Fee Account, Deferred Fees, Management Fees, Distribution Fees, or Reserved Distributions, and (b) the alleged fraudulent transfers and all other claims

asserted by UBS Securities LLC and UBS AG, London Branch (collectively, "UBS") in *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct.) or by UBS in the Debtor's chapter 11 case (collectively, the "UBS Claims"), including but not limited to claims that the Redeemer Committee, the Crusader Funds, or any Additional Crusader Release Party could assert for contribution, indemnity or joint tortfeasor liability in connection with the UBS Claims; provided, however, that (I) such release shall not apply with respect to the obligations of the Debtor, Eames, or each of the Highland Additional Release Parties under this Stipulation, including Exhibit B hereto, the allowance of or distributions in respect of Claim 72 and Claim 81, and the Cornerstone Shareholders Agreement; (II) notwithstanding anything to the contrary herein, neither James Dondero nor Mark Okada, nor any entities owned or controlled by either of them, other than the Debtor, Eames, and any Highland Additional Release Party solely with respect to such entities and not as to any capacity in which James Dondero or Mark Okada had an interest in or served with respect to such entities, is released from any claims, including without limitation any claims arising from obligations owed to the Debtor; and provided further, and solely for the avoidance of doubt, that none of the releases set forth herein shall impair the right or ability of the applicable holders of Claim 72 or Claim 81 to receive distributions of any kind from the Debtor's estate in satisfaction of such respective claims in the amounts and on such terms as are provided for herein; and (III) in the event any of the Highland Additional Release Parties fails to execute this Stipulation, this Release is null, void and of no legal effect as to that non-signing Highland Additional Release Party.

11. At present, certain of the Parties are engaged in one or more of the following pending lawsuits and actions: (a) *Redeemer Committee of the Highland Crusader Fund v. Highland Capital Management, L.P.*, Chancery Court, Delaware, C.A. No. 12533-VCG (the "Delaware Action"); (b) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Supreme Court of Bermuda, Civil Jurisdiction, Case No. 01-16-0002-6927 ("Bermuda Action No. 1"); (c) *Highland Capital Management, L.P. and Redeemer Committee of the Highland Crusader Fund*, Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2017: No. 308 ("Bermuda Action No. 2"); and (d) *Redeemer Committee of the Highland Crusader Fund and Highland Capital Management, L.P.*, Grand Court of Cayman

Islands, Financial Services Division, Cause No. 153 of 2019 (CRJ) (the "Grand Cayman Action" and together with the Delaware Action and Bermuda Action No. 1, the "Redeemer Actions"). The Parties agree that (1) as of the Stipulation Effective Date, the Redeemer Committee and each of the Crusader Funds covenants not to prosecute, and shall refrain from prosecuting, any of the Redeemer Actions against the Debtor, Eames, or any of the Highland Additional Release Parties, and (2) as soon as reasonably practicable after the Stipulation Effective Date, the Debtor shall cause Bermuda Action No. 2 to be dismissed with prejudice.

12. This Stipulation, together with the Cornerstone Shareholders Agreement and the Schedule, contains the entire agreement between and among the Parties and the Additional Release Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between and among the Parties and the Additional Release Parties relating thereto.

13. This Stipulation may not be modified other than by a signed writing executed by the Parties; provided, however, that paragraphs 10 through 15 may not be modified other than by a signed writing that is also executed by the Additional Release Parties.

14. Each person who executes this Stipulation represents that he or she is duly authorized to do so on behalf of the respective Party or Additional Release Party and that each Party or Additional Release Party has full knowledge and has consented to this Stipulation, provided, however, that (a) the effectiveness of the Debtor's execution of this Stipulation shall be subject to entry of an order of the Bankruptcy Court approving this Stipulation and authorizing the Debtor's execution thereof, and (b) the Redeemer Committee represents and warrants to the Debtor, Eames, and each of the Highland Additional Release Parties that, in conformity with the Redeemer Committee's corporate governance documents, at least the minimum number of

members of the Redeemer Committee have executed this Stipulation to cause it to be legally binding on the Redeemer Committee.

15. The Debtor shall use commercially reasonable efforts to cause each of the Contingent Parties to execute this Stipulation not later than the date on which the Bankruptcy Court enters an order confirming a plan of reorganization or liquidation. Notwithstanding the foregoing, the Parties acknowledge and agree that the failure of either or both of the Contingent Parties to execute this Stipulation shall not affect (a) the rights, obligations, or duties of any of the Parties or (b) the enforceability of this Stipulation.

16. Not later than September 23, 2020, the Debtor shall file with the Bankruptcy Court a motion for an order approving this Stipulation, which motion shall be in form and substance satisfactory to the Crusader Funds and the Redeemer Committee, pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code.

17. This Stipulation may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument, and shall be effective against a Party or Additional Release Party upon the Stipulation Effective Date.

18. This Stipulation will be exclusively governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of law principles, and all claims relating to or arising out of this Stipulation, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of New York, excluding New York's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Stipulation.

[Remainder of page intentionally left blank]

Execution Copy

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated: HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: _____
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

Execution Copy

In witness whereof, the parties hereto, intending to be legally bound, have executed this Stipulation as of the day and year set forth below:

Dated: HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name:
Title:

REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

Dated: Grosvenor Capital Management, L.P.

By: /s/ Eric Felton
Name: Eric Felton, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Tom Rowland
Name: Tom Rowland, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Burke Montgomery
Name: Burke Montgomery, designated Representative of Grosvenor Capital Management, L.P.

Dated: Grosvenor Capital Management, L.P.

By: /s/ Brian Zambie
Name: Brian Zambie, designated Representative of Grosvenor Capital Management, L.P.

Dated:

Concord Management, LLC

By: /s/ Brant Behr
Name: Brant Behr, designated Representative of Concord Management, LLC

Dated:

Baylor University

By: /s/ David Morehead
Name: David Morehead, designated Representative of Baylor University

Dated:

Seattle Fund SPC

By: /s/ Stuart Robertson
Name: Stuart Robertson, designated Representative of Seattle Fund SPC

Dated:

Man Solutions Limited

By: /s/ Michael Buerer
Name: Michael Buerer, designated Representative of Man Solutions Limited

Dated:

Army and Air Force Exchange Service

By: /s/ James Jordan
Name: James Jordan, designated Representative of Army and Air Force Exchange Service

Execution Copy

Dated:

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND, L.P.

By: House Hanover, Its General Partner

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HIGHLAND CRUSADER FUND II, LTD.

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

HOUSE HANOVER, LLC

By: /s/ Mark S. DiSalvo
Name: Mark S. DiSalvo
Title: Authorized Signatory

Dated:

ALVAREZ & MARSAL CRF MANAGEMENT, LLC

By: /s/ Steven Varner
Name: Steven Varner
Title: Managing Director

Dated:

EAMES, LTD.

By: _____
Name: Abali Hoilett
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

HOCKNEY, LTD.

By: _____
Name: Abali Hoilett
Title: Authorised Signatory of the Director MaplesFS Directors Limited

Dated:

STRAND ADVISORS, INC.

By: _____
Name:
Title:

Dated:

HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated:

HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated:

HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name:
Title:

Dated: EAMES, LTD.

By: _____
Name:
Title:

Dated: HOCKNEY, LTD.

By: _____
Name:
Title:

Dated: STRAND ADVISORS, INC.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Dated: HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By: _____
Name:
Title:

Dated: HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Dated: HIGHLAND FINANCIAL PARTNERS, L.P.

By: _____
Name:
Title:

Dated: HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

Execution Copy

Dated:

HIGHLAND CREDIT OPPORTUNITIES CDO, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT A

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

[●], 2020

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AMENDED & RESTATED STOCKHOLDERS' AGREEMENT

THIS AMENDED & RESTATED STOCKHOLDERS' AGREEMENT (the "***Agreement***") is made as of the [●] day of [●], 2020 by and among (i) Cornerstone Healthcare Group Holding, Inc., a Delaware corporation (the "***Company***"), (ii) certain holders of the Company's common stock (the "***Common Stock***") (each of which is referred to herein as a "***Stockholder***" and collectively as the "***Stockholders***"), and (iii) Highland Capital Management, L.P., a Delaware limited partnership ("***HCMLP***"). HCMLP (if and to the extent it is or becomes a Stockholder) and the Stockholders that are affiliates of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP are collectively referred to herein as "***Highland Capital***" and are set forth on Schedule A, as it may be updated from time to time. Individual Stockholders that are part of the Highland Capital group of Stockholders are sometimes referred to as a "***Highland Capital Stockholders***." Any Stockholders other than Highland Capital Stockholders are collectively referred to herein as the "***Remaining Stockholders***" and are set forth on Schedule B, as it may be updated from time to time. All references in this Agreement to "***Crusader***" shall mean and include, as the case may be, (x) Highland Crusader Holding Corp., (y) any of its successors or assigns and (y) any purchaser or transferee of any Securities that at any time were held by Highland Crusader Holding Corp. (*i.e.*, any purchaser or transferee of Securities from Highland Crusader Holding Corp. and any subsequent purchasers or transferees of any such Securities).

RECITALS:

WHEREAS, the Company, the Stockholders and HCMLP are parties to that certain Stockholders' Agreement of the Company, dated as of March 24, 2010 (as the same may have been amended, modified or supplemented in accordance with its terms, the "***First Stockholders' Agreement***").

WHEREAS, the Stockholders hold shares of Common Stock of the Company, and the Stockholders, the Company and HCMLP desire to enter into this Agreement to (i) provide certain rights to, and impose certain restrictions on, the Stockholders and HCMLP with respect to the Common Stock held by them and (ii) amend and modify certain provisions in the First Stockholders' Agreement.

AGREEMENT:

NOW, **THEREFORE**, in consideration of the foregoing premises, the mutual promises and covenants set forth herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

TRANSFER RESTRICTIONS; RIGHT OF FIRST REFUSAL

Section 1.1 Restrictions on Transfer.

(a) Generally. During the term of this Agreement, all of the Common Stock and any other equity securities (collectively, "***Securities***") now owned or hereafter acquired by

any Stockholder shall be subject to the terms and conditions of this Agreement. No transfer, whether voluntary or involuntary, of the Securities shall be valid unless it is made pursuant to the terms and conditions of this Agreement; and, accordingly, any proposed transfer not made in compliance with the requirements of this Agreement shall be null and void ab initio, shall not be recorded on the books of the Company or its transfer agent, and shall not be recognized by the Company.

(b) Permitted Transfers. Notwithstanding the foregoing, the first refusal rights and co-sale rights of the Company and Highland Capital, as set forth below in this Article I, shall not apply to (i) any transfer of Securities by a Stockholder to any such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption); (ii) any transfer of Securities by a Stockholder to a trust, partnership, corporation, limited liability company or other similar entity owned exclusively by such Stockholder and/or such Stockholder's spouse, parents, siblings (by blood, marriage or adoption) or lineal descendants (by blood, marriage or adoption) for the benefit of such Stockholder or such Stockholder's spouse, parents, siblings or lineal descendants; (iii) any transfer of Securities by a Stockholder, or upon a Stockholder's death to the executors, administrators, testamentary trustees, legatees or beneficiaries of such Stockholder; (iv) any transfer of Securities by a Stockholder to any person who controls, is controlled by or is under common control with such Stockholder (within the meaning of the Securities Act of 1933, as amended (the "***Securities Act***")); (v) any transfer of Securities by a Stockholder pursuant to a bona fide loan transaction which creates a mere security interest in the Securities; (vi) the Securities held Crusader; *provided*, *however*, that in each such case, each transferee, pledgee, donee, heir or distributee shall, as a condition precedent to such transfer, become a party to this Agreement by executing an Adoption Agreement substantially in the form attached as Annex A and shall have all of the rights and obligations set forth hereunder, and all interests in any trust, partnership, corporation, limited liability company or other similar entity to which any Securities are transferred shall themselves be deemed Securities and shall be subject to all of the provisions hereof. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement. Any purported transfers made in violation of this Section 1.1(b) shall be void.

(c) Company Repurchase or Public Offering. The provisions of this Agreement shall not apply to the sale of any Securities (i) to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission (the "***SEC***") under the Securities Act or (ii) to the Company.

(d) Prohibited Transferees. Notwithstanding any other provision of this Agreement to the contrary, no Remaining Stockholder shall transfer any Target Shares to (a) any entity which, in the good faith and reasonable determination of the Company's Board of Directors, directly competes with the Company or (b) any customer, distributor or supplier of the Company, if the Company's Board of Directors should determine in good faith and reasonably that such transfer would result in such customer, distributor or supplier receiving information that would place the Company at a material competitive disadvantage with respect to such customer, distributor or supplier.

Section 1.2 Right of First Refusal.

(a) Grant of Right of First Refusal. Subject to the terms hereof, the Company and, to the extent such right is waived by the Company, HCMLP, on behalf of itself and Highland Capital (and, as provided below, each ROFR Participant) are each hereby granted a right of first refusal with respect to any proposed disposition of any Securities held by any Remaining Stockholder (except for a permitted transfer of the Securities under Section 1.1(b) hereof), in the following order of priority:

(i) The Company shall have the first right to purchase any Target Shares (as defined below). In the event the Company elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, the Company agrees to waive such rights with respect to such portion of Target Shares in favor of Highland Capital's first refusal rights under this Agreement.

(ii) If the Company waives its first refusal rights pursuant to Section 1.2(a)(i), Highland Capital shall have the next right to purchase any remaining Target Shares. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable (the actual participants, including any individuals or entities assigned such rights, each being a "***Highland ROFR Participant***" and, together with the Company, each a "***ROFR Participant***"); *provided* that each such Highland ROFR Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland ROFR Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an executing an Adoption Agreement in the form attached hereto as Exhibit A. In the event that HCMLP does not specify an allocation for ROFR Participants, then each Highland Capital Stockholder shall have the right to purchase up to that number of remaining Target Shares equal to the product of (A) the number of remaining Target Shares multiplied by (B) a fraction, (x) the numerator of which shall be the number of shares of Common Stock owned by such Highland Capital Stockholder (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock held by such Highland Capital. Stockholder) and (y) the denominator of which shall be the number of shares of Common Stock owned by all of the Highland Capital Stockholders (assuming full conversion and exercise of all convertible and exercisable securities into Common Stock).

(iii) In the event that HCMLP (or the Highland ROFR Participants as its designated assignee(s)) elects not to exercise first refusal rights with respect to all or any portion of such Target Shares, Highland Capital agrees to waive such rights with respect to such portion.

(b) Notice of Intended Disposition. In the event a Remaining Stockholder desires to accept a written, bona fide third-party offer for the transfer of any or all of the Securities held by such Remaining Stockholder (in such capacity such Remaining Stockholder shall be referred to as a "***Selling Stockholder***" and the shares subject to such offer to be referred to as the "***Target Shares***"), the Selling Stockholder shall promptly deliver to the Company and HCMLP written notice of the intended disposition ("***Disposition Notice***") and the basic terms and conditions thereof, including the identity of the proposed purchaser.

(c) Exercise of First Refusal Right. The Company shall, for a period of thirty (30) days following receipt of the Disposition Notice, have the right to purchase all or any portion of the Target Shares:

(i) The Company's right shall be exercisable by written notice (the "***Exercise Notice***") delivered to the Selling Stockholder and HCMLP prior to the expiration of the thirty (30) day exercise period. If such right is exercised with respect to all the Target Shares specified in the Disposition Notice, then the Company shall effect the purchase of such Target Shares, including payment of the purchase price, not more than five (5) business days after the delivery of the Exercise Notice. At such time, the Selling Stockholder shall deliver to the Company the certificates representing the Target Shares to be purchased, each certificate to be properly endorsed for transfer.

(ii) Alternatively, if the Company exercises such rights with respect to only a portion of the Target Shares specified in the Disposition Notice, the Company shall notify HCMLP of its intent to purchase only a portion of the Target Shares within the thirty (30) day exercise period above defined. The Company's purchase of such Target Shares shall be consummated at the time of HCMLP's exercise of its purchase rights in accordance with Section 1.2(e) hereof, if such rights are exercised. In the event HCMLP does not elect to purchase any of the remaining Target Shares, the Company's purchase of that portion of the Target Shares that it desires to purchase shall be consummated not more than five (5) business days after the date of expiration of HCMLP's first refusal right. The purchasing party under this Section 1.2 is referred to herein as the "***ROFR Purchaser***."

(iii) Should the purchase price specified in the Disposition Notice be payable in property other than cash or evidences of indebtedness, the ROFR Purchaser shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. It the Selling Stockholder and the ROFR Purchaser cannot agree on such cash value within fifteen (15) days after receipt of the Disposition Notice (or, in the event HCMLP is the ROFR Purchaser, within fifteen (15) days after the Company's waiver of its first refusal rights hereunder, the valuation shall be determined by the Company's Board of Directors (the "***Board***") in its good faith discretion. The closing shall then be held on the later of (A) the fifth business day following the delivery of the Exercise Notice, or (B) the fifth business day after such cash valuation shall have been made.

(d) Non-Exercise of Right by the Company. In the event the Exercise Notice is not given to the Selling Stockholder and HCMLP within thirty (30) days following the date of the Company's receipt of the Disposition Notice, the Company shall be deemed to have waived its right of first refusal with respect to such proposed disposition.

(e) Exercise of Right by HCMLP. Subject to the rights of the Company, for a period ending on the earlier of (a) sixty (60) days following receipt of the Disposition Notice or (b) thirty (30) days following receipt of written notice of the Company's election either to waive its right of first refusal or to purchase only a portion of the Target Shares, HCMLP (and/or its designee(s) as provided in Section 1.2(a)(a)(ii)) shall have the right to purchase all, or any portion of the remaining balance after the Company's purchase, of the Target Shares, upon the terms and conditions specified in the Disposition Notice. The Highland ROFR Participants shall

exercise this right of first refusal in the same manner and subject to the same rights and conditions as the Company, as more specifically set forth in Section 1.2(c) above.

(f) Non-Exercise of Right by HCMLP: Subsequent Sales, Void Transfers. In the event an Exercise Notice with respect to all of the Target Shares is not given to the Selling Stockholder by the Company and/or HCMLP within sixty (60) days following the date of receipt of the Disposition Notice, the Selling Stockholder shall have a period of sixty (60) days thereafter in which to sell the portion of the Target Shares that the ROFR Participants have not elected to purchase upon terms and conditions (including the purchase price and the form of consideration therefor) no more favorable to the third-party transferee than those specified in the Disposition Notice; *provided, however*, that the Selling Stockholder must first offer the Target Shares for co-sale pursuant to Section 1.3 hereof. Any transfer in violation of this Section 1.2 shall be void. Such transferred Securities shall remain "***Securities***" hereunder, and such transferee shall be treated as a "***Stockholder***" for the purposes of this Agreement, in the capacity of Highland Capital or a Remaining Stockholder, as applicable. In the event the Selling Stockholder does not notify the Company or consummate the sale or disposition of the Target Shares within such sixty (60) day period, HCMLP's and the Company's first refusal rights shall continue to be applicable to any subsequent disposition of the Target Shares by the Selling Stockholder until such right lapses or terminates in accordance with Section 6.1 hereof.

(g) Violation of First Refusal Right. If any Selling Stockholder becomes obligated to sell any Target Shares to the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) under this Agreement and fails to deliver such Target Shares in accordance with the terms of this Agreement, the Company and/or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) may, at its option, in addition to all other remedies it may have, send to such Selling Stockholder the purchase price for such Target Shares as is herein specified and transfer to the name of the Company or HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) (or request that the Company effect such transfer in the name of HCMLP (and/or its designee(s) as provided in Section 1.2(a)(ii)) on the Company's books the certificate or certificates representing the Target Shares to be sold. Such Selling Stockholder shall also reimburse HCMLP and each ROFR Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the ROFR Participants' rights under this Section 1.3.

(h) Application of Co-Sale Right. Notwithstanding anything to the contrary in this Section 1.2 Target Shares may be sold to a third party transferee (other than the Company or Highland Capital) if and only if the Selling Stockholder first complies with the co-sale procedures set forth in Section 1.3, and some or all of the Target Shares remain available for sale following the application of Section 1.3.

Section 1.3 Co-Sale Rights.

(a) Notice of Offer. The provisions of Section 1.2(b) requiring the Selling Stockholder to give notice of any intended transfer of the Securities are incorporated in this Section 1.3.

(b) Grant of Co-Sale Rights.

(i) If (i) any such proposed disposition of Target Shares is being made by the Selling Stockholder and (ii) the rights of first refusal of the Company and HCMLP have been waived or have lapsed, in full or in part with respect to such proposed disposition, the Co-Sale Participant (as defined herein) shall have the right, exercisable upon written notice to the Selling Stockholder within thirty (30) days after receipt of the Disposition Notice, to participate in such sale of the Target Shares on the same terms and conditions as those set forth in the Disposition Notice. As used herein, "***Co-Sale Participant***" shall mean (x) in the event Highland Capital holds or otherwise controls a majority of the issued and outstanding shares of Common Stock of the Company, the Highland Capital entities designated by HCMLP as provided below, or (y) in the event Highland Capital does not hold or otherwise control a majority of the issued and outstanding shares of Common Stock of the Company, each non-Selling Stockholder. To the extent any Co-Sale Participant exercises such right of participation, the number of shares of Target Shares that the Selling Stockholder may sell in the transaction shall be correspondingly reduced. The right of participation of the Co-Sale Participants shall be subject to the terms and conditions set forth in this Section 1.3.

(ii) Each Co-Sale Participant may sell all or any part of a number of shares of the capital stock of the Company held by such Co-Sale Participant equal to the product obtained by multiplying (i) the aggregate number of Target Shares covered by the Disposition Notice that neither the Company nor Highland Capital have elected to purchase pursuant to Section 1.2 by (ii) a fraction, the numerator of which is the number of shares of Common Stock of the Company at the time owned by such Co-Sale Participant (assuming for the purposes of this calculation that all shares held by Highland Capital are held by HCMLP) and the denominator of which is the combined number of shares of Common Stock of the Company at the time deemed owned by the Selling Stockholder and all of the Co-Sale Participants that desire to exercise their rights of co-sale. Notwithstanding the foregoing, HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be Stockholders or parties to this Agreement at that time, in any proportion it deems suitable; *provided* that each such Highland Capital Co-Sale Participant is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and provided further that any Highland Capital Co-Sale Participant that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

(iii) Each Co-Sale Participant may effect its participation in the sale by delivering to the Selling Stockholder for transfer to the purchase offeror one or more certificates, properly endorsed for transfer, which represent the number of shares of Common Stock that it elects to sell pursuant to this Section 1.3(h).

(c) Payment of Proceeds. The stock certificates that the Co-Sale Participants deliver to the Selling Stockholder pursuant to Section 1.3(b) shall be transferred by the Selling Stockholder to the purchase offeror in consummation of the sale of the Common Stock pursuant to the terms and conditions specified in the notice to the Company and HCMLP (and, if applicable, the Remaining Stockholders) pursuant to Section 1.2(b), and the Selling Stockholder shall promptly thereafter remit to the Co-Sale Participants that portion of the sale proceeds to

which the Investors are entitled by reason of their participation in such sale. To the extent that any prospective purchaser or purchasers refuses to purchase shares or other securities from an Co-Sale Participant exercising its rights of co-sale hereunder, the Selling Stockholder shall not sell to such prospective purchaser or purchasers any Securities unless and until, simultaneously with such sale, the Selling Stockholder purchases such shares or other securities from such Co-Sale Participant for the same consideration and on the same terms and conditions as the proposed transfer described in the Disposition Notice.

(d) Non-exercise. The exercise or non-exercise of the rights of the Co-Sale Participants hereunder to participate in one or more sales of Common Stock made by the Selling Stockholder shall not adversely affect their rights to participate in subsequent Common Stock sales by any Selling Stockholder.

(e) Violation of Co-Sale Right. If any Selling Stockholder purports to sell any Target Shares in contravention of this Section 1.3 (a "***Prohibited Transfer***"), each Co-Sale Participant may, in addition to such remedies as may be available by law, in equity or hereunder, require Selling Stockholder to purchase from such Co-Sale Participant the type and number of Securities that such Co-Sale Participant would have been entitled to sell under Section 1.3(b)(ii) had the Prohibited Transfer been effected pursuant to and in compliance with the terms of Section 1.3. The sale will be made on the same terms and subject to the same conditions as would have applied had the Selling Stockholder not made the Prohibited Transfer, except that the sale (including, without limitation, the delivery of the purchase price) must be made within ninety (90) days after the Co-Sale Participant learns of the Prohibited Transfer. Such Selling Stockholder shall also reimburse HCMLP and each Co-Sale Participant for any and all reasonable and documented out-of-pocket fees and expenses, including reasonable legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Co-Sale Participants' rights under this Section 1.3.

Section 1.4 Market Stand-Off Agreement.

(a) In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act, including the first bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act on Form S-1 or Form SB-2 (or any successor form designated by the SEC) (the "***Initial Public Offering***"), the Remaining Stockholders (each, an "***Owner***") shall not (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any securities of the Company, including (without limitation) shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock (whether now owned or hereafter acquired), whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of securities, in cash or otherwise without the prior written consent of the Company or its underwriters; *provided* that all executive officers, directors and greater than 5% stockholders (including, if applicable, HCMLP

and Highland Capital) are subject to similar restrictions. Such restriction (the "***Market Stand-Off***") shall be in effect for such period of time from and after the effective date of the final prospectus for the offering as may be requested by the Company or such underwriters. In no event, however, shall such period exceed one hundred eighty (180) days (the "***Lock-Up Period***"), and the Market Stand-Off shall in no event be applicable to any underwritten public offering effected more than two (2) years after the effective date of the Company's initial public offering.

(b) Any new, substituted or additional securities which are by reason of any recapitalization or reorganization distributed with respect to the Common Stock to be registered shall be immediately subject to the Market Stand-Off, to the same extent the Common Stock is at such time covered by such provisions.

(c) In order to enforce the Market Stand-Off, the Company may impose stop-transfer instructions with respect to the Common Stock until the end of the applicable stand-off period.

ARTICLE II

RIGHTS OF FIRST OFFER

Section 2.1 **Grant of Right of First Offer**. Each time the Company proposes to offer (i) any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("***equity securities***"), or (ii) any debt securities (collectively, the "***First Offer Securities***"), the Company shall first offer to Highland Capital the right and opportunity (but not the obligation) to purchase the First Offer Securities proposed to be issued in such offering in accordance with the provisions of this Article IV. HCMLP, in its sole discretion, shall have the right to assign and apportion the rights of first refusal hereby granted among itself and investment funds comprising Highland Capital, which need not be parties to this Agreement at that time (the actual participants, including any individuals or entities assigned such rights, each being a "***Purchaser***"); *provided* that each such Purchaser is an "***accredited investor***" within the meaning of Rule 501 of Regulation D of the Securities Act; and *provided further* that any such Purchaser that is not then a party to this Agreement shall be required to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A.

Section 2.2 **Procedure for Exercise**. The Company shall deliver notice (the "***Offer Notice"***) to HCMLP stating (a) the number and description of the First Offer Securities to be offered in the applicable offering and (b) the price and terms, if any, upon which it proposes to offer such First Offer Securities. Within 30 days after giving of the Offer Notice, the Purchasers may elect to purchase, at the price and on the terms specified in the Offer Notice, such First Offer Securities, in the amounts designated by HCMLP. The Purchasers shall exercise the rights under this section by paying the purchase price for the First Offer Securities elected to be purchased in cash or by wire transfer of immediately available funds. As promptly as practicable on or after the purchase date, the Company shall issue and deliver to the Purchasers a certificate or certificates for the number of full shares or amount, whichever is applicable, of First Offer Securities.

Section 2.3 **Excluded Issuances**. The rights of first offer set forth in this section shall not be applicable to the following (collectively, the "***Excluded Issuances***"): (A) in the case of equity securities, (i) the issuance of shares of capital stock (or any cash-settled "phantom units" or similar equity-linked or equity-based incentive plans or agreement structures, the value of which is based on the Company's Common Stock (collectively, "***phantom units***")) of the Company issued or issuable solely for compensatory purposes, to directors, officers, employees or consultants of the Company, whether directly (as Common Stock, options or phantom units) or pursuant to an equity incentive plan or agreement or a restricted stock plan or agreement, in each case approved by the Board; (ii) the issuance of shares of capital stock of the Company in connection with stock splits, stock dividends, recapitalizations or the like; (iii) the issuance of shares of capital stock in connection with a bona fide business acquisition or license of technology of or by the Company, whether by license, merger, consolidation, sale of assets, sale or exchange of stock or otherwise that are not issued primarily for equity financing purposes, in each case as approved by the Board; (iv) the issuance of shares of capital stock of the Company in connection with corporate partnering transactions, business relationships and similar transactions that are not issued primarily for equity financing purposes, in each case as approved by the Board; or (v) the issuance of shares of capital stock to financial institutions in connection with bona fide Commercial Debt (as defined below) arrangements (including issuances, extensions, renewals, modifications and waivers), in each case approved by the Company's Board of Directors; and (B) in the case of debt securities, shall not be deemed to include debt issued to NexBank, SSB and other banks, commercial finance lenders, insurance companies, leasing or equipment financing institutions or other lending institutions regularly engaged in the business of lending money (excluding venture capital, private equity, investment banking or similar institutions which sometimes engage in lending activities but which are primarily engaged in investments in equity securities), which is for money borrowed, or purchase or leasing of equipment in the case of lease or other equipment financing, whether or not secured, and in any such instance is not primarily for equity financing purposes ("***Commercial Debt***"), in each such case approved by the Board of Directors of the Company,

Section 2.4 **Sale to Third Parties**. The Company shall, after complying with its obligations under Section 2.1, be free at any time prior to 90 days after the date of the Offer Notice, to offer and sell to any third party or parties the remainder of such First Offer Securities proposed to be issued by the Company at a price and on payment terms no less favorable to the Company than those specified in the Offer Notice. However, if such third party sale or sales are not consummated within such 90-day period, or if the terms of any such proposed sale are modified in a manner more favorable to the proposed purchaser (whether with respect to price or any other term) than offered to HCMLP pursuant to Section 2.1, the Company shall not sell such First Offer Securities as shall not have been purchased within such period without again complying with Section 2.1 hereof.

ARTICLE III

REGISTRATION RIGHTS

Section 3.1 **Definitions**. For purposes of this Article III.

(a) "***Certificate of Incorporation***" shall mean the Company's Certificate of Incorporation as in effect as of the date hereof and as amended and restated from time to time.

(b) "***Change in Control***" shall mean (A) the acquisition of the Company by means of any transaction or series of related transactions (including, without limitation, any stock purchase transaction, merger, consolidation or other form of reorganization in which outstanding shares of the Company are exchanged for securities or other consideration issued, or caused to be issued, by the acquiring entity or its subsidiary, but excluding (i) any transaction effected for the purpose of changing the Company's jurisdiction of incorporation and (ii) the sale by the Company of shares of its capital stock to investors in bona fide equity financing transactions), unless securities representing more than fifty percent (50%) of the total combined voting power of the voting securities of the surviving or acquiring entity or its direct or indirect parent entity are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the Company's stockholders of record as constituted immediately prior to such transaction or series of related transactions and (B) a sale of all or substantially all of the assets of the Company in a single transaction or series of related transactions. In no event shall any public offering of the Company's securities be deemed to constitute a Change in Control.

(c) "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

(d) "***Form S-3***" shall mean such form under the Securities Act as in effect on the date hereof or any registration forms under the Securities Act subsequently adopted by the SEC that permit inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(e) "***Holder***" shall mean any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 3.13 hereof.

(f) The terms "***register***," "***registered***" and "***registration***" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) "***Registrable Securities***" shall mean, only with respect to equity securities held by Highland Capital, the Common Stock and any shares of Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of such shares; excluding in all cases, however, any Registrable Securities sold by a Holder in a transaction in which his rights under this Article III are not assigned.

(h) The number of shares of "***Registrable Securities then outstanding***" shall be equal to the number of shares of Common Stock then issued and outstanding which are, and the number of shares of Common Stock then issuable pursuant to then exercisable or convertible securities which are, Registrable Securities.

(i) "***Rule 144***" means Rule 144 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

(j) "***Rule 145***" means Rule 145 as promulgated by the SEC under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the SEC.

Section 3.2 Request for Registration.

(a) At any time, HCMLP, on behalf of Highland Capital, may request that the Company effect a registration under the Securities Act of all or any part of the Registrable Securities held by Highland Capital (each, a "***Demand Registration***"), subject to the terms and conditions of this Agreement. Any request (a "***Registration Request***") for a Demand Registration shall specify (A) the approximate number of shares of Registrable Securities requested to be registered and (B) the intended method of distribution of such shares. Within twenty (20) days of the receipt of the Registration Request, the Company will use its best efforts to effect as soon as practicable (and in any event within ninety (90) days of the date such request is given) the registration under the Securities Act requested and will include in such registration all shares of Registrable Securities that holders of Registrable Securities request the Company to include in such registration by written notice given to the Company within twenty (20) days after the Company's sends such notice (subject to underwriter cut-backs as provided in this Agreement).

(b) Without the prior written consent of HCMLP, the Company will not include in any Demand Registration any securities other than (a) Registrable Securities, (b) shares of stock pursuant to Section 3.3 hereof, and (c) securities to be registered for offering and sale on behalf of the Company. If the managing underwriter(s) advise the Company in writing that in their opinion the number of shares of Registrable Securities and, if permitted hereunder, other securities in such offering, exceeds the number of shares of Registrable Securities and other securities, if any, which can be sold in an orderly manner in such offering within a price range acceptable to the holders of a majority of the shares of Registrable Securities held by Holders initially requesting registration, the Company will include in such registration, prior to the inclusion of any securities which are not shares of Registrable Securities, the number of shares of Registrable Securities requested to be included that in the opinion of such underwriters can be sold in an orderly manner within the price range acceptable to the Holders of a majority of the shares of Registrable Securities initially requesting registration, subject to the following order of priority: (A) first, the securities requested to be included therein by the Holders, pro rata among the holders thereof on the basis of the number of shares of Registrable Securities such holders requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

(c) If HCMLP indicates that the Holders on whose behalf it is initiating the Registration Request hereunder (the "***Initiating Holders***") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 3.2 and the Company shall include

such information in the written notice referred to in Section 3.2. The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Board, which approval shall not be unreasonably withheld, conditioned or delayed. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

(d) Notwithstanding the foregoing, if the Company shall furnish to HCMLP a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period.

(e) In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 3.2:

(i) after the Company has effected three (3) Demand Registrations pursuant to this Section 3.2 and such registrations have been declared or ordered effective;

(ii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days after the effective date of, a registration subject to Section 3.3 or Section 3.11 hereof, provided that the Company is actively employing its commercially reasonable efforts to cause such registration statement to become effective; *provided, however*, that the Company may not utilize this right more than once in any twelve-month period;

(iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 3.11 below; or

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act.

Section 3.3 Company Registration.

(a) If, but without any obligation to do so, the Company proposes to register (including for this purpose a registration initiated by the Company for itself or for the Holders or stockholders other than the Holders) any of its stock or other securities under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to employee benefit plans, or a registration relating solely to a SEC Rule 145 transaction, or a registration on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the Registrable Securities) the Company shall, at such time,

promptly give each Holder written notice of such registration. Upon the written request of HCMLP given within fifteen (15) days after delivery of such notice by the Company, the Company shall cause to be registered under the Securities Act all of the Registrable Securities that HCMLP has requested to be registered on behalf of Highland Capital.

(b) If a registration subject to Section 3.3 relates to an underwritten public offering of equity securities and the managing underwriters advise the Company that in their opinion the number of securities requested to be included in such registration exceeds the number that can be sold in an orderly manner in such offering within a price range acceptable to the Holders initially requesting such registration, the Company will include in such registration (i) first, the Registrable Securities requested to be included in such registration by Highland Capital, allocated pro rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (ii) second, the securities requested to be included therein by the Company if the Company has initiated the registration; and (iii) third, among persons not contractually entitled to registration rights under this Agreement. Notwithstanding the foregoing, the amount of Registrable Securities of Highland Capital included in the offering shall not be reduced below thirty percent (30%) of the total amount of securities included in such offering. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters). All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting.

Section 3.4 Obligations of the Company. Whenever required under this Article III to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective within sixty (60) days of a request for registration pursuant to Section 3.2 and Section 3.11 and such registration statement shall remain effective until the earlier to occur of (i) one-hundred-eighty (180) days after the date such registration statement was declared effective or (ii) until the distribution contemplated in such registration statement has been completed; *provided, however*, that such one-hundred-eighty (180) day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein of misleading in the light of the circumstances then existing.

(g) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or nationally recognized quotation system on which similar securities issued by the Company are then listed.

(h) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities not later than the effective date of such registration.

(i) Use its best efforts to cause to be furnished, at the request of at least a majority of the Holders participating in the registration, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in connection with an underwritten public offering, addressed to the underwriters, if any.

(j) Make available for inspection by each Holder of Registrable Securities, any underwriter and any attorney, accountant, or other agent retained by such Holder or underwriter, all financial and other records, pertinent corporate documents and properties of the Company and cause the Company's officers, directors, and employees to supply all information

reasonably requested by such Holder, underwriter, attorney, accountant, or agent in connection with such registration statement.

Section 3.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Article III with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding such Holder, the Registrable Securities held by such Holder, and the intended method of disposition of such securities as shall be required by the Company or the managing underwriters, if any, to effect the registration of such Holder's Registrable Securities.

Section 3.6 Expenses of Demand Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.2(a), including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company, including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.7 Expenses of Company Registration. All expenses, other than underwriting discounts and commissions relating to Registrable Securities, incurred in connection with registrations, filings or qualifications pursuant to Section 3.3 for each Holder, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company.

Section 3.8 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Article III.

Section 3.9 Indemnification. In the event any Registrable Securities are included in a registration statement under this Article III:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, members, officers, and directors of each Holder (including HCMLP), any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any of the following statements, omissions or violations (each, a "***Violation***"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the

Exchange Act, any state securities taw or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished by any such Holder, underwriter or controlling person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this Section 3.9(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided*, *however*, that the indemnity agreement contained in this Section 3.9(b), shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld, conditioned or delayed); *provided*, *however*, that in no event shall any indemnity under this Section 3.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 3.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 3.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided*, *however*, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability

to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 3.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 3.9.

(d) If the indemnification provided for in this Section 3.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations; *provided*, *however*, that in no event shall any contribution under this Section 3.9 exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control as to any Investor that is a party thereto.

(f) The obligations of the Company and Holders under this Section 3.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Article III, and otherwise. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each other indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

Section 3.10 Reports Under Securities Exchange Act. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public;

(b) take such action, including the voluntary registration of its Common Stock under Section 5.12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the

end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request from such Holder (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to Form S-3.

Section 3.11 Form S-3 Registrations. In the event that the Company shall receive from HCMLP on behalf of the Holders of at least 10% of the Registrable Securities then outstanding a written request that the Company effect a registration on Form S-3, and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use its commercially reasonable efforts to, as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; *provided*, *however*, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 3.11:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such Form S-3, propose to sell Registrable Securities at an aggregate price to the public (net of underwriting discounts and commissions) of less than $500,000;

(iii) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 3.11 a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company and its stockholders for such registration statement to be filed and it is, therefore, essential to defer the filing of such registration statement, the Company shall have the right to defer taking action with respect to such filing for a period of not more than one-hundred-

twenty (120) days after receipt of the request of the Initiating Holders; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12) month period;

(iv) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance;

(v) if the Company has, within the twelve (12) month period preceding the date of such request, already effected one (1) registration on Form S-3 for the Holders pursuant to this Section 3.11; or

(vi) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of filing of, and ending on a date one-hundred-eighty (180) days after the effective date of, any registration statement pertaining to a public offering of securities for the Company's account; *provided*, *however*, that the Company is actively employing its commercially reasonable efforts to cause such registration statement to be effective.

(c) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. All expenses incurred in connection with a registration requested pursuant to this Section 3.11, including, without limitation, all registration, filing, qualification, printer's and accounting fees and the reasonable fees and disbursements of counsel for the selling Holder or Holders and counsel for the Company, shall be borne by the Company. Registrations effected pursuant to this Section 3.11 shall not be counted as demands for registration or registrations effected pursuant to Section 3.2 or Section 3.3, respectively.

(d) If the Holders initiating a registration pursuant to this Section 3.11 intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 3.11 and the Company shall include such information in the written notice referred to in Section 3.11(a). The underwriter will be selected by HCMLP and shall be reasonably acceptable to the Company, which approval shall not be unreasonably withheld or delayed. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 3.4(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 3.11, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated in the following order of priority: (A) first, the Registrable Securities requested to be included in such registration by the Holders, allocated pro

rata among the holders thereof on the basis of the total number of shares of Registrable Securities such Holder requested to be included in such registration or apportioned among them in any other manner in which HCMLP determines to be appropriate in its sole discretion; (B) second, the securities requested to be included therein by the Company; and (C) third, among persons not contractually entitled to registration rights under this Agreement.

Section 3.12 Expenses of Form 5-3 Registration. All expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Section 3.11, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of counsel for the selling Holders shall be borne by the Company; including, without limitation, all such expenses incurred with respect to a registration request subsequently withdrawn by the Holders, regardless of whether such withdrawal was a result of a material adverse change in the condition (financial or otherwise), business or prospects of the Company from that known to the Holders at the time of the request or otherwise.

Section 3.13 Assignment of Registration Rights. Subject to the prior consent of HCMLP, the rights to cause the Company to register Registrable Securities pursuant to this Article III may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, member, partner, limited partner, retired partner, grantor or shareholder of a Holder, and (ii) an affiliate of HCMLP, including any investment funds controlled by or under common control with, or managed directly or indirectly by, HCMLP, which will continue to qualify as Highland Capital after such transfer; *provided* that: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including (without limitation) the provisions of Section 1.4 below, including the execution of an Adoption Agreement in the form attached hereto as Exhibit A; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act. For the purposes of determining the number of shares of Registrable Securities held by a transferee or assignee, the holdings of transferees and assignees of a partnership who are partners or retired partners of such partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Registrable Securities by gift, will or intestate succession) shall be aggregated together and with the partnership; *provided* that all assignees and transferees who would not qualify individually for assignment of registration rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under this Article III.

Section 3.14 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of HCMLP (which approval may be granted or withheld in its sole discretion), enter into any agreement with any holder or prospective holder of any securities of the Company (i) to include such securities in any registration filed under Section 3.2, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such holder's or prospective holder's securities will not reduce the amount of the

Registrable Securities of the Holders which is included or (ii) to make a demand registration that could result in such registration statement being declared effective prior to the dates set forth in Section 3.2 or within one-hundred-eighty (180) days of the effective date of any registration effected pursuant to Section 3.2.

ARTICLE IV

VOTING AGREEMENT; BOARD OF DIRECTORS; REQUIRED VOTE

Section 4.1 Board of Directors.

(a) Composition of Board of Directors. For so long as Highland Capital owns any shares of the Company's capital stock, each Stockholder agrees that in any election of directors of the Company, each Stockholder shall vote all shares of the Company capital stock entitled to vote in the election of directors that are owned or controlled by such Stockholder (or shall consent pursuant to an action by written consent of the holders of capital stock of the Company), including all shares that each Stockholder is entitled to vote under any voting trust, voting agreement, proxy or other arrangement (collectively, "***Stock***"), to elect a Board of Directors consisting of the directors designated by HCMLP in its sole discretion. In the absence of any designation HCMLP, the director previously designated by HCMLP and then serving shall be re-elected if still eligible to serve as provided herein. This Section 4.1(a) shall not apply to Crusader.

(b) Subsidiary Governing Bodies; Committees. Unless otherwise agreed to by HCMLP or the Board of Directors, the members of the Board of Directors, as the same shall be constituted from time to time, shall also constitute the board of directors or equivalent governing body of each subsidiary of the Company. HCMLP shall have the right but not the obligation to designate at least two members of the Board of Directors elected pursuant to this Section 4.1 to serve on any duly constituted committee of the boards of directors of the Company and any subsidiaries.

(c) Obligations of the Company. The Company shall use its best efforts and shall exercise all authority under applicable law to cause to be nominated for election and cause to be elected or appointed, as the case may be, as directors of the Company, a slate of directors consisting of individuals meeting the requirements of Section 4.1(a). The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of HCMLP hereunder against impairment. Each Stockholder hereby agrees to vote, cause to be voted or sign a written consent with respect to all of its shares in favor of a slate of directors consisting of individuals meeting the requirements of Section 4.1(a).

(d) Vacancies; Removal. In the event of any vacancy in the Board of Directors, each Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder and to use such Stockholder's best efforts to fill such vacancy so that the Board of Directors will be comprised of directors designated as provided in Section 4.1(a). Each

Stockholder agrees to vote all outstanding shares of Stock owned or controlled by such Stockholder for the removal of a director whenever (but only whenever) there shall be presented to the Board of Directors the written direction that such director be removed, signed by HCMLP. In such event, the Board of Directors shall solicit the vote of the Stockholders entitled to remove such director in order to effect such removal. This Section 4.1(d) shall not apply to Crusader.

Section 4.2 Required Vote.

(a) Notice of Disposition Transaction. In the event HCMLP has approved or rejected any (A) the acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) unless the Company's stockholders of record as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for the Company's acquisition or sale or otherwise) hold at least 50% of the voting power of the surviving or acquiring entity; or (B) a sale of all or substantially all of the assets of the Company, including a sale of all or substantially all of the assets of the Company's subsidiaries, if such assets constitute substantially all of the assets of the Company and such subsidiaries taken as a whole (each, an "***Approved Sale***"), the Company shall give notice (the "***Sale Notice***") to the Stockholders stating that HCMLP has approved or rejected, as applicable, an Approved Sale. The Sale Notice also shall set forth the identity of the person or entity proposing to buy the Company, its assets or its capital stock (the "***Acquisition Offeror***") and shall summarize the basic terms of the proposed Approved Sale. Any Sale Notice may be rescinded by HCMLP by delivering written notice thereof to the Stockholders.

(b) Obligations of Stockholders. As soon as practicable after receipt of the Sale Notice, the Stockholders shall take all lawful action reasonably necessary and requested by the Company (i) in the event the Approved Sale was approved by HCMLP, to complete the Approved Sale, including without limitation (A) the voting of all capital stock of the Company held by the Stockholders in favor of the Approved Sale, (B) if so requested, the surrender to the Acquisition Offeror of certificates representing all capital stock and all instruments representing convertible securities of the Company held by the Stockholders, properly endorsed for transfer to the Acquisition Offeror against payment of the sale price for such capital stock or such convertible securities in the Approved Sale, and (C) the execution of all sale, liquidation and other agreements in the form reasonably requested (containing, among other things, reasonable and customary representations and warranties relating to the valid title to such capital stock free and clear of any liens, claims, encumbrances and restrictions of any kind (other than those arising hereunder) and such Stockholder's power, authority, and right to enter into and consummate such purchase or merger agreement without violating any other agreement); or (ii) in the event the Approved Sale was rejected by HCMLP, to reject the Approved Sale, including, without limitation, the voting of all capital stock of the Company held by the Stockholders against the Approved Sale. The Stockholders hereby agree, after having received a Sale Notice, not to exercise any dissenter's rights or other rights granted to minority stockholders under state law in connection with an Approved Sale, or otherwise take actions designed to or that reasonably would be expected to complicate, delay, reject or terminate the Approved Sale.

Section 4.3 Grant of Proxy. To ensure the performance of each Stockholder with respect to the agreements set forth in this Article IV, each Stockholder hereby appoints the

Chairman of the Board of Directors and the principal executive officer of the Company, or either of them from time to time, or their designees, as his, her or its true and lawful proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote all. Stock owned or held by such Stockholder and to execute all appropriate instruments consistent with this Agreement, subject to the provisions of this Agreement, upon any matter presented to the stockholders of the Company, if and only if such Stockholder fails to vote all of such Stockholder's Stock or execute such other instruments in accordance with the provisions of this Agreement within five (5) days of the Company's or any other party's written request for such Stockholder's written consent or signature. The proxies and powers granted by each Stockholder pursuant to this Section 4.3 are coupled with an interest, are given to secure the performance of such Stockholder's commitments under this Agreement, and shall he irrevocable unless and until this Agreement terminates or expires pursuant to its terms. Such proxies shall survive the death, incompetence, disability, merger, reorganization, dissolution or winding up of such Stockholder. Each party hereto hereby revokes any and all previous proxies with respect to the Stock and shall not hereafter, unless and until this Agreement terminates or expires, purport to grant any other proxy or power of attorney with respect to any of the Stock, deposit any of the Stock into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Stock, in each case, with respect to any of the matters set forth herein.

ARTICLE V

COVENANTS OF THE COMPANY

Section 5.1 Delivery of Financial Statements. The Company shall deliver the following information to HCMLP, to each Highland Capital Stockholder and to Crusader:

(a) as soon as reasonably practicable, but in any event within 90 days after the end of each fiscal year of the Company (which due date may be lengthened with respect to any fiscal year by approval of HCMLP), an audited consolidated income statement of the Company for such year, an audited consolidated balance sheet and statement of stockholders' equity of the Company as of the end of such fiscal year, and an audited consolidated statement of cash flows of the Company for such fiscal year, such audited year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("***GAAP***") consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such audited financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by HCMLP.

(b) as soon as reasonably practicable, but in any event within thirty (30) days after the end of each fiscal quarter of the Company, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such fiscal quarter and an unaudited consolidated balance sheet of the Company as of the end of such fiscal quarter, prepared in accordance with GAAP, which shall each show a comparison to plan figures for such period and to the comparable period in the prior year prepared in accordance with GAAP with the exception that no notes need be attached to such statements and year end audit adjustments

need not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such quarter.

(c) as soon as reasonably practicable, but in any event within twenty (20) days after the end of each calendar month, an unaudited consolidated income statement and consolidated statement of cash flows of the Company for such month and an unaudited consolidated balance sheet of the Company as of the end of such month and for the current fiscal year to date, including a comparison to plan figures for such period and to the comparable period in the prior year, prepared in accordance with GAAP consistently applied, with the exception that no notes need be attached to such statements and year end audit adjustments may not have been made, together with a report from the Company's chief executive officer, and/or chief financial officer, summarizing the Company's consolidated financial condition and consolidated results of operation during such month.

(d) an annual budget and operating plans for the Company at least thirty (30) days prior to the beginning of each fiscal year and (promptly after they are available) any subsequent substantive revisions thereto; and

(e) such relevant business and other information reasonably requested, including, without limitation, copies of relevant management reports, as HCMLP may request from time to time.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Section 5.2 Inspection. The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with GAAP consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under GAAP consistently applied. The Company shall permit HCMLP or its designee(s) to visit and inspect the Company's properties, to examine and audit its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times and during normal business hours as may be requested by HCMLP.

Section 5.3 Directors and Officers Insurance.

(a) The Company shall maintain, from financially sound and reputable insurers approved by HCMLP, directors' and officers' insurance with coverage decided in accordance with policies adopted by HCMLP.

(b) The Company will indemnify the Board of Directors to the broadest extent permitted by applicable law. The Company shall enter into written indemnification agreements (in a form reasonably acceptable to HCMLP) with the directors and executive officers of the Company.

(c) in the event of a Change in Control, proper provision shall be made so that the successors and assigns of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately prior to such transaction, whether in the Company's Bylaws, Certificate of Incorporation, or elsewhere, as the case may be, and, unless otherwise affirmatively determined by the Board of Directors, for the purchase of "***tail***" D&O insurance coverage.

Section 5.4 **Additional Stockholders**. As a condition to the Company's issuance of any shares of Common Stock, or options, warrants or rights to purchase or acquire Common Stock, to any person or entity, including the issuance of certificates representing shares of Common Stock upon a transfer following compliance with the terms of this Agreement, the Company shall, as a condition to such issuance, cause such person or entity to execute an Adoption Agreement in the form attached as Exhibit A hereto in the capacity of a Remaining Stockholder or a Highland Capital Stockholder, as appropriate, confirming that such person or entity is bound by, and subject to, all the terms and provisions of this Agreement applicable to a Remaining Stockholder or a Highland Capital Stockholder, whichever is applicable to such person or entity. The addition of Stockholders as parties to the Agreement in compliance with this provision shall not be deemed an amendment.

ARTICLE VI

MISCELLANEOUS

Section 6.1 **Term; Termination**. This Agreement shall terminate upon the earliest to occur of (a) such time as the Stockholders shall no longer be the owner of any shares of capital stock of the Company; or (b) the date specified by agreement of the Company and HCMLP. Notwithstanding the foregoing, the following rights under this Agreement shall terminate as set forth herein:

(a) The rights of first refusal and co-sale set forth in Article I hereof shall terminate upon the earlier of (i) the closing of a bona fide firm commitment underwritten public offering of the Company's Common Stock registered under the Securities Act resulting in proceeds to the Company of at least $50 million (a "***Qualified IPO***"), and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(b) The rights of first offer set forth in Article II hereof shall terminate upon the earlier of (i) a Qualified IPO, and (ii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders);

(c) The registration rights set forth in Article III hereof shall terminate with respect to any Holder upon the earlier of (i) a Change in Control, and (ii) the date upon which all Registrable Securities held by such Holder can be sold without restriction under Rule 144(k) under the Securities Act;

(d) The voting rights and obligations set forth in Article IV hereto shall terminate upon the earlier of (i) (A) in the case of Section 4.1 the Initial Public Offering, and (B) in the case of Section 4.2, a Qualified IPO, and (ii) a Change in Control; and, *provided* that the provisions of Section 4.2 will continue after the closing of any Approved Sale to the extent necessary to enforce the provisions of Section 4.2 with respect to such Approved Sale;

(e) The information and inspection rights set forth in Section 5.1 and Section 5.2 hereto shall terminate upon the earliest of (i) the Initial Public Offering, (ii) the date upon which the Company becomes subject to the periodic reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, and (iii) a Change in Control (including in the case of an asset sale or similar transaction in which Stockholders continue to hold the Company's shares, the final distribution of proceeds to the Stockholders).

Section 6.2 Legend. Each certificate representing the Common Stock of the Company shall be endorsed with substantially the following legend, in addition to any other legend required by law, the Company's organizational documents or agreement to which the Stockholder is subject:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN STOCKHOLDERS' AGREEMENT, BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF THE COMMON STOCK OF THE COMPANY, INCLUDING SUBSTANTIAL RESTRICTIONS ON TRANSFER AND VOTING. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. THE STOCKHOLDERS' AGREEMENT IS BINDING ON THE TRANSFEREES OF SUCH SHARES."

Section 6.3 Successors and Assigns. In addition to any restriction on transfer that may be imposed by any other agreement by which the parties hereto may be bound, this Agreement shall be binding upon the parties hereto and their respective permitted transferees, heirs, executors, administrators, successors and assigns; *provided, however*, that the Company shall not effect any transfer of Common Stock subject to this Agreement on its books or issue a new certificate for such Common Stock unless the transferee of such Common Stock has executed and delivered an Adoption Agreement in the form attached hereto as Exhibit A. Upon compliance with all transfer and other restrictions set forth herein and the execution and delivery of an Adoption Agreement by the transferee, such transferee shall be deemed to be a party hereto as if such transferee's signature appeared on the signature pages hereto, in the capacity of Highland Capital or a Remaining Stockholder, as the case may be, whereupon the schedules of Stockholders shall be updated accordingly. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 6.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to conflicts of laws principles.

Section 6.5 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 6.6 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 6.7 **Notices**.

(a) All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the address for each party set forth herein (or at such other address for a party as shall be specified by like notice):

(i) If to the Company:

Cornerstone Healthcare Group Holding, Inc.
13455 Noel Rd., Suite 1320
Dallas, TX 75240
Fax: [●]
Attn: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Fax: ([●]
Attn: [●]

(ii) If to HCMLP:

Highland Capital Management, L.P.
[●]
[●]
[●]
Fax: [●]
Attention: [●]
Email: [●]

(iii) If to a Highland Capital Stockholder, to the address set forth below such Highland Capital Stockholder's name on Schedule A hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(iv) If to a Remaining Stockholder, at the address set forth below such Stockholder's name on Schedule B hereto, with a copy (which shall not constitute notice) to HCMLP and the Company.

(b) Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by facsimile shall be confirmed by appropriate answer back and shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

(c) An electronic communication ("***Electronic Notice***") shall be deemed written notice for purposes of this Section 6.7 if sent with return receipt requested to the electronic mail address specified by the receiving party in a signed writing in a nonelectronic form. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("***Nonelectronic Notice***") which shall be sent to the requesting party within five (5) days of receipt of the written request for Nonelectronic Notice.

Section 6.8 DGCL Electronic Notice. Each party hereto generally consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "***DGCL***"), as amended or superseded from time to time, by electronic transmission (a "***DGCL Electronic Notice***") pursuant to Section 232 of the DGCL at the electronic mail address or the facsimile number set forth below such party's name on the Schedules hereto, as updated from time to time by notice to the Company, or as the books of the Company. To the extent that any DGCL Electronic Notice is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted DGCL Electronic Notice shall be ineffective and deemed to not have been given. Each party hereto hereby agrees to promptly notify the Company of any change in such holder's electronic mail address, but failure to do so shall not affect the foregoing.

Section 6.9 Dispute Resolution.

(a) Arbitration. Notwithstanding anything contained in this Agreement to the contrary, and except for the equitable remedies provided in Section 6.9(b), in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; *provided*, *however*, that the Company or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on any of the parties, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process

shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

(b) Equitable Relief. Each party hereto acknowledges and agrees that any breach of this Agreement would result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocable agree that nay non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including, without limitation, seeking specific performance or the rescission of purchases, sales and other transfers of Securities not made in strict compliance with this Agreement).

Section 6.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

Section 6.11 Amendments and Waivers. Subject to the last sentence of this Section 6.11, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of (i) the Company, (ii) HCMLP, (iii) the Highland Capital Stockholders holding a majority of the Shares of the Company's Capital Stock held by Highland Capital, and (iv) at any such time as Highland Capital does not hold a majority of the Shares of the Company's capital stock that are subject to this Agreement, the Stockholders holding a majority of the shares of the Company's capital stock (on an as-converted to Common Stock basis) then held by all Stockholders that are subject to this Agreement, *provided* that the

consent of the Remaining Stockholders shall not be required for any amendment or waiver if such amendment or waiver either (A) is not directly applicable to the rights of the Remaining Stockholders hereunder or (B) does not materially and adversely affect the rights of the Remaining Stockholders in a manner that is disproportionate to the effect on the rights of the other parties hereto. Notwithstanding the foregoing, any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party. Any amendment or waiver effected in accordance with this Section 6.11 shall be binding upon each party to this Agreement and each future party to this Agreement. Notwithstanding the foregoing, neither (i) the addition of parties hereto as a condition to such person participating in a transaction described herein, nor (ii) the addition of a party hereto as a result of such party being or becoming a Highland Capital Stockholder, shall be deemed an amendment hereto, nor shall any update to the Schedules hereto from time to time to reflect the correct holdings of or other information with respect to the parties. No provision of this Agreement that is applicable expressly to Crusader, including Section 1.1(b)(vi), Section 1.1(b)(vii), Section 1.2(d), Section 4.1(a), Section 4.1(d), Section 5.1 and this Section 6.11, shall be amended in any respect that is applicable to Crusader without the prior written consent of Crusader.

Section 6.12 Aggregation of Stock. All shares of Common Stock or other Securities of the Company held or acquired by affiliated entities or persons (including, without limitation, the Common Stock or other Securities held by Highland Capital) may be aggregated together for the purpose of determining the availability of any rights under this Agreement. For the purposes of determining the availability of any rights under this Agreement, the holdings of transferees and assignees of an individual or a partnership who are spouses, ancestors, lineal descendants or siblings of such individual or partners or retired partners of such partnership or partnerships affiliated with such transferring or assigning partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Common Stock by gift, will or intestate succession) shall be aggregated together with the individual or partnership, as the case may be, for the purpose of exercising any rights or taking any action under this Agreement.

Section 6.13 Entire Agreement. This Agreement (including the Schedules hereto, if any) constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and thereof and supersedes any and all prior agreements relating to the subject matter hereof, including without limitation the First Stockholders' Agreement. The Company and each Stockholder acknowledges and agrees that neither the Company's Certificate of Incorporation or Bylaws shall be amended to include any transfer restrictions on the Company's Securities (it being understood that any and all applicable transfer restrictions, other than those arising under the securities laws generally, shall be as set forth herein).

Section 6.14 Stock Splits, Stock Dividends, etc. In the event of any stock split, stock dividend, capitalization, reorganization, or the like, any securities issued with respect to the shares of the Company's capital stock held by the Stockholders shall become subject to the terms of this Agreement.

Section 6.15 Cumulative Remedies. In addition to the rights and remedies stated in this Agreement, each party hereto shall have all those rights and remedies allowed by applicable laws. The rights and remedies of each party are cumulative and recourse to one or more right or remedy shall not constitute a waiver of the others.

Section 6.16 **Rights of Stockholders**. Each of HCMLP and each Stockholder, in its sole and absolute discretion, may exercise or refrain from exercising any rights or privileges that such Stockholder may have pursuant to this Agreement, the Company's Certificate of Incorporation or Bylaws, or at law or in equity; and neither HCMLP nor such Stockholder shall incur or be subject to any liability or obligation to the Company, any other party hereto, or any other person, by reason of exercising or refraining from exercising any such rights or privileges.

Section 6.17 **Further Assurance**. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instrument or documents and take all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder.

Section 6.18 **Joint Product**. This Agreement is the joint product of the Company and the other parties hereto and each provision hereof and thereof has been subject to the mutual consultation, negotiation and agreement of the Company and the other parties hereto and shall not be construed against any party hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned party has executed this counterpart signature page to the Amended & Restated Stockholders' Agreement as of the date first above written.

COMPANY:

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By:_____
Name: _____
Title: _____

HCMLP:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: _____
Title: _____

HIGHLAND CAPITAL STOCKHOLDERS:

Highland Credit Opportunities Holding Corporation

By:_____
Name: _____
Title: _____

Highland Credit Strategies Holding Corporation

By:_____
Name: _____
Title: _____

Highland Capital Management, L.P.

By: Strand Advisors, Inc., its general partner

By:_____
Name: _____
Title: _____

REMAINING STOCKHOLDERS:

Highland Crusader Holding Corp.

By: _____
Name: Mark S. DiSalvo
Title: Authorized Signatory

SCHEDULE A

Highland Capital Stockholders
(as of [●], 2020)

Name/Address	**Number of Shares**
Highland Credit Opportunities Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	4,029
Highland Credit Strategies Holding Corporation 13455 Noel Road, Suite 800 Dallas, Texas 75240	8,119
Highland Capital Management, L.P. 13455 Noel Road, Suite 800 Dallas, Texas 75240	1,022
Highland Restoration Capital Partners Master, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	6,655
Highland Restoration Capital Partners, L.P. 13455 Noel Road, Suite 1300 Dallas, Texas 75240	5,445
Total	**25,270**

SCHEDULE B

Remaining Stockholders
(as of [●], 2020)

Name/Address	**Number of Shares**
Highland Crusader Holding Corp. 800 Turnpike Street, Suite 300 North Andover, MA 01845	14,830

EXHIBIT A

Adoption Agreement

This Adoption Agreement ("***Adoption Agreement***") is executed by the undersigned (the "***Transferee***") pursuant to the terms of that certain Amended & Restated Stockholders' Agreement dated as of _____ (the ***Stockholders' Agreement***") by and among Cornerstone Healthcare Group Holding, Inc. (the "***Company***"), Highland Capital Management, L.P. and certain holders of its Common Stock. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Stockholders' Agreement.

1. Acknowledgement. Transferee acknowledges that Transferee is acquiring certain shares of the capital stock of the Company (the "***Stock***"), which shares are subject to the terms and conditions of the Stockholders' Agreement.

2. Agreement. As partial consideration for such transfer, Transferee (i) agrees that the Stock acquired by Transferee shall be bound by and subject to the terms of the Stockholders' Agreement, to the same extent and with the same rights and obligations as the person(s) from which such Stock is received and (ii) hereby agrees to become a party to the Stockholders' Agreement with the same force and effect as if Transferee were originally a party thereto in the capacity of a [Highland Capital / Remaining] Stockholder.

3. Notice. Any notice required or permitted by the Stockholders' Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

4. Joinder. The spouse of the undersigned Transferee, if applicable, executes this Adoption to acknowledge its fairness and that it is in such spouse's best interests, and to bind to the terms of the Stockholders' Agreement such spouse's community interest, if any, in the Stock.

EXECUTED AND DATED this ____ day of _____, ____.

TRANSFEREE:

_____

Title: _____
Address: _____
Fax: _____

Spouse: (if applicable):

_____
Name:

Acknowledged and accepted on _____, _____.

CORNERSTONE HEALTHCARE GROUP HOLDING, INC.

By:_____
Name: _____
Title: _____

EXHIBIT B

(To Be Filed under Seal)

EXHIBIT 2

***Partial Final Award* dated March 6, 2019**

(To Be Filed under Seal)

EXHIBIT 3

Disposition of Application of Modification of Award **dated March 14, 2019**

(To Be Filed under Seal)

EXHIBIT 4

***Final Award* dated April 29, 2019**

(To Be Filed under Seal)

EXHIBIT 5

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   Redeemer Committee Highland Crusader Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   See summary page
   Contact phone
   Contact email TMascherin@jenner.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

19340542001230404280038 85

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached rider . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached rider

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

     Nature or property:
     - ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
     - ☐ Motor vehicle
     - ☐ Other. Describe: _____

     Basis for perfection: _____
     Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

     Value of property: $_____
     Amount of the claim that is secured: $_____
     Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

     Amount necessary to cure any default as of the date of the petition: $_____

     Annual Interest Rate (when case was filed)_____%
     - ☐ Fixed
     - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

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12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/03/2020
MM / DD / YYYY

/s/Terri L. Mascherin
Signature

Print the name of the person who is completing and signing this claim:

Name: Terri L. Mascherin
First name | Middle name | Last name

Title: Partner

Company: Jenner and Block LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

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KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
Redeemer Committee Highland Crusader Fund
c/o Terri Mascherin, Esq.
Jenner and Block
353 N. Clark Street
Chicago, IL, 60654-3456
Phone:
Phone 2:
Fax:
Email:
TMascherin@jenner.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached rider

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached rider

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
No

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Terri L. Mascherin on 03-Apr-2020 1:51:56 p.m. Eastern Time

Title:
Partner

Company:
Jenner and Block LLP

Your claim can be filed electronically on KCC's website at https://epoc.kccllc.net/HCMLP

ID: 24788159 PIN: wZvUm7fb

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the Northern District of Texas, Dallas Division

Case number 19-34054-sgj11

Official Form 410
Proof of Claim

04/19

Read the instructions before filiing out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim

NameID: 13930498

1. **Who is the current creditor?**
   Redeemer Cmmttee Highland Crusader Fund
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**
   ☒ No
   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   Redeemer Cmmttee Highland Crusader Fund
   c/o Terri Mascherin, Esq.
   Jenner & Block
   353 N. Clark Street
   Chicago, IL 60654-3456

   Address _____
   Contact phone _____
   Contact email _____

   Where should payments to the creditor be sent? (if different)
   Name _____
   Number Street _____
   City State ZIP Code _____
   Country _____
   Contact phone _____
   Contact email _____

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   _____

4. **Does this claim amend one already filed?**
   ☒ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☒ No
   ☐ Yes. Who made the earlier filing? _____

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Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - [X] No
   - [ ] Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached rider. **Does this amount include interest or other charges?**
   - [ ] No
   - [X] Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached rider.

9. **Is all or part of the claim secured?**
   - [X] No
   - [ ] Yes. The claim is secured by a lien on property.

   Nature of property:
   - [ ] Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - [ ] Motor vehicle
   - [ ] Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - [ ] Fixed
   - [ ] Variable

10. **Is this claim based on a lease?**
    - [X] No
    - [ ] Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - [X] No
    - [ ] Yes. Identify the property: _____

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12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04 / 02 / 2020
MM / DD / YYYY

Terri L. Mascherin
Signature

Print the name of the person who is completing and signing this claim:

Name: Terri (First name) L. (Middle name) Mascherin (Last name)

Title: Partner

Company: Jenner & Block LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 353 N. Clark Street (Number Street)
Chicago (City) IL (State) 60654-3456 (ZIP Code) USA (Country)

Contact phone: (312) 222-9350 Email: tmascherin@jenner.com

1934054200123040428003885

RIDER TO THE PROOFS OF CLAIM OF THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

This Rider is part of the proof of claim (the "**Proof of Claim**") filed by the Redeemer Committee of the Highland Crusader Fund (the "**Redeemer Committee**") against Highland Capital Management, L.P. ("**HCM**" or the "**Debtor**").

On March 6, 2019, a panel of arbitrators issued a Partial Final Award (the "**March Award**") in favor of the Redeemer Committee against HCM. On April 29, 2019, the panel issued a Final Award (the "**Final Award**," and together with the March Award, the "**Arbitration Award**") in favor of the Redeemer Committee against HCM.[1] The Arbitration Award is subject to the Federal Arbitration Act and The Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Redeemer Committee timely moved to confirm the Award in the Delaware Chancery Court. HCM moved for partial vacatur of the Arbitration Award in June 2019. The time period to move to vacate the Arbitration Award expired prior to the Petition Date (as defined below). All capitalized terms that are not defined herein have the meanings given to such terms in the Arbitration Award.

The Redeemer Committee files this Proof of Claim out of an abundance of caution. The Arbitration Award is an executory contract under section 365 of the Bankruptcy Code. HCM has not yet moved to assume or reject the contract. Accordingly, the deadline to file a proof of claim remains undetermined. By filing the Proof of Claim, the Redeemer Committee does not concede that the amounts awarded under the Arbitration Award are prepetition claims or that it is required to file a proof of claim to be entitled to the amounts described herein. The Redeemer Committee reserves all rights to amend or modify this Proof of Claim in any respect, including to assert other or additional claims, or for the purpose of fixing or liquidating any contingent or unliquidated claims. This Proof of Claim is without prejudice to any other rights the Redeemer Committee may have against the Debtor, its officers, employees, successors, or assigns.

This Proof of Claim includes the following components, and each is based on the Arbitration Award (together, the "**Claim**"):

1. **Damage Claim.** The Redeemer Committee asserts a liquidated claim for at least $190,824,557 plus interest that is accruing beginning as of October 16, 2019, the date that HCM filed its bankruptcy case (the "**Petition Date**"). As set forth in the Final Award, the separate components of the Damage Claim are as follows, and the amounts set forth below are as of the Petition Date, including prepetition interest awarded under the Arbitration Award accrued to the Petition Date:

   a. Deferred Fee Claim: $43,105,395 (Final Award ¶ F.a.ii.1)

   b. Distribution Fee Claim: $22,922,608 (Final Award ¶ F.a.ii.2)

[1] Copies of the Arbitral Award have previously been provided the Debtor, the Official Committee of Unsecured Creditors, and the Office of the United States Trustee. The Redeemer Committee reserves the right to file a copy of the Arbitral Award with the Bankruptcy Court.

c. Taking of Plan Claims: $3,277,991 (Final Award ¶ F.a.v)

d. CLO Trades Claim: $685,195 (Final Award ¶ F.a.vi)

e. Credit Suisse Claim: $3,660,130 (Final Award ¶ F.a.vii)

f. UBS Claim: $2,600,968 (Final Award ¶ F.a.viii)

g. Barclays Claim: $30,811,366 (Final Award ¶ F.a.ix)

h. Legal Fees, Costs, and Expenses: $11,351,850 (Final Award ¶ F.a.xi)

i. Administrative Fees: $514,164 (Final Award ¶ F.a.xii)

j. Cornerstone Award: $71,894,891 (Final Award ¶ F.a.ix)

The Redeemer Committee also asserts an unliquidated claim for post-petition interest, attorneys' fees, costs, and other expenses that continue to accrue in connection with the Damage Claim.

2. **Cancellation of Limited Partnership Interests.** The Final Award provides, in relevant part, for the cancellation of the limited partnership interests in the Crusader Fund that are (i) held by HCM and Charitable DAF Fund, L.P. that are identified in RC411, and (ii) held by Eames, Ltd. (Final Award ¶¶ F.a.v and F.a.x). The Final Award provides for HCM to transfer, or take all necessary steps to cause the transfer of, such interests to the Redeemer Committee for the benefit of the Crusader Fund. The Final Award also provides that the Redeemer Committee has the independent right to cause the Crusader Fund to cancel such limited partnership interests. The Redeemer Committee reserves the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cancel such limited partnership interests in accordance with the Final Award. The Redeemer Committee asserts a claim in an unliquidated amount in the event all such limited partnership interests are not cancelled in accordance with the Final Award.

3. **Deferred Fee Account.** The Arbitration Award granted the Redeemer Committee's request for a declaratory judgment with respect to the immediate distribution of the Deferred Fee Account, which the Crusader Fund continues to hold, and ordered the payment of the funds in such account to the Redeemer Committee for disbursal to the Consenting Compulsory Redeemers (March Award ¶ VII.D; Final Award ¶ F.a). The Redeemer Committee reserves the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cause the distribution of the funds held in the Deferred Fee Account in accordance with the Arbitration Award. The Redeemer Committee asserts a claim in an unliquidated amount in the event all such funds are not distributed in accordance with the Arbitration Award.

The Redeemer Committee expressly reserves all of its procedural and substantive defenses and rights with respect to any claim that may be asserted against the Redeemer Committee by the Debtor, including any rights of setoff or recoupment.

The filing of this Claim shall not constitute: (i) an admission of liability by the Redeemer Committee to any party; (ii) a waiver or release of the Redeemer Committee's rights against any person, entity, or property; (iii) a consent by the Redeemer Committee to the jurisdiction of the Bankruptcy Court with respect to the subject matter of this Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases or otherwise involving the Redeemer Committee; (iv) a waiver of the right to move to withdraw the reference to the subject matter of this Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant; (v) a waiver of the right to have final orders entered only after *de novo* review by a United States Judge; (vi) its right to trial by jury in any proceeding so triable in these cases or any case, controversy, or proceeding related to these cases; (vii) its right to arbitration under the Plan and Scheme; (viii) an election of remedies; or (ix) any other rights, claims, actions, defenses, setoffs, or recoupments to which it is or may be entitled under agreements, in law, in equity, or otherwise, all of which rights, claims, actions, defenses, setoffs, and recoupments are expressly reserved.

EXHIBIT 6

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   See summary page
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   See summary page
   Contact phone 212-351-3969
   Contact email mrosenthal@gibsondunn.com

   Where should payments to the creditor be sent? (if different)
   Alvarez and Marsal CRF Management, LLC
   2029 Century Park East, Suite 2060
   Los Angeles, CA 90067, United States
   Contact phone 310-975-2600
   Contact email svarner@alvarezandmarsal.com

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):
   ____

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on ____ / ____ / ____ (MM / DD / YYYY)

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

1934054200406000000000005

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
- ☑ No
- ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ see attached rider . **Does this amount include interest or other charges?**
- ☐ No
- ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached rider

9. **Is all or part of the claim secured?**
- ☑ No
- ☐ Yes. The claim is secured by a lien on property.

Nature or property:

- ☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
- ☐ Motor vehicle
- ☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%
- ☐ Fixed
- ☐ Variable

10. **Is this claim based on a lease?**
- ☑ No
- ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
- ☐ No
- ☑ Yes. Identify the property: See attached rider

1934054200406000000000005

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/06/2020
MM / DD / YYYY

/s/Michael A. Rosenthal
Signature

Print the name of the person who is completing and signing this claim:

Name: Michael A. Rosenthal
First name Middle name Last name

Title: Counsel to Alvarez and Marsal CRF Management, LLC, as Investment Manager

Company: Gibson, Dunn and Crutcher LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.

District:
Northern District of Texas, Dallas Division

Creditor:
Highland Crusader Offshore Partners, L.P., et al., see rider for all names of creditors
Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP
200 Park Avenue
New York, NY, 10166
United States
Phone:
212-351-3969
Phone 2:
Fax:
Email:
mrosenthal@gibsondunn.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Disbursement/Notice Parties:
Alvarez and Marsal CRF Management, LLC
2029 Century Park East, Suite 2060
Los Angeles, CA, 90067
United States
Phone:
310-975-2600
Phone 2:
Fax:
E-mail:
svarner@alvarezandmarsal.com
DISBURSEMENT ADDRESS

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached rider

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
see attached rider

Includes Interest or Charges:
Yes

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
Yes, See attached rider

Nature of Secured Amount:

Value of Property:

Annual Interest Rate:

Arrearage Amount:

Basis for Perfection:

Amount Unsecured:

Submitted By:
Michael A. Rosenthal on 06-Apr-2020 4:27:48 p.m. Eastern Time

Title:
Counsel to Alvarez and Marsal CRF Management, LLC, as Investment Manager

Company:
Gibson, Dunn and Crutcher LLP

VN: 7A78DE4EB71152089D81101C07CBE433

Fill in this information to identify the case:

Debtor 1 Highland Capital Management, L.P.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of Texas

Case number 19-34054-sgj11

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Highland Crusader Offshore Partners, L.P., et al. (see rider for all names of creditors)
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Michael A. Rosenthal, Gibson, Dunn & Crutcher	Alvarez & Marsal CRF Management, LLC
Name	Name
200 Park Avenue	2029 Century Park East, Suite 2060
Number Street	Number Street
New York NY 10166	Los Angeles CA 90067
City State ZIP Code	City State ZIP Code
Contact phone (212) 351-3969	Contact phone 310-975-2600
Contact email mrosenthal@gibsondunn.com	Contact email SVarner@alvarezandmarsal.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ See attached rider . **Does this amount include interest or other charges?**
   - ☐ No
   - ☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   See attached rider

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☐ No
    - ☑ Yes. Identify the property: See attached rider

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/06/2020
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Michael A. Rosenthal
First name Middle name Last name

Title: Counsel to Alvarez & Marsal CRF Management, LLC, as Investment Manager

Company: Gibson, Dunn & Crutcher LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 200 Park Avenue
Number Street

New York NY 10166
City State ZIP Code

Contact phone (212) 351-3969 Email mrosenthal@gibsondunn.com

RIDER TO THE PROOF OF CLAIM OF THE CRUSADER FUNDS
Dated: April 6, 2020

This Rider is part of the proof of claim (the "**Proof of Claim**") filed by Highland Crusader Offshore Partners, L.P. ("**Master Fund**"), Highland Crusader Fund, L.P. ("**Onshore Fund**"), Highland Crusader Fund, Ltd. ("**Offshore Fund I**"), and Highland Crusader Fund II, Ltd. ("**Offshore Fund II**" and together with the Master Fund, Onshore Fund, and Offshore Fund I, the "**Crusader Funds**"), by and through their authorized investment manager, Alvarez & Marsal CRF Management, LLC, against Highland Capital Management, L.P. ("**HCM**" or the "**Debtor**").

The Crusader Funds' claim against HCM contains two components (which partially overlap) and a number of sub-components, described below.

I. FORFEITURE OF COMPENSATION

At all relevant times prior to August 4, 2016, HCM served as the investment manager for each of the Crusader Funds, pursuant to the terms of (a) the Joint Plan of Distribution of the Crusader Funds (the "**Plan**"); (b) the Scheme of Arrangement (the "**Scheme**"); (c) the Amended and Restated Investment Management Agreement between the Master Fund and HCM, dated as of June 1, 2006 (the "**Master Fund IMA**"); (d) the Amended and Restated Investment Management Agreement between Onshore Fund and HCM, dated as of June 1, 2006 (the "**Onshore IMA**"); (e) the Amended and Restated Investment Management Agreement between Offshore Fund I and HCM, dated as of September 1, 2006 (the "**Offshore I IMA**"); and (f) the Third Amended and Restated Investment Management Agreement between Offshore Fund II and HCM, dated as of September 1, 2006 (the "**Offshore II IMA**" and together with the Master Fund IMA, the Onshore IMA, and the Offshore I IMA, the "**IMAs**"). The Plan, the Scheme, and the IMAs are collectively referred to as the "**Fund Documents**."

Pursuant to the Fund Documents, HCM received compensation from the Crusader Funds in the form of Management Fees, Distribution Fees, and rights to Deferred Fees (each as defined in the Plan, the Scheme, or the IMAs). However, by no later than January 2012, HCM willfully and deliberately breached its obligations under the Fund Documents and breached its duty of loyalty to the Crusader Funds. At that time, HCM caused the Crusader Funds to borrow on margin from a trading account at Jefferies, and used the borrowings to inflate the amount of distributions being made, so as to inflate the amount of HCM's Distribution Fee. Following that date, HCM committed other acts of disloyalty and further breached its obligations to the Crusader Funds, as described in the Arbitration Award (as defined below) and as shown by the evidence presented at the arbitration hearing that led to the Arbitration Award.

As a result, pursuant to the "faithless servant" doctrine, HCM forfeited any right it had to compensation for its services from the Crusader Funds, from the date of HCM's first disloyal act onward. *See, e.g.*, *Phansalkar v. Andersen Weinroth & Co., L.P.*, 344 F.3d 184, 188 (2d Cir. 2003) ("We hold that New York's faithless servant doctrine requires Phansalkar to forfeit all compensation received after his first disloyal act."). As a "faithless servant," HCM is obligated to disgorge all compensation received from the Crusader Funds from the date of HCM's first disloyal act, and has no right to any further compensation from the Crusader Funds. The Crusader Funds thus assert a claim in the following amounts:

1. Management Fees: $8,233,337

2. Distribution Fees: $15,250,109

3. Deferred Fees: $32,313,000[1]

4. Other Fees: In the amount of any other compensation, fees or distributions which may now or in the future otherwise be owing to HCM

The Crusader Funds also assert an unliquidated claim for pre- and post-petition interest, attorneys' fees, costs, and other expenses in connection with recovering such amounts. The Crusader Funds also assert a claim in an unliquidated amount for any Deferred Fees to which HCM might otherwise become entitled in the future under the Fund Documents.

The Crusader Funds currently hold, and may in the future hold, amounts that HCM may claim are, either now or in the future, due to it as a result of services provided by HCM to the Crusader Funds (the "Withheld Amounts"). As a result of the claims detailed in the Arbitration Award and this Proof of Claim (including without limitation, the faithless servant claim), the Crusader Funds dispute that any such amounts are due. However, to the extent that HCM prevails on an entitlement to a claim against the Crusader Funds, the Crusader Funds have a right of setoff against any such claim to the extent of its claims against HCM and such right of setoff is further secured by the Withheld Amounts.

II. ARBITRATION AWARD

This component of the claim is asserted in the alternative to the claim asserted by the Redeemer Committee of the Crusader Funds (the "**Redeemer Committee**"). The Crusader Funds would withdraw this portion of their claim if and to the extent that the Redeemer Committee's claim is allowed.

On March 6, 2019, a panel of arbitrators issued a Partial Final Award (the "**March Award**") in favor of the Redeemer Committee against HCM. On April 29, 2019, the panel issued a Final Award (the "**Final Award**," and together with the March Award, the "**Arbitration Award**") in favor of the Redeemer Committee against HCM.[2] Substantially all of the relief awarded by the panel was expressly noted to be "for the benefit of the Fund." Final Award ¶¶ F.a.iii-x. The Arbitration Award is subject to the Federal Arbitration Act and The Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Redeemer Committee timely moved to confirm the Award in the Delaware Chancery Court. HCM moved for partial vacatur of the Arbitration Award in June 2019. The time period to move to vacate the Arbitration Award expired prior to the Petition Date (as defined below). All capitalized terms that are not defined below have the meanings given to such terms in the Arbitration Award.

[1] This element of the claim for forfeiture of compensation overlaps in part with a component of the Arbitration Award claim, described in Section II below.

[2] Copies of the Arbitral Award have previously been provided the Debtor, the Official Committee of Unsecured Creditors, and the Office of the United States Trustee. The Crusader Funds reserve the right to file a copy of the Arbitral Award with the Bankruptcy Court.

The Arbitration Award component of the Crusader Funds' claim includes the following sub-components, and each is based on the Arbitration Award:

1. **Damage Claim.** The Crusader Funds assert a liquidated claim for at least $190,824,557 plus interest that is accruing beginning as of October 16, 2019, the date that HCM filed its bankruptcy case the (the "**Petition Date**"). As set forth in the Final Award, the separate components of the Damage Claim are as follows, and the amounts set forth below are as of the Petition Date, including prepetition interest awarded under the Arbitration Award accrued to the Petition Date:

   a. Deferred Fee Claim: $43,105,395 (Final Award ¶ F.a.ii.1)

   b. Distribution Fee Claim: $22,922,608 (Final Award ¶ F.a.ii.2)

   c. Taking of Plan Claims: $3,277,991 (Final Award ¶ F.a.v)

   d. CLO Trades Claim: $685,195 (Final Award ¶ F.a.vi)

   e. Credit Suisse Claim: $3,660,130 (Final Award ¶ F.a.vii)

   f. UBS Claim: $2,600,968 (Final Award ¶ F.a.viii)

   g. Barclays Claim: $30,811,366 (Final Award ¶ F.a.ix)

   h. Legal Fees, Costs, and Expenses: $11,351,850 (Final Award ¶ F.a.xi)

   i. Administrative Fees: $514,164 (Final Award ¶ F.a.xii)

   j. Cornerstone Award: $71,894,891 (Final Award ¶ F.a.ix)

The Crusader Funds also assert an unliquidated claim for post-petition interest, attorneys' fees, costs, and other expenses that continue to accrue in connection with the Damage Claim.

2. **Cancellation of Limited Partnership Interests.** The Final Award provides, in relevant part, for the cancellation of the limited partnership interests in the Crusader Funds that are (i) held by HCM and Charitable DAF Fund, L.P. that are identified in RC411, and (ii) held by Eames, Ltd. (Final Award ¶¶ F.a.v and F.a.x). The Final Award provides for HCM to transfer, or take all necessary steps to cause the transfer of, such interests to the Redeemer Committee for the benefit of the Crusader Funds. The Final Award also provides that the Redeemer Committee has the independent right to cause the Crusader Funds to cancel such limited partnership interests. The Crusader Funds reserve the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cancel such limited partnership interests in accordance with the Final Award. The Crusader Funds assert a claim in an unliquidated amount in the event all such limited partnership interests are not cancelled in accordance with the Final Award.

3. **Deferred Fee Account.** The Arbitration Award granted the Redeemer Committee's request for a declaratory judgment with respect to the immediate distribution of the

Deferred Fee Account, which the Crusader Funds continue to hold, and ordered the payment of the funds in such account to the Redeemer Committee for disbursal to the Consenting Compulsory Redeemers (March Award ¶ VII.D; Final Award ¶ F.a). The Crusader Funds reserve the right, to the extent required under applicable law, to seek relief from the Bankruptcy Court in order to cause the distribution of the funds held in the Deferred Fee Account in accordance with the Arbitration Award. The Crusader Funds assert a claim in an unliquidated amount in the event all such funds are not distributed in accordance with the Arbitration Award.

The Crusader Funds file this portion of the Proof of Claim out of an abundance of caution and in the event that the Arbitration Award is determined not to be an executory contract. However, the Arbitration Award may be an executory contract under section 365 of the Bankruptcy Code. HCM has not yet moved to assume or reject such contract. The Crusader Funds reserve the right to dispute whether the Arbitration Award is an executory contract and, if so, HCM's decision to reject such contract. If the Arbitration Award is determined to be an executory contract and is allowed to be rejected by the Bankruptcy Court, the Crusader Funds reserve the right to file an amended proof of claim by the bar date for the filing of rejection damages claims; if no such amended proof of claim is filed, then, this claim shall serve as the Crusader Funds' rejection damages claim. By filing this Proof of Claim, the Crusader Funds do not concede that the Arbitration Award is an executory contract, that amounts awarded under the Arbitration Award are prepetition claims or that they are now required to file a proof of claim to be entitled to the amounts described in the Arbitration Award.

* * *

The Crusader Funds reserve all rights to amend or modify this Proof of Claim in any respect, including, without limitation, to assert other or additional claims, or for the purpose of fixing or liquidating any contingent or unliquidated claims. This Proof of Claim is without prejudice to any other rights the Crusader Funds may have against the Debtor, its officers, employees, successors, or assigns.

The Crusader Funds expressly reserve all of their procedural and substantive defenses and rights with respect to any claim that may be asserted against the Crusader Funds by the Debtor, including, without limitation, any rights of setoff or recoupment.

The filing of this Proof of Claim shall not constitute: (i) an admission of liability by the Crusader Funds to any party; (ii) a waiver or release of the Crusader Funds' rights against any person, entity, or property; (iii) a consent by the Crusader Funds to the jurisdiction of the Bankruptcy Court with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases or otherwise involving the Crusader Funds; (iv) a waiver or release of the right to move to withdraw the reference to the subject matter of this Proof of Claim Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant; (v) a waiver or release of the right to seek to have the Bankruptcy Court abstain with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced with respect thereto, or any other proceeding commenced in these cases against or otherwise involving any claimant, (vi) a waiver or release of the right to have final

orders entered only after *de novo* review by a United States District Judge; (vii) a waiver or release of their right to trial by jury in any proceeding so triable in these cases or any case, controversy, or proceeding related to these cases; (viii) a consent to a jury trial in any proceeding so triable in these cases or any case, controversy or proceeding related to these cases, (ix) a waiver or release of their right to arbitration under the Plan and Scheme; (x) an election of remedies or limitation of rights or remedies; or (xi) a waiver or release of any other rights, claims, actions, defenses, setoffs, or recoupments to which they are or may be entitled under agreements, in law, in equity, or otherwise, all of which rights, claims, actions, defenses, setoffs, and recoupments are expressly reserved.

Exhibit 3

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	Case No. 19-34054-sgj11
Debtor.	:	

OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81)

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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UBS Securities LLC and UBS AG, London Branch (together, "UBS"), by and through their undersigned counsel, hereby submit this objection (the "Objection") to the *Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1089] (the "Motion") regarding the proofs of claim filed by the Redeemer Committee of the Highland Crusader Fund ("Redeemer" and the "Redeemer Claim") and the Highland Crusader Funds ("Crusader"[2] and the "Crusader Claim"). In support of this Objection, UBS respectfully states as follows:

PRELIMINARY STATEMENT

Under Federal Rule of Bankruptcy Procedure 9019, a bankruptcy court must make an independent judgment of the merits of any settlement proposed by a debtor to ensure that it is fair, equitable, and in the best interest of the debtor's estate. While settlements are certainly desirable in the context of a bankruptcy case—especially in this case, which is particularly complex and fraught with allegations of fraud and bad faith—a settlement should not be approved just because the debtor says it should be. Here, Highland Capital Management, L.P. (the "Debtor") acknowledges that it made "substantial compromises" to strike a deal with Crusader and Redeemer, but contends that those compromises benefit the Debtor's estate. A closer review of the Proposed Settlement (as defined below), however, belies such assertion and evidences that the Debtor has not met its burden of showing this is a fair and equitable compromise within the range of reasonable alternatives.

[2] Crusader refers to a collection of four funds: Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd.

The Debtor's "modest reductions" to the Redeemer Claim do not account for the significant risk that a substantial portion of the Redeemer Claim (based on an Arbitration Award) is subject to vacatur. More importantly, under the Proposed Settlement, the Debtor would forfeit rights to over $30 million in cash and valuable assets potentially worth more than $80 million, permitting a significant windfall to Redeemer to the detriment of the Debtor's estate and other creditors.

The Redeemer Claim is based on an Arbitration Award that required the Debtor, *inter alia*, to pay $118,929,666 (including prejudgment interest and attorneys' fees) in damages and to pay Redeemer $71,894,891 (including prejudgment interest) ***in exchange*** for all of Crusader's shares in Cornerstone. Pursuant to that same Arbitration Award, the Debtor also retained the right to receive $32,313,000 in Deferred Fees upon Crusader's liquidation. As shown below, after accounting for those reciprocal obligations to the Debtor and depending on the true value of the Cornerstone shares to be tendered (which is disputed), the actual value of the Arbitration Award to Redeemer is between $74,911,557 and $128,011,557.[3]

Under the Proposed Settlement, however, Redeemer stands to gain far more because the Debtor has inexplicably agreed to release its rights to Crusader's Cornerstone shares and the Deferred Fees (with a combined value that could be as much as $115,913,000)—providing a substantial windfall to Redeemer. The Debtor has failed to provide sufficient information to permit this Court to meaningfully evaluate the true value of the Proposed Settlement, including the fair value of the Cornerstone shares, which it must do in order for this Court to have the information it needs to approve the Proposed Settlement. Depending on the valuation of the Cornerstone shares,

[3] The potential range of value attributable to the Cornerstone shares is significant because, according to the Debtor's liquidation analysis, the Debtor expects to have only $195 million total in value to distribute, and only $161 million to distribute to general unsecured creditors under its proposed plan. *See Liquidation Analysis* [Dkt. No. 1173-1]; *First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1079].

the value of the Proposed Settlement to Redeemer may be as much as $253,609,610—which substantially exceeds the face amount of the Redeemer Claim.

In the meantime, other general unsecured creditors of the Debtor will receive a much lower percentage recovery than they would if those assets were instead transferred to the Debtor's estate, as required by the Arbitration Award, and evenly distributed among the Debtor's creditors. The Proposed Settlement is only in the best interests of Redeemer and, as such, it should be rejected.

BACKGROUND[4]

A. Procedural Background

1. The Debtor is an investment management firm that manages a variety of hedge funds, structured investment vehicles, and mutual funds.

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for chapter 11 relief in the Bankruptcy Court for the District of Delaware. Pursuant to an order dated December 4, 2019, the Debtor's bankruptcy proceedings were transferred to this Court under the above-captioned case number (the "Chapter 11 Case").

3. On March 2, 2020, this Court entered the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Dkt. No. 488]. Pursuant to that order, the general bar date for proofs of claim was set for April 8, 2020.

4. On April 3, 2020, Redeemer filed Proof of Claim No. 72 against the Debtor's estate, claiming (1) $190,824,557 (its so-called "Damages Award"); (2) "post-petition interest, attorneys' fees, costs and other expenses;" (3) the right to distribute funds held in the "Deferred Fee Account" to Crusader investors; and (4) the transfer or cancellation of certain limited partner interests in Crusader held by the Debtor, the Charitable DAF Fund, L.P. ("DAF"), and Eames, Ltd. ("Eames").

[4] **Additional background information is described in the UBS Objection (defined below) [Dkt. No. 996] and incorporated herein by reference.**

Redeemer Claim Rider at 1-2. The Redeemer Claim is predicated upon an "Arbitration Award," which it characterizes as an "executory contract." Redeemer Claim Rider at 1.

5. As discussed in further detail below, the Arbitration Award is actually made up of three awards: (i) a March 6, 2019 "Partial Final Award," (ii) a March 14, 2019 "Modification Award," and (iii) an April 29, 2019 "Final Award"—all issued by the same panel of arbitrators in the same arbitration proceeding, but none of which has ever been confirmed or otherwise entered as a final judgment by any court of competent jurisdiction. *See* Mot. ¶ 15.

6. On April 6, 2020, Crusader filed Proof of Claim No. 81 against the Debtor's estate alleging the Debtor had been a faithless fiduciary and claiming (1) $55,796,446, including the disgorgement of $8,233,337 in "Management Fees" and $15,250,109 in "Distribution Fees" previously paid to the Debtor for its service as investment manager, as well as forfeiture of the Debtor's right to $32,313,000 in "Deferred Fees" and any "Other Fees" that "may now or in the future otherwise be owing to [the Debtor]"; (2) any other Deferred Fees the Debtor "might otherwise become entitled in the future"; (3) "pre- and post-petition interest, attorneys' fees, costs and other expenses"; and (4) a right of setoff against any claim that the Debtor may assert against it for "Withheld Amounts." Crusader Claim Rider at 1-2;[5] Crusader Claim at 2; *see* Mot. ¶ 22.

7. On August 26, 2020, UBS filed its *Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund* [Dkt. No. 996] (the "UBS Objection"). UBS objected to the Redeemer Claim's: (1) characterization of the Arbitration Award as an executory contract, (2) inclusion of relief in the so-called Damages Award that was impermissibly awarded for the first time in the Final Award and thus is subject to vacatur, and (3) failure to take into

[5] The Crusader Claim also asserts an alternative claim based on the Arbitration Award in the event any part of the Redeemer Claim is not allowed. Mot. ¶ 21 n.5; Crusader Claim Rider at 2.

account the value of assets that Redeemer is obligated to transfer to the Debtor's estate under the same Arbitration Award. UBS Obj. at 3, 19.

8. On September 23, 2020, the Debtor filed the Motion and the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1090] (the "Morris Declaration"). The Motion seeks approval of a stipulation, attached as Exhibit 1 to the Morris Declaration [Dkt. No. 1090-1] (the "Proposed Settlement").

B. The Arbitration Award

9. From Crusader's inception through August 2016, the Debtor served as Crusader's investment manager. Mot. ¶¶ 10, 13; Crusader Claim Rider at 1. In late 2008, Crusader was put into wind-down. Mot. ¶ 11. That process was governed by a *Joint Plan of Distribution of the Crusader Funds* and the *Scheme of Arrangement Between the Crusader Funds and their Scheme Creditors* (the "Plan and Scheme"),[6] both adopted in 2011 in an attempt to permit redeeming investors to be able to realize additional monetary benefits that would not ordinarily be realized through general liquidation. Plan & Scheme at 14-16; *see also* Mot. ¶ 12. This arrangement was not intended to be a risk-free choice. Plan & Scheme at 16 ("There is a risk that the Company Redeemers' Distributions may be less than their Redemption Amounts . . .").

10. Pursuant to the Plan and Scheme, payment of certain fees owed to the Debtor as compensation for its role as investment manager was deferred (the "Deferred Fees") until

[6] The Plan and Scheme, filed under seal at Docket No. 953, is Exhibit 22 to *Redeemer Committee of the Highland Crusader Funds and the Highland Crusader Funds' Objection to the Proofs of Claim of UBS AG, London Branch and UBS Securities LLC and Joinder in the Debtor's Objection* [Dkt. No. 933]. UBS notes, however, that Redeemer and Crusader filed only a pre-execution draft. *E.g.* Plan & Scheme at 38 (reflecting track change revisions).

liquidation of Crusader's assets was complete. Mot. ¶¶ 10, 13, 25; Plan & Scheme at 37, 73-74. Unlike certain "Distribution Fees" that the Debtor would not be entitled to receive if removed for cause, Plan & Scheme at 48, 73, the "Deferred Fees are payable under ***all*** circumstances to HCMLP," except for the "Deferred Fee Account." Plan & Scheme at 20 (emphasis added). For those amounts in the Deferred Fee Account, the Debtor had the right to "potentially receive" those amounts if it met specified distribution targets on time. Plan & Scheme at 15, 57-58, 82-83.

11. Redeemer was entrusted with oversight of this process from the start and at all times had the power to terminate the Debtor as Crusader's investment manager upon thirty days' notice, with or without cause. Plan and Scheme at 15-16, 18, 51, 76. Redeemer chose not to exert this power until July 5, 2016, when Redeemer provided the Debtor with notice it was being terminated as investment manager and an arbitration proceeding was being initiated against it. Mot. ¶¶ 13-14. Pursuant to this notice, the Debtor's investment management services ended effective August 4, 2016. Mot. ¶ 13. The Debtor was replaced by Alvarez & Marsal CRT Management, LLC ("Alvarez"). PFA at 4. Concurrently with its arbitration demand, Redeemer initiated an action in the Delaware Chancery Court (the "Delaware Court") for a status quo order, *id.*, where the Debtor added Alvarez as a third party defendant. *See* Mot. ¶ 14 n.3; Ex. A, Debtor Brief to Vacate (REDEEMER_001635).

12. In the arbitration proceeding, Redeemer asserted breach of contract and breach of fiduciary duty claims against the Debtor seeking disgorgement and other relief based on the Debtor's service as Crusader's investment manager. Mot. ¶ 14; PFA at 3-4. Redeemer chose not to allege the Debtor had been a faithless servant. PFA at 8, 49. After "the record was declared closed" on December 12, 2018, *id.* at 7, the panel of arbitrators (the "Panel") rendered a "Partial Final Award" (or "PFA") [Dkt. No. 1128] on March 6, 2019. The Partial Final Award was a 56-

page single-spaced reasoned decision unanimously signed by all three members of the Panel. *See generally id*. Four aspects of the Partial Final Award are of particular relevance here:

- **Deferred Fees.** The Panel found that the Debtor was entitled to receive the Deferred Fees but had paid them to itself prematurely. PFA at 3; Mot. ¶ 25. Because Redeemer was deprived of the use of these funds during the improper period, the Panel awarded damages of $41,320,655, consisting of $32,313,000 in damages and $9,007,655[7] in prejudgment interest. Importantly, the Panel made no finding that the Debtor's misconduct required it to give up its right to receive the Deferred Fees at the time set forth in the Plan and Scheme. PFA at 14.[8] Under the Plan & Scheme, the Deferred Fees are required to be paid to the Debtor's estate upon Crusader's complete liquidation, which as UBS understands, is largely tied to the disposition of the Cornerstone shares. *See* PFA at 51.

- **Cornerstone Award.** The Panel also found that the Debtor had breached its fiduciary duty by failing to liquidate Crusader's shares in Cornerstone Healthcare Group ("Cornerstone"). Mot. ¶ 30. The Arbitration Award ordered the Debtor to pay Redeemer $48,070,407 (at the fair market value of $3,241.41 per share, calculated as of the date of the Debtor's interference, PFA at 42, 48), plus $21,169,417 in prejudgment interest, ***and ordered Redeemer to transfer Crusader's Cornerstone shares to the Debtor***. PFA at 55; *id*. at 48 ("[We] order that the [Redeemer] Committee simultaneously cause the Crusader Fund to surrender its interest in Cornerstone to Highland."). Neither Redeemer nor Crusader was provided any future interest in Cornerstone or right to seek retention of the Cornerstone shares in lieu of damages. *See* PFA at 48, 55; Mot. ¶ 31.

- **Barclays LP Interests.** The Panel ruled on one of Redeemer's core allegations—namely, that the Debtor improperly transferred certain limited partner interests in Crusader that belonged to Barclays (the "Barclays LP Interests") from Barclays to Eames, *see*, *e.g.*, PFA at 8, 15, 20-22, 54—and determined that such transfers were a breach of the parties' agreement. PFA at 21-22, 54. But the Panel did not treat the Debtor's transfers of the Barclays LP Interests as an independent wrongdoing. Instead, the Partial Final Award only discussed the transfer of the Barclays LP Interests in the context of one of Redeemer's broader sets of claims, known as its "Distribution Fee Claim." *See* PFA at 15; *id.* at 20 (analyzing "Payments to Barclays and Eames ***as Distributions***"). After determining that the Debtor's transfers of the Barclays LP Interests were "improper," PFA at 20-22, 54, the Panel awarded Redeemer a "total" of $14,452,275 in aggregate damages (plus prejudgment interest) to cover all of the conduct relating to its Distribution Fee Claim—a claim that specifically included the Debtor's transfers of the Barclays LP Interests. *E.g.*, PFA at 22.

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[7] The Partial Final Award included interest "through the date of this Partial Final Award." *Id*. at 14. The Final Award's extension of the prejudgment accumulation period added an additional $1,784,740 in interest bringing the total Deferred Fees award to $43,105,395.

[8] In fact, the Debtor asserted a counterclaim against Redeemer to recover the Deferred Fees prior to complete liquidation of Crusader, because it alleged Alvarez should have completed the Crusader liquidation by December 2017, triggering the payment to the Debtor. PFA at 8, 49. The Panel, however, found that Alvarez was not responsible for any delay. *Id.* at 51. Notably, Redeemer did not raise a faithless servant defense. PFA at 8, 49.

- **Prejudgment Interest.** As noted, the Panel awarded Redeemer prejudgment interest on its damages awards, *see e.g.*, PFA at 48, 54-55, accruing from the time of the alleged breaches through March 6, 2019, the date of the Partial Final Award. *E.g.*, PFA at 54 (awarding "statutory interest of 9%, calculated on a simple basis, from the dates of taking in January and April 2016 through the date of this Partial Final Award").

13. On March 7, 2019, one day after the Panel issued the Partial Final Award, Redeemer requested a modification to the Partial Final Award. FA at 1. On March 11, 2019, ***before*** the Debtor was required to respond to the request, the Panel responded by email that it "[would] be modifying" the Partial Final Award. Ex. A, Debtor Brief to Vacate at 5 (REDEEMER_001644). Next, on March 14, 2019, and also ***before*** the Debtor was required to respond to the request, the Panel unilaterally issued a "Disposition of Application for Modification of Award" [Dkt. No. 1129] (the "Modification Award" or "MA"). This email and the Modification Award added a completely new category of damages as a result of the Debtor's "improper" transfer of the Barclays LP Interests—damages above and beyond the $14.5 million already ordered for such conduct in the Partial Final Award. FA at 11.

14. The Modification Award purported to be issued pursuant to Rule 50 of the AAA Commercial Rules, which allows a panel to "correct any clerical, typographical, or computational errors in the award." MA at 1; FA at 1 n.1. If Rule 50 had been properly applied, the Debtor would have had "10 calendar days to respond to [Redeemer's] request" in writing. AAA R-50. Instead, the Modification Award was issued on March 14, 2019—just 7 days after Redeemer's request and 3 days short of the timeframe for objections provided for in Rule 50. FA at 1; Mot. ¶ 15. The Debtor timely opposed Redeemer's modification request on March 17, 2019, and requested that the Panel withdraw its Modification Award and refrain from any further modification of the Partial Final Award. FA at 2(a). That did not happen.

15. Almost three weeks later, on April 5, 2019 (ten days ***after*** Rule 50's allotted period for modification requests closed), Redeemer submitted yet another formal written request for

modification of the Partial Final Award, this time asking the Panel to "award further damages in connection with the Barclays claim" and to "award prejudgment interest through" an extended date. FA at 2. Again, the Debtor opposed Redeemer's request for such "further damages" on the basis that such post-award modifications are improper under the AAA Rules and governing law. FA at 2-3.

16. On April 29, 2019,[9] the Panel issued a new "Final Award." In that Final Award, the Panel "re-adopt[ed] all prior findings and conclusions" but "specifically modified" portions of the earlier Partial Final Award. FA at 1. The "modifications" included several substantive changes to the Partial Final Award by: (1) awarding Redeemer an additional $21,768,743 in damages due to the transfers of the Barclays LP Interests, as well as $9,042,623 in prejudgment interest on these new damages; (2) granting injunctive relief that required the Debtor to return improperly taken limited partner interests held by Eames to Redeemer; and (3) extending the time for prejudgment interest to accrue until "the date paid or the entry of a final judgment." FA at 2, 14-15. Put differently, the relief awarded through the Arbitration Award included:

Award	Modification	Amount Added	Total Liquidated Damages Award
Partial Final Award	n/a	n/a	$154,314,614[10]
Modification Award	New damages related to Barclays LP Interests	$30,811,366	$183,923,629
Final Award	Incorporated MA; added injunctive relief (Eames); extended accrual period for prejudgment interest	$6,900,921 & injunctive relief	$190,824,557

[9] Two of three arbitrators signed on April 29, the third arbitrator signed on May 9, 2019. FA at 19-22; *see* Mot. ¶ 15 (referencing a May 9, 2019 Final Award).

[10] The Partial Final Award explicitly found liability and awarded damages for the "Sale of CLO interests" and "Credit Suisse claims," as well as for attorneys' fees, but directed the parties to confer regarding the appropriate amount of damages or, if no agreement could be reached, the Panel would determine the amount. PFA at 55-56. These amounts was properly clarified in the Final Award and such amounts are included in this calculation.

17. After the Final Award was issued, and prior to the Petition Date, Redeemer moved in the Delaware Court to have that award confirmed as a judgment. Mot. ¶ 17. Also prior to the Petition Date, the Debtor moved the Delaware Court to vacate at least $36.5 million of the Arbitration Award on the grounds that the Panel was without authority to modify its Partial Final Award ("Motion to Vacate"). Mot. ¶ 17. Both motions were scheduled to be heard by the Delaware Court on the day that the Debtor filed its Chapter 11 Case.[11] The Delaware proceedings are currently stayed by section 362 of the Bankruptcy Code.

C. The Proposed Settlement

18. On July 8, 2020, the Debtor informed this Court that it and Redeemer had reached a settlement in principle as to Redeemer's claim and would file their agreement when certain language was finalized. Dkt. 817, July 8, 2020 Hr'g Tr.

19. Subsequently, and in parallel with the Debtor and Redeemer finalizing their agreement, the Debtor, Redeemer and other parties in interest, including UBS, proceeded with mediation. A brief summary of the terms of the Redeemer settlement was announced to the mediation parties on the first day of mediation, August 27, 2020.

20. Then, on September 23, 2010, the Debtor filed its Motion and Proposed Settlement. As the Debtor has acknowledged to this Court in the past, a settlement of the Redeemer Claim based on the Arbitration Award is not as simple or straightforward as with a typical arbitration award. Dkt. No. 817, July 8, 2020 Hr'g Tr. This is, in part, because of the obligations imposed by the Arbitration Award and Plan and Scheme that require Redeemer to transfer meaningful assets

[11] The Motion emphasizes that Redeemer "timely moved" to confirm the Arbitration Award, but implies that the timeliness of the Debtor's Motion to Vacate is in question. *See* Mot. ¶¶ 17-18 n.4 (citing the three-month statutory time limit under the Federal Arbitration Act, 9 U.S.C. § 12). The Debtor's Motion to Vacate was filed on June 6, 2019, less than six weeks after the Final Award was issued, and the Debtor's brief was filed on July 10, 2019, pursuant to an ordered briefing schedule. *See*, *e.g.*, Ex. A, Debtor Brief to Vacate at 9 (REDEEMER_001648).

to the Debtor's estate—*i.e.*, the Deferred Fees and Cornerstone shares. Under the Proposed Settlement, Redeemer is relieved of those obligations, and the Debtor forfeits the estate's rights to those assets. Among other terms (in addition to an exchange of releases and discontinuation of litigation), under the Proposed Settlement:

- The Redeemer Claim would be allowed in the amount of $137,696,610. Mot. ¶ 23; Proposed Settlement ¶ 1.
- The Crusader Claim would be allowed in the amount of $50,000. Mot. ¶ 23; Proposed Settlement ¶ 2.
- Limited partner interests in Crusader held by (i) the Debtor, (ii) the DAF, and (iii) Eames, would be cancelled, and the "Reserved Distributions" associated with those interests would be forfeited. Mot. ¶ 23; Proposed Settlement ¶ 3.
- The Debtor would forfeit its right to collect approximately $32,313,000 of Deferred Fees owed to it upon Crusader's completed liquidation. Mot. ¶ 23; Proposed Settlement ¶ 5.
- The Debtor would forfeit its right to the Cornerstone shares held by Crusader, in exchange for an approximately $30,500,000 reduction of the Redeemer Claim "to account for the perceived fair market value of those shares," and Redeemer and the Debtor would work together to monetize Cornerstone. Mot. ¶ 23; Proposed Settlement ¶ 8.

21. These terms purport to reflect two self-styled "substantial compromise[s]" and "other modest reductions" that were applied to reduce the Redeemer Claim from an asserted claim of $190,824,557 to an allowed claim of $137,808,302. *See* Mot. ¶ 28, 32; *id.* ¶¶ 27, 31. *First*, Redeemer "agreed to reduce the Damages Award by $21,592,000" (which the Debtor claims is "approximately two-thirds of the Deferred Fees" component of the so-called Damages Award), and in exchange, the Debtor agreed to forfeit its right to collect approximately $32,313,000 in Deferred Fees upon liquidation of Crusader. Mot. ¶ 27. *Second*, Redeemer agreed to reduce the $71,894,891 component of the so-called Damages Award "by approximately $30,500,000 to account for the perceived fair market value of" the Cornerstone shares, and in exchange, the Debtor agreed to forfeit its right to receive the Cornerstone shares. Mot. ¶ 31. Under the Proposed Settlement, Crusader would retain its minority interest in Cornerstone, and Redeemer would

cooperate with the Debtor to liquidate the Cornerstone investment as a whole. *Id*. *Finally*, the parties agreed to further reduce the so-called Damages Award by approximately $924,255, for unspecified reasons.[12] Mot. ¶ 32.

D. The Cornerstone Shares

22. The Cornerstone shares undoubtedly provide value to whatever entity holds them. Crusader currently owns 14,830 shares (or approximately 40%) of Cornerstone. The Motion states that the "perceived fair market value" of those shares is $30.5 million ($2,059/share), Mot. ¶ 31, but does not provide any details whatsoever regarding whose "perception" this is, what it is based on, when it was calculated, or what information was taken into account to arrive at this valuation. And the Motion does not provide any evidence at all to support such a valuation.

23. On October 12, 2020, REDACTED

Alvarez, Crusader's investment manager and a released "Crusader Additional Party" under the Proposed Settlement. *See* Proposed Settlement at 1, ¶ 11; Ex. B, 6/4/20 Presentation to Redeemer at 16 (REDEEMER_004899).

24. The true value of Crusader's Cornerstone shares (and thus, the true value of the rights forfeited by the Debtor) is much higher than the $30.5 million assigned to them for

[12] Under the Proposed Settlement, the Debtor and Eames would also forfeit all rights to "certain other monies as to which the Debtor and Eames may have had an interest in the absence of this Stipulation." Proposed Settlement ¶ 5. But it is unclear what those "other monies" are. Other aspects of the Proposed Settlement are equally unclear, for example, the Debtor's forfeiture of its interest in any "Reserved Distributions," future "Distribution Fees," and "Management Fees" that may relate either to "the Cancelled LP Interests or any other role or position of the Debtor with respect to the Crusader Funds (including but not limited to its role as the investment manager for the Crusader Funds until August 4, 2016)." *Id.* These unquantified fees that may be "currently accrued or that might have accrued in the future," *id.*, appear to provide value for the Crusader Claim that could be well beyond the $50,000 allowed claim. *See* Crusader Claim Rider at 2 (asserting a claim "[i]n the amount of any other compensation, fees or distributions which may now or in the future otherwise be owing to [the Debtor]"). These items were not sought in the Redeemer Claim. *See generally* Redeemer Claim Rider.

settlement purposes. REDACTED

25. REDACTED

26. UBS's own financial advisor in this matter, Grant Thornton LLP, has evaluated both the Crusader Houlihan June Valuation and the Debtor Houlihan Valuation. *See* Declaration of W. Kevin Moentmann (the "GT Declaration"). REDACTED

[13] It is unclear whether the same individuals at Houlihan prepared both analyses.

REDACTED

27. Moreover, based on the data made available to it and using the methodology described in the Declaration submitted herewith, Grant Thornton has calculated that the actual value of Cornerstone as of June 30, 2020 might be as high as between $116 million and $208.7 million, in the aggregate. GT Decl. ¶ 5. That means that Crusader's 14,830 shares might have an actual value of between $46.5 million and $83.6 million, *id.* ¶ 6 (the "Grant Thornton Estimation")—*i.e.*, nearly triple the $30.5 million fair market value calculated REDACTED , which apparently forms the basis for the Debtor's decision to forfeit its rights to Crusader's 14,830 shares in exchange for a $30.5 million reduction of the Redeemer Claim in the Proposed Settlement.

ARGUMENT

28. The Debtor's own evaluation of the deal it struck cannot and should not "be automatically accepted as reasonable" by this Court. *In re Alfonso*, 2019 Bankr. LEXIS 2816, at *9 (Bankr. W.D. Tex. Sept. 6, 2019). Instead, when evaluating a claim compromise under Bankruptcy Rule 9019, the Court must be apprised "of the relevant facts and law so that it can make an informed and intelligent decision on whether the settlement proposed is fair and equitable to parties in interest.'" *Id.* at *8; *In re Rogumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008) (applying the court's independent judgment and finding the proposed compromise must be denied).

29. Such information is necessary because, while settlements are desirable, the Court cannot "simply accept the [settling parties'] word that the settlement is reasonable," nor can it "merely 'rubber-stamp'" a settlement. *In re Shankman*, 2010 Bankr. LEXIS 619, at *9 (Bankr. S.D. Tex. Mar. 2, 2010) (Isgur, M.). Rather, a Court must determine whether the compromise

struck is "fair, equitable, and in the best interest of the estate." *Id.* at *7.[14] To make that determination, the Court must balance the "terms of the compromise with the likely rewards of litigation" by considering several factors: "(1) The probability of success in the litigation, with due consideration for the uncertainty in fact and law; (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and (3) All other factors bearing on the wisdom of the compromise," including the "best interests of the creditors, with proper deference to their reasonable views" and the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *E.g.*, *id.*; *In re Alfonso*, 2019 Bankr. LEXIS 2816, at *8.

30. Importantly, the Court should not just consider whether the compromise as a whole is fair, rather, the Court must look at each component to determine whether the Proposed Settlement is in the best interest of the Debtor's estate. *See In re Allied Props., LLC*, 2007 Bankr. LEXIS 2174, at *13 (Bankr. S.D. Tex. June 25, 2007) (Isgur, M.) (rejecting a settlement despite "[m]ost provisions" of the compromise being fair, equitable, and in the best interest of the debtor's estate, because "two provisions do not meet this standard"). It is the Debtor's burden to establish that the Proposed Settlement is within the range of reasonable alternatives and would lead to a fair and equitable claim settlement. *Id.* at *12.

31. Here, the Proposed Settlement includes several components that are not fair, equitable, or in the best interest of the Debtor's estate. The Debtor acknowledges that it made "substantial compromises." Mot. ¶¶ 28, 47. All settlements necessarily include compromises. But those compromises must be reasonable concessions, not capitulations. The Debtor misleadingly portrays those compromises as providing its estate with "immediate[]" benefits. Mot.

[14] Unless noted, all internal quotations have been omitted.

¶ 64. UBS disagrees. In fact, those compromises—which provide no reductions for substantial litigation risk, and forfeit the estate's rights to meaningful assets—provide Redeemer with a windfall to the detriment of the Debtor's estate and other creditors.

32. For these reasons and others, there is sufficient basis to reject the Proposed Settlement based on the Bankruptcy Rule 9019 factors set forth by the Fifth Circuit.

A. The Debtor Is More Likely Than Not To Succeed On Its Motion To Vacate

33. Under the first factor, the Debtor argues that it is unlikely to succeed in contesting the Redeemer Claim because the claim is based on the Arbitration Award, which addressed every claim and argument asserted by the parties, after the Panel examined extensive evidence, heard lengthy argument, and made detailed legal and factual findings. Mot. ¶ 43. But the Proposed Settlement does not account for the fact that the Arbitration Award is contingent, disputed, and has never been confirmed by any court of competent jurisdiction.[15]

34. The Debtor argues that Redeemer "could simply move to lift the automatic stay for the sole purpose of having the Arbitration Award confirmed, thereby eliminating the alleged 'contingent' nature of the claim." Mot. ¶ 46. But the Debtor ignores that, even if this Court granted Redeemer's motion to lift the automatic stay, the Debtor's Motion to Vacate is also fully briefed and pending before the Delaware Court. While litigation outcomes are never guaranteed, at minimum, the Debtor's chance of success on its Motion to Vacate and Redeemer's Motion to Confirm is much closer to 50% than the 0% chance of success the Proposed Settlement appears to assign to it, by applying no reduction to account for this litigation risk.

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[15] For this reason and others, UBS objected to Redeemer's characterization of the Arbitration Award as an "executory contract" under 11 U.S.C. § 365, rather than as the prepetition litigation damages claim that it is. UBS Obj. ¶¶ 21-22 (*citing, e.g., In re Denman*, 513 B.R. 720, 723 (Bankr. W.D. Tenn. 2014) ("[A]n executory contract must be a 'contract' and not some other legal instrument.")). The Debtor argues that this issue is "moot" because the Proposed Settlement does not treat the Arbitration Award as an executory contract.

35. As the Debtor itself argued in the Motion to Vacate, and as addressed more fully in the UBS Objection, *see* UBS Obj. ¶¶ 23-32, the Panel overstepped its fundamental authority as arbitrators by modifying certain aspects of the Partial Final Award, in violation of well-established state law, the Federal Arbitration Act, and Rule 50 of the AAA Commercial Arbitration Rules. *See Weinberg v. Silber*, 140 F. Supp. 2d 712, 724 (N.D. Tex. 2001) ("[T]he arbitrator shall not revisit his decision on the merits, as his authority to do so has expired."), *aff'd*, 57 F. App'x 211 (5th Cir. 2003); 9 U.S.C. §10; AAA R-50 ("[Parties] may request the arbitrator, . . . , to correct any clerical typographical, or computational errors in the award," but "[t]he arbitrator is not empowered to redetermine the merits of any claim already decided."). The new Final Award improperly modified the Partial Final Award in two distinct ways.

36. *First*, the Final Award dramatically expanded the Debtor's purported liability for Redeemer's claim that the Debtor had improperly transferred the Barclays LP Interests to Eames. The Partial Final Award acknowledged Redeemer's claims included the "payment of Distribution Fees" and "transfer of Barclays' Fund interests without Redeemer Committee approval." *See* PFA at 8; *but see* Mot. ¶ 54 (arguing the UBS Objection "conflates two separate and distinct issues" related to Barclays). Whereas the Partial Final Award discussed both claims and awarded Redeemer total damages in the amount of $14,452,275 (and prejudgment interest through March 6, 2019) for the Distribution Fee Claim, including for the Debtor's "improper" transfer of Barclays LP Interests, the Panel elected in the Final Award to grant Redeemer an additional $21,768,743 in damages arising out of the Debtor's "improper" transfer of the Barclays LP Interests. FA at 18. That is not all. The Final Award also awarded Redeemer prejudgment interest on these new compensatory damages—a sum that, on its own, adds yet another $9,042,623 to the award. *Id.* All told, the Panel's modification of these aspects of the Partial Final Award resulted in a combined

total of ***$30,811,366 in new damages*** for the Debtor's transfers of the Barclays LP Interests—an amount Redeemer itself now refers to as the "Barclays Claim." Redeemer Claim Rider at 2.[16]

37. *Second*, in the Final Award, the Panel reconsidered its prior ruling on prejudgment interest. The Panel had previously ordered that the Debtor pay Redeemer a finite amount of prejudgment interest (9% per simple interest annum) "through the date of this Partial Final Award" (March 6, 2019), PFA at 14, yet the Panel threw that limitation out entirely in the Final Award. After openly acknowledging its prior ruling, *see* FA at 14, the Panel announced in the Final Award that it was doing away with that March 6, 2019 end date and, instead, all such interest would run through "the earlier of the date paid or the entry of a final judgment," *id.* at 2, 14. In addition to the $30.8 million in additional damages for the Barclays LP Interests, the additional interest contemplated by the Final Award accounted for at least ***another $5.7 million*** through the Petition Date, for a total of ***approximately $36.5 million*** in new damages.

38. Any suggestion that the two major modifications discussed above were attempts to correct "clerical, typographical, or computational errors," AAA R-50, is belied by their sweeping impact. Prior to the Final Award, the aggregate amount of compensatory damages expressly awarded to Redeemer under the Partial Final Award was roughly $142 million (excluding fees and costs). The Panel's two modifications described above, standing alone, immediately add no less than $36,500,000 to that compensatory damages sum—more than a ***25% increase*** (in addition to mandatory injunctive relief purporting to require the Debtor to take the Barclays LP Interests from Eames and transfer them to Redeemer).[17] FA at 18. The portions of the Final Award reflecting

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[16] On top of these additional liquidated damages, the Panel ordered the Debtor to "take all necessary steps to cause the improperly taken [] LP interests currently owned and controlled by Respondent through Eames, Ltd to be transferred to Claimant . . . within sixty (60) days from the date of transmittal of this Final Award"—mandatory injunctive relief that is also not mentioned anywhere in the Partial Final Award. FA at 18.

[17] Eames's limited partner interests in Crusader are valued at several million dollars, and possibly more based on the other amounts related to these interests released in the Proposed Settlement. In addition to being subject to

these improper, material modifications are examples of the Panel exceeding its authority and are subject to vacatur. *Smith v. Transp. Workers Union of Am.*, 374 F.3d 372, 375 (5th Cir. 2004) ("If an arbitral panel exceeds its authority, it provides grounds for a court to vacate that aspect of its decision.").

39. The Proposed Settlement does not appear to account for the very real risk that a court would vacate those aspects of the Arbitration Award, as the Debtor strongly believed itself when it advocated for vacatur on the same grounds described above to the Delaware Court. The Debtor argues now that "[t]hese procedural attacks on the Arbitration Award were considered and rejected by the Panel" and are unlikely to succeed "here" or in the Delaware Court, if the automatic stay were lifted. Mot. ¶ 49. But the Panel's self-serving evaluation of its conduct is unreasonable and irrelevant to a court's independent analysis of whether that same Panel exceeded its authority under the applicable law and rules.

40. In fact, the Panel's own excuses for its conduct removes any doubt that it exceeded its authority. In the Final Award, the Panel claims the new damages awarded for the Barclays LP Interests were "clear" in the Partial Final Award but it left that "paragraph missing from the damages portion" inadvertently. FA at 9. But courts have considered, and rejected, this exact "explanation" before. *See Wein v. Morris*, 909 A.2d 1186, 1198 (N.J. Super. Ct. App. Div. 2006) (deciding that AAA Rule 46, the predecessor to Rule 50, does not allow modifications to address "inadvertent omissions" and "neither expressly states nor suggests that claims denied through inadvertence could also be revisited").

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vacatur for the reasons discussed above, the Debtor's Motion to Vacate also challenged this injunctive relief on the basis that Eames was not a party to the arbitration and it was therefore outside of the Panel's powers to award this relief. Ex. A, Debtor Brief to Vacate at 8, 15, 17-18.

41. To justify the settlement, the Debtor now credits Redeemer's arguments that the Partial Final Award was labeled "Partial," directed the parties to confer regarding the amount of certain damages, and left the hearing open for those issues to be agreed upon or decided by the Panel. Mot. ¶ 51. But this loses sight of an important distinction: the Panel did not leave the hearing open until *all issues* were resolved; the panel left the "hearing open until all *issues set forth above* have been agreed upon by the Parties or decided by the Tribunal." PFA at 56. The issues "set forth above" did not include damages for the Barclays LP Interests or prejudgment interest because those issues had already been directly addressed and decided in the Partial Final Award. *E.g.*, PFA at 14, 24. The Panel conceded as much, *see* FA at 14 ("In the March 6 Partial Final Award, we awarded damages and interest through the date of that award"), but decided to reach a different conclusion in the Final Award because, in its own view, the prior ruling in the Partial Final Award was "***not determinative of this issue***." FA at 15. That is exactly what the Panel cannot do. A partial final award rendered on any issue is, by definition, determinative of the issue. *See Fluor Daniel Intercontinental, Inc. v. GE*, 2007 WL 766290, at *2-3 (S.D.N.Y. Mar. 13, 2007); *see also Trade & Transp., Inc. v. Nat. Petroleum Charterers Inc.*, 931 F.2d 191, 195 (2d Cir. 1991).

42. No court has ever ruled on the propriety of the Panel's attempts to redetermine the merits of claims already decided. The Debtor argues that under the Federal Arbitration Act, this Court would be required to defer to the Panel's exercise of its discretion under AAA Rule 8 to "interpret and apply" the AAA Rules, "***so long as it is 'within reasonable limits***.'" Mot. ¶ 58 (quoting *Commc'ns Workers of Am., AFL-CIO, v. Sw. Bell Tel. Co*., 953 F.3d 822, 827 (5th Cir. 2020)) (emphasis added). But the Debtor cannot seriously expect that this Court (with its equitable powers) or the Delaware Court would view changes that fundamentally alter—and in this instance, significantly increase—the relief granted to Redeemer as a mere correction of a "clerical error"

and a "reasonable" interpretation of AAA Rule 50. Nor does the Debtor's Motion grapple with the fact that the modifications requested by Redeemer, which prompted changes in the Final Award, were requested too late under Rule 50.[18]

43. UBS recognizes that litigation is uncertain. But even if the likelihood of the Debtor prevailing on its Motion to Vacatur is assigned a 50% chance of success, that would suggest a $18,250,000 ($36,500,000 x 50%) reduction of the Redeemer Claim to account for that uncertainty, millions above the "modest" unspecified reduction of $924,255 included the Proposed Settlement. Mot. ¶ 32. UBS submits that the Debtor's failure to take into account the litigation risk associated with its arguments for vacatur is an exercise of business judgment that falls below any range of reasonableness. *In re Allied Props., LLC*, 2007 Bankr. LEXIS 2174, at *20 (Bankr. S.D. Tex. June 25, 2007) (Isgur, M.) (requiring the trustee to "show that his decision falls within the range of reasonable litigation alternatives").

B. This Court Or the Delaware Court Could Decide The Motions To Confirm And Vacate With Minimal Expenditure Of Time And Resources

44. Under the second factor, the Debtor seems to place the Redeemer Claim at both ends of this spectrum. To show that the complexity of litigation favors settlement, the Debtor asserts that issues in the Redeemer Claim "are fairly complex; litigation would require meaningful resources, would take time, and would delay the Debtor's efforts to get to a confirmable plan." Mot. ¶ 59. But as discussed above, the Debtor also acknowledges that its Motion to Vacate and Redeemer's Motion to Confirm were both fully briefed prior to the Petition Date, and that

[18] In contrast to Redeemer's April 5, 2019 submission, Redeemer's March 7, 2019 submission was timely—but the Panel responded to that request before the Debtor's 10-day response period had lapsed. *See generally* MA; FA at 1.

Redeemer "could simply move to lift the automatic stay for the sole purpose of having the Arbitration Award confirmed." *Id.* ¶ 46.

45. UBS does not dispute that the Panel already made extensive findings of fact, legal rulings, and credibility determinations. The only issue left to be litigated is the propriety of the Panel's modifications to the Arbitration Award at issue. No further discovery, evidence, or witness testimony is needed to decide that issue, so the remaining litigation would be a much "simpler" proceeding than the previous evidentiary hearing before the Panel, which featured four expert witnesses as well as eleven fact witnesses and spanned nine days. Mot. ¶ 43. Nor would this consume meaningful resources or cause significant delay—all that is left to do is for a court (this Court or the Delaware Court) to rule on the Debtor and Redeemer's pending motions.[19] In fact, the Debtor would likely spend only a very small sum of money in legal fees (if anything), to possibly reduce the Redeemer Claim by as much as $36,500,000.

C. The Proposed Settlement Is Not In The Best Interests Of All Creditors

46. Under the third factor, this Court must consider all other factors bearing on the wisdom of the Proposed Settlement, including most importantly, whether the Proposed Settlement is in the best interests of *all* the creditors. Applying this factor, courts generally look at "the consideration offered by the settling creditor and the degree to which creditors object." *In re Rogumore*, 393 B.R. 474, 480 (Bankr. S.D. Tex. 2008); *In re Shankman*, 2010 Bankr. LEXIS 619,

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[19] The Motion also references how "notoriously complex" setoff issues would arise with respect to the Deferred Fees and Cornerstone shares in litigation. Mot. ¶ 59. To "make an informed and independent judgment, however, the court needs facts, not allegations." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 437 (1967); *see In re Allied Props., LLC*, 2007 Bankr. LEXIS 2174, at *15. The Debtor states, without citation, that "under principles of setoff, the Redeemer Committee may have only been required to tender shares equal in value to the recovery of its claim." Mot. n.15. It is unclear how traditional principles of setoff—under which a Debtor's monetary debt owed to a creditor is offset by a separate monetary debt owed by the creditor to the Debtor—applies to a situation like this one, where the Deferred Fees and Cornerstone shares are real assets owed to the Debtor. Without further elaboration, the Debtor does not show that this Court would need to address this "notoriously complex" issue.

at *9 (Bankr. S.D. Tex. Mar. 2, 2010) (Isgur, M.). Where a significant unsecured creditor affected by the Proposed Settlement—here, UBS—objects, "the Court must look to the reasonable views of" that creditor. *Id.* at *20 (rejecting a settlement when only two creditors "strenuously opposed" but it became "clear that they will not receive any benefit under the proposed compromise).[20]

47. The Debtor describes the Proposed Settlement as purportedly benefitting the estate, doing so "on reasonable terms," and in the exercise of "sound business judgment." Mot. ¶ 63. But the Proposed Settlement's terms should not be viewed as anything approaching "reasonable" to any creditor, except Redeemer. When studied carefully, the supposed benefits to the estate are illusory. *In re Shankman*, 2010 Bankr. LEXIS 619, at *10 (rejecting the proposed settlement because it offered only "illusory benefits" and was not just, equitable, and in the best interests of the estate).

48. In addition to the lack of any reduction to account for the litigation uncertainty associated with the risk of vacatur discussed above, in the Proposed Settlement, the Debtor forfeits the right to meaningful assets that otherwise would be transferred to the estate and distributed pro rata among all of the estate's unsecured creditors. This provides a windfall to Redeemer to the detriment of other creditors, by not only permitting Redeemer to receive more than its pro rata share of the Debtor's estate, but also requiring the Debtor to forfeit the estate's rights to valuable assets. When these components are factored in, Redeemer could receive a greater than 100% recovery on the Redeemer Claim, and all other creditors would lose out. Accordingly, this

[20] The Motion asserts that the UBS Objection was the only objection made to the Redeemer Claim or Crusader Claim. Mot. ¶ 33 n.10. The number of creditors who object to a claim or settlement is not dispositive of this factor or the resolution. Regardless of whether *any* creditors object, "[t]he Court is obliged to independently consider whether the creditor's best interests are being served." *In re Allied Props., LLC*, 2007 Bankr. LEXIS 2174, at *27 (Bankr. S.D. Tex. June 25, 2007) (Isgur, M.). Even when no creditors object, a Court must reject a claim settlement if the compromise is not fair, equitable, and in the best interest of the debtor's estate. *In re Rogumore*, 393 B.R. at 479 (finding a compromise was not fair, equitable, or in the best interests of the debtor's estate "[a]lthough no objections to the motions were filed").

compromise violates the third factor that courts in the Fifth Circuit have focused on in evaluating settlements. *In re Allied Props., LLC*, 2007 Bankr. LEXIS 2174, at *18-19 ("Th[e third] factor focuses on the degree to which the compromise serves *all* creditors' interests. The compromise provides *no* material benefits to the estate. Consequently, to the extent that the compromise gives Black Mountain assets that otherwise would be distributed pro rata among all the estate's unsecured creditors, the compromise violates the third factor.").

1. The Debtor Would Forfeit Its Right To Collect Deferred Fees

49. The Debtor acknowledges that while the Panel found that $32,313,000 in Deferred Fees were prematurely taken by the Debtor, the Debtor ultimately would be entitled to those fees pursuant to the Plan and Scheme, upon the completion of the liquidation of Crusader. Mot. ¶¶ 25-27. In the Proposed Settlement, the Debtor and Redeemer claimed to have reached a "substantial compromise," whereby Redeemer "agreed to reduce the Damage Award by $21,592,000," which the Debtor characterizes as "approximately two-thirds" of the Deferred Fees component, in exchange for the Debtor forfeiting its right to collect the Deferred Fees. Mot. ¶ 27. According to the Debtor, this compromise results in the estate "immediately" receiving a benefit (through the reduction of the Damages Award), rather than waiting for the completion of Crusader's liquidation and "litigating at some future date the merits of" the "faithless servant" defense. Mot. ¶ 64. This characterization of the compromise, and who it really "benefits," is misleading at best.

50. As an initial matter, the Debtor's claim that the Proposed Settlement discounted the Deferred Fee component of the Arbitration Award by "approximately two-thirds" is inaccurate. Mot. ¶ 27. The Deferred Fee component of the Arbitration Award listed in the Redeemer Claim

is $43,105,395 (not $32,313,000), which includes $10,792,395 in pre-judgment interest.[21] Redeemer Claim Rider at 1. Thus, an "apples-to-apples" or "claim-to-claim" comparison of the asserted claim and allowed claim would acknowledge that a reduction of the so-called Damages Award by approximately $21,592,000 is only one-half, rather than two-thirds, of the Deferred Fee component. Redeemer retains $21,513,395 of its claim based on the Deferred Fees ($43,105,395 - $21,592,000), and does not have to pay the Debtor $32,313,000 upon complete liquidation of Crusader. The Debtor, meanwhile, forfeits its right to receive ***any*** of the Deferred Fees indisputably owed to it upon Crusader's completed liquidation.

51. None of Redeemer's counterarguments (or the Debtor's justifications) provides a reasonable basis for the Debtor to forfeit its right to $32,313,000 in Deferred Fees in the future altogether. *First*, Redeemer apparently expressed its view that it was entitled to recover all of the Deferred Fees found by the Panel to be prematurely taken. Mot. ¶ 26. But Redeemer previously argued, and the Panel agreed, that the Debtor's conduct was improper because it transferred the Deferred Fees to itself *too soon*. Mot. ¶ 25. The Debtor's entitlement to the Deferred Fees in the future was not in question, however. For this reason, the Panel made clear that "measuring the damages suffered by [Redeemer] by referencing the full amount of the Deferred Fees taken is ***not*** the same as literally ordering a return of the moneys." PFA at 14; *id.* at 3. The Motion does not explain why Redeemer, not the Debtor, would be legally entitled to those fees under any scenario. Under the Plan and Scheme, contracts to which Redeemer is a party, the Debtor alone is entitled

[21] Of this prejudgment interest, $9,007,655 accrued by March 6, 2019, the date of the Partial Final Award. PFA at 54. An additional $1,784,740 in prejudgment interest was later added in the Final Award. FA at 16. This portion may be vacated. *Infra* Section A, at 16.

to those fees, and the Arbitration Award did not alter those rights in any way or order that the Debtor "return" or forfeit the fees.

52. *Second*, the Debtor implies that it will not receive the Deferred Fees until some point far in the future, when Crusader's liquidation is complete, but the Debtor provides no facts to ascertain what assets besides the Cornerstone shares, if any, remain at Crusader to be liquidated or when Crusader's liquidation may be completed. Crusader went into wind down in 2008—twelve years ago. *See* Mot. ¶ 11. The Arbitration Award suggests the Cornerstone shares are among the last assets at Crusader to be liquidated. PFA at 51 (discussing whether liquidation of the Cornerstone shares had delayed liquidation being completed). Therefore, it is entirely possible that Crusader may be liquidated before the close of this Chapter 11 Case. The uncertainty of *when* the Debtor's estate will receive the Deferred Fees is not reason to forfeit them altogether.

53. *Third*, Redeemer's argument that the Debtor would be barred from recovering any of the Deferred Fees from Crusader upon its complete liquidation because of the "faithless servant" doctrine is meritless and ignores the Debtor's valid defenses. *See* Mot. ¶ 26. Redeemer contends that waiver and estoppel are inapplicable because "that is a defense that would only be required to be asserted when HCMLP made a claim for the Deferred Fees—as it did during the negotiations." Mot. ¶ 28 n.9. However, recent negotiations were not the first time the Debtor sought to collect the Deferred Fees, meaning this defense was "required to be asserted" previously. When the Debtor asserted a counterclaim for the Deferred Fees during arbitration, Redeemer defended itself against that claim without ever raising the faithless servant defense. PFA at 49. Moreover, under the Proposed Settlement, the parties agreed to an allowed claim of $50,000 for the Crusader Claim—a claim based in its entirety on the same "faithless servant" doctrine—because, as the

Debtor points out, it "is very likely to defeat this claim based on, among other things, affirmative defenses, including the statute of limitations, waiver, laches, and estoppel." Mot. ¶ 58 n.14.

54. The Debtor's forfeiture of its clear right to the Deferred Fees is not a sound exercise of business judgment. The $32,313,000 in Deferred Fees is a cash receivable, a valuable asset that Redeemer would otherwise be required to transfer to the estate upon liquidation of Crusader, at which point it would be available to increase *all* creditors' pro rata recoveries on their allowed claims. ***That*** would be a real benefit to the estate, even if not an "immediate" one. In that scenario, Redeemer would end up giving more in real, cash assets to the Debtor through this pay-back obligation than it would receive on a pro rata basis recovery on its Deferred Fee Claim. Instead, Redeemer avoids this obligation altogether. There is nothing fair or equitable about this compromise from the perspective of all other creditors.

2. The Debtor Would Forfeit Its Right To Crusader's Cornerstone Shares, Which May Be Worth Double The Value Assigned To Them For Settlement Purposes

55. Next, there is no dispute that the Arbitration Award requires Redeemer, simultaneously with a damages payment from the Debtor (including prejudgment interest), to have Crusader "tender its Cornerstone shares to [the Debtor]." FA at 17; PFA at 48; *see* Mot. ¶ 31. In the UBS Objection, UBS expressed concern regarding how the value of Crusader's 14,380 Cornerstone shares would be taken into account when calculating the true value of the Redeemer Claim. UBS Objection ¶ 20. The Debtor dismisses these concerns as "moot" with little explanation: "these obligations were fully considered by the Debtor and form the basis for substantial compromises embedded in the Stipulation." Mot. ¶¶ 35, 47. UBS's concerns, however, are only heightened by the treatment of Crusader's Cornerstone shares in the Proposed Settlement.

56. Under the Proposed Settlement, the Debtor "agreed to treat the Cornerstone Shares differently from the process required under the Arbitration Award." Mot. ¶ 31. Rather than

tendering the Cornerstone shares, Redeemer's "Damage Award will be reduced by approximately $30.5 million to account for the perceived fair market value of those shares," and Crusader will retain the shares. *Id.* This "substantial compromise" is actually a complete surrender.

57. As an initial matter, this reduction translates to Redeemer receiving ***over half*** of the Cornerstone component in its allowed claim. The Cornerstone component of the Arbitration Award listed in the Redeemer Claim is $71,894,891 (not $48,070,407, as the Debtor suggests), which includes $23,824,284 in pre-judgment interest.[22] Redeemer Claim Rider at 1. Thus, an "apples-to-apples" or "claim-to-claim" comparison of the asserted claim and allowed claim would acknowledge that a reduction of the total payments by approximately $30.5 million is a less than 50% reduction of the Cornerstone component ($71,894,891). Put differently, Redeemer retains both $17,570,407 of its asserted claim based on the Cornerstone shares ($48,070,407 - $30,500,000), ***plus*** another $23.8 million (the full amount of pre-judgment interest awarded by the Final Award), for a total of $41,394,691 in an allowed claim to be paid pro rata from the estate. And on top of that, Redeemer retains the value of Crusader's Cornerstone shares upon their liquidation, while the Debtor "does not have to purchase" Crusader's Cornerstone shares for $48,070,407 in cash (which the Debtor points out it does not have).

58. But that is not the way that the Arbitration Award was supposed to operate and it is certainly not an equitable way to proceed in this Chapter 11 Case. The Debtor was supposed to pay to Redeemer a fixed amount, which included the Panel's calculation of the fair market value of Crusader's 14,380 shares in Cornerstone plus prejudgment interest. PFA at 48. In return, Crusader was required to tender its Cornerstone shares to the Debtor. That the Debtor does not

[22] Of this prejudgment interest, $21,169,417 accrued by March 6, 2019, the date of the Partial Final Award. PFA at 54. An additional $2,655,067 in prejudgment interest was later added in the Final Award. FA at 16. This portion may be vacated. *Infra* Section A, at 16.

have $48,070,407 in cash (right now) to pay the full amount assigned by the Panel to the Cornerstone component of the Damages Award is beside the point. Based on the Debtor's current asset valuation, no general unsecured creditors, other than perhaps certain retained employees, will receive a full recovery on account of their prepetition claims. But permitting Redeemer to avoid that downside by keeping both half of the amount that was supposed to be paid for the Cornerstone shares ***and*** the Cornerstone shares provides Redeemer with a windfall that the Panel did not contemplate.

59. Moreover, the Debtor's reduction of the Redeemer claim by $30.5 million falls below any reasonable range of valuation, including the Debtor Houlihan Valuation or even the Crusader Houlihan June Valuation. REDACTED

higher than the $30.5 million fair market value calculated in the Crusader Houlihan March Valuation and used by the Debtor for settlement purposes. It is unreasonable for the Debtor to accept a lower valuation calculated by the exact same financial firm, while failing to provide the Court with any explanation of what analysis the Debtor or Houlihan performed to determine that this lower value is reasonable (and should be fixed in March as opposed to June, when the value of Cornerstone increased in those three months). *See In re Rogumore*, 393 B.R. 474, 481 (Bankr. S.D. Tex. 2008) (rejecting a settlement under Rule 9019 and questioning why the estate should "be forced to accept the low valuation at whatever date," when "[n]o party to the Compromise adequately explained why the cash surrender value should be fixed at the March 24 value").

60. In fact, UBS believes that the valuation of Crusader's shares in Cornerstone is potentially nearly triple the $30.5 million calculated in the Crusader Houlihan March Valuation

and used by the Debtor for settlement purposes. According to the Grant Thornton Estimation, the true value of Cornerstone as of June 30, 2020 might be between $116 million and $208.7 million. GT Decl. ¶ 5. This means that Crusader's 14,830 shares might have a value of between $46.5 million and $83.6 million, *id.* ¶ 6, which Redeemer will receive upon a sale of Cornerstone.

61. Indeed, such a sale is contemplated by the Proposed Settlement. Specifically, the Proposed Settlement requires the Debtor to "in good faith, use commercially reasonable efforts to monetize all shares of capital stock of Cornerstone held by the Debtor, any funds managed by the Debtor, and the Crusader Funds," and requires Redeemer to cooperate in the sale process. Mot. ¶ 23. According to the Debtor, Redeemer's cooperation means that Cornerstone "may be sold as a whole, to the likely benefit of all creditors." Mot. ¶ 64. Redeemer's cooperation is an illusory benefit. If instead, Redeemer was required to comply with its obligations under the Arbitration Award, Crusader's minority interest in Cornerstone would be transferred to the Debtor, and the Debtor would have the same ability to sell Cornerstone "as a whole."[23] Plus, as UBS understands, Cornerstone is among the last of Crusader's assets to be liquidated, so under the Plan and Scheme, the Debtor could (upon receipt of Crusader's shares) trigger payment of the $32,313,000 of Deferred Fees due to the Debtor upon completion of the Crusader liquidation.

3. The Proposed Settlement May Result In Redeemer Recovering More Than 100% On Its Claim

62. All told, the Debtor's forfeiture, and Redeemer's retention, of the Deferred Fees and Cornerstone shares may in fact result in Redeemer recovering more than 100% on its claim. The Debtor's Plan has not been approved and the general unsecured creditor class pro rata recovery

[23] The "Amended & Restated Stockholders' Agreement" filed with the Proposed Settlement, Dkt. No. 1090-1 at Schedule A, raises further questions about the Proposed Settlement—and the Debtor's acceptance of it—by including a Schedule of "Highland Capital Stockholders" that is inconsistent with other documentation provided regarding which Highland entities currently hold Cornerstone shares.

remains uncertain, for a variety of reasons. *See, e.g.*, *First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1079]. Under the Proposed Settlement, however, when the value of the forfeited assets are taken into account, Redeemer may fare far better than it would have under the underlying Arbitration Award and far better than other general unsecured creditors in this Chapter 11 Case.

63. To illustrate the potential windfall to Redeemer under the Proposed Settlement, a comparison of Redeemer's recovery under the Arbitration Award versus its potential recovery under the Proposed Settlement is helpful. Under the Arbitration Award, the Debtor was required to pay Redeemer 118,929,666 (including prejudgment interest and attorneys' fees) in damages and to pay Redeemer $71,894,891 (including prejudgment interest) ***in exchange*** for all of Crusader's shares in Cornerstone. In exchange, Redeemer remained obligated to (i) tender Crusader's Cornerstone shares; and (ii) pay the Debtor $32,313,000 in Deferred Fees upon liquidation of Crusader. As shown below, after accounting for its reciprocal obligations to the Debtor, and depending on the value of the Cornerstone shares to be tendered (which is disputed), the value of the Arbitration Award to Redeemer is between $74,911,557 (using the Grant Thornton Estimation) and $128,011,557 (using the Crusader Houlihan March Valuation):

Redeemer Recovery (Arbitration Award)

Highland Payments	$190,824,557			
Pay Deferred Fees	($32,313,000)			
REDACTED				
Total Recovery	**$74,911,557**	**$104,811,557**	**$103,111,557**	**$128,011,557**

[24] For purposes of this chart, the highest ends of the ranges calculated by Grant Thorton and Houlihan ("HL") are used, except for the Crusader Houlihan March Valuation, which uses the low end of the range, as the Debtor does.

64. Under the Proposed Settlement, however, Redeemer stands to gain far more. Depending on the valuation of the Cornerstone shares, Redeemer could receive or retain value in an amount up to $253,609,610 (based on the Grant Thornton Estimation) or $200,509,610 (based on the Crusader Houlihan March Valuation), each of which exceeds the face amount of the Redeemer Claim ($190,824,557) and the highest recovery it would have received under the Arbitration Award ($128,011,557), as reflected in the chart above.

Redeemer Recovery (Proposed Settlement)

Allowed Claim	$137,696,610			
Release of Deferred Fees	$32,313,000			
REDACTED				
Total Recovery	**$253,609,610**	**$223,709,610**	**$225,409,610**	**$200,509,610**

65. Not only does the Proposed Settlement create a likelihood that Redeemer will recover more than 100% of its filed claim amount, it does so while depriving the Debtor's estate of valuable assets that could be used to pay other creditors and increase their pro rata recovery. This contradicts any assertion that the "proposed settlement is in the best interests of the Debtor's creditors." *See* Mot. ¶ 62. Where, as here, the Proposed Settlement "adversely affect[s] recovery by the estate's other creditors," it is not "fair and equitable" and should be rejected. *In re Alfonso*, 2019 Bankr. LEXIS 2816, at *13 (Bankr. W.D. Tex. Sept. 6, 2019).

CONCLUSION

[25] For purposes of this chart, the highest ends of the ranges calculated by Grant Thornton and Houlihan ("HL") are used, except for the Crusader Houlihan March Valuation, which uses the low end of the range, as the Debtor does.

66. For the foregoing reasons, UBS respectfully requests that the Court independently assess the merits of the Proposed Settlement. Upon doing so, UBS submits that the Court should deny the Motion and provide any such other and further relief to which UBS and all creditors might be entitled. UBS respectfully submits that such relief should include an Order requiring the Debtor to provide sufficient information for UBS and the Court to assess the true value of the Cornerstone shares held by Crusader, and/or an Order requiring the Debtor to obtain a valuation of Cornerstone from an independent, third-party financial advisor.

67. In the alternative, even if the Court approves the Proposed Settlement, UBS respectfully requests that when the Debtor and Redeemer have sold the Cornerstone shares, if the sale price of Crusader's 14,380 shares exceeds the $30,500,000 "perceived" fair market value assigned to them in the Proposed Settlement, the Court take the additional proceeds of that sale into consideration when calculating Redeemer's pro rata recovery from the Debtor's estate, under Section 105 of the Bankruptcy Code.

DATED this 16 day of October, 2020.

LATHAM & WATKINS LLP

By /s/ Sarah Tomkowiak

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Counsel for UBS Securities LLC and UBS AG, London Branch

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that the *Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81)* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: October 16, 2020.

/s/ Martin Sosland

Exhibit A

Debtor Brief to Vacate

(To Be Filed Under Seal)

Exhibit B

6/4/20 Presentation to Redeemer

(To Be Filed Under Seal)

Exhibit C

8/6/20 Presentation to Redeemer

(To Be Filed Under Seal)

Exhibit 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	Case No. 19-34054-sgj11
	:	
Debtor.	:	

DECLARATION OF W. KEVIN MOENTMANN IN SUPPORT OF OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81)

I, W. Kevin Moentmann, pursuant to 28 U.S.C. § 1746(a), declare under penalty of perjury as follows:

1. I am a principal in the accounting firm of Grant Thornton LLP ("Grant Thornton" or "We"), financial advisor to UBS Securities LLC and UBS AG, London Branch in this matter. I have over thirty years' experience providing advisory services to healthcare entities for acquisition, regulatory compliance and for financial reporting purposes. My healthcare valuation experience includes the valuation of general and specialty hospitals; long term acute care hospitals, skilled nursing facilities, rehabilitation facilities; surgical centers; imaging centers; dialysis centers; general and specialty hospitals; hospice/home health entities and clinics. See Exhibit 1 for a copy of my bio.

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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2. I submit this Declaration in support of UBS's *Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81)* based on my personal knowledge and a review of relevant documents accessible to me. Should additional information or documents be produced at a later date, the opinions and conclusions stated herein could be adjusted to reflect such information.

3. The subject of this declaration is to provide our findings regarding analysis of valuations prepared by Houlihan Lokey ("Houlihan") which estimate the fair value of Cornerstone Healthcare Group Holding, Inc. ("Cornerstone" or the "Company") as of June 30, 2020 (the "Valuation Date"). The valuations were performed for Highland Capital Management L.P. ("Highland" or "HCM") and Highland Crusader Fund ("Crusader"). I note Highland and Crusader entered into a settlement related to Crusader's equity interest in Cornerstone of $30.5 million.[2]

REDACTED

The analysis described below focuses on the more recently prepared June 30, 2020 Houlihan valuations and allows for a side-by-side comparison of the Houlihan valuations.

4. Our procedures included the following:

   a. Requested information (see Exhibit 2 for a complete list of documents requested);

[2] Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith, Pg. 10

b. Reviewed information received (see Exhibit 3 for a complete list of documents received to date) with the key documents listed below being the focus of our review:

i. *Highland Cornerstone 6.30.20 Draft (7.2.20).pdf* (the "Houlihan HCM Schedules" – See Attachment B)

ii. *CRUSADER_00030.pdf* (the "Houlihan Crusader Schedules" – See Attachment C)

c. Evaluated the Houlihan HCM Schedules and Houlihan Crusader Schedules and provided adjusted alternative calculations of value based on the observations described in this declaration (see Exhibit 4 for my alternative calculations of value).

5. A summary of Houlihan's concluded equity value of Cornerstone prepared for Highland and Crusader, as well as my adjusted calculations of value, is presented below.[3]

Total Cornerstone Equity Value as of June 30, 2020	*Low*	*High*
REDACTED		

a. REDACTED

[3] "DLOM" stands for Discount for Lack of Marketability

ii. REDACTED

b. REDACTED

a. The below table summarizes the value range (in millions) of Crusader's equity interest in Cornerstone based on an assumed 40.05% ownership interest by Crusader.[4]

[4] Crusader's 40.05% equity interest is calculated as follows: 14,830 shares owned by Crusader divided by 37,025 shares outstanding as implied by the per share values on pg 3 to the Houlihan HCM Schedules. Different estimates of shares outstanding exist within documents referred to in Exhibit 2.

Value of Crusader Interest in Cornerstone as of June 30, 2020	*Low*	*High*
REDACTED		

7. I make the following observations concerning the Houlihan HCM Schedules and the Houlihan Crusader Schedules:

a. REDACTED

[5] Houlihan HCM Schedules, pg. 10

[6] Houlihan HCM Schedules, pg. 11

[7] Houlihan HCM Schedules, pg. 4

REDACTED

REDACTED

[8] Houlihan HCM Schedules, pg. 3

[9] Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith, Pg. 7-8

[10] Houlihan HCM Schedules, pg. 22

REDACTED

[11] Duff & Phelps' *2020 Cost of Capital Navigator*

[12] Houlihan HCM Schedules, pg. 19, Houlihan Crusader Schedules, pg. 19

[13] See Exhibit 4, Schedule 1

[14] Houlihan HCM Schedules, pg. 4

REDACTED

[15] See Exhibit 4, Schedule 1

[16] Houlihan HCM Schedules, pg. 14 - 17

[17] Houlihan HCM Schedules, pg. 14

[18] Houlihan HCM Schedules, pg. 4

REDACTED

[19] Houlihan Crusader Schedules, pg. 14 - 17

[20] Houlihan Crusader Schedules, pg. 14

[21] Houlihan HCM Schedules, pg. 4, Houlihan Crusader Schedules, pg. 4

[22] Houlihan Crusader Schedules, pg. 14

REDACTED

[23] Houlihan HCM Schedules, pg. 4

[24] Houlihan Crusader Schedules, pg. 4

[25] REDEEMER_004906-REDEEMER_004924

REDACTED

[26] Houlihan HCM Schedules, pg. 4, Houlihan Crusader Schedules, pg. 4

REDACTED

[27] See Exhibit 4, Schedule 1

[28] Houlihan HCM Schedules, pg. 4, Houlihan Crusader Schedules, pg. 4

REDACTED

REDACTED

[29] Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith, Pg. 7-8

[30] Houlihan Crusader Schedules, pg. 4, 25

REDACTED

I certify under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of October, 2020.

W. Kevin Moentmann

Exhibit 1

Grant Thornton

W. Kevin Moentmann

CFA, CEIV

Principal, Valuation Services

Experience

Kevin is a Principal located in Grant Thornton's St. Louis, Missouri office. He oversees and coordinates the technical and administrative aspects of valuation and financial consulting engagements on a national basis and works extensively with Grant Thornton's Health Care Advisory Practice. Kevin has provided consulting, valuation and compensation services to health care systems, pharmaceutical companies and medical equipment entities across the U.S.

Industry experience

Kevin has provided health care consulting and financial valuation services since 1987. Kevin began his career providing valuation services at a leading public accounting firm. Prior to joining Grant Thornton, he spent eighteen years in the valuation practice at a publicly-traded professional services firm.

Kevin has over thirty years' experience providing advisory services to healthcare entities for acquisition, regulatory compliance (Stark, anti-kickback and Fraud and Abuse) and for financial reporting purposes. Kevin's healthcare valuation experience includes the valuation of general and specialty hospitals; long term acute care hospitals, skilled nursing facilities, rehabilitation facilities; surgical centers; imaging centers; dialysis centers; general and specialty hospitals; hospice/ home health entities and clinics. He has valued pharmaceutical companies and medical device and equipment manufacturers along with the associated intellectual property.

Kevin has provided compensation opinions on thousands of provider arrangements across nearly all specialties for regulatory purposes. His compensation consulting encompasses employment arrangements, professional services, administrative services, stipend arrangements, call coverage, etc.

Kevin consults with and advises leading health systems and academic medical centers as well as physician clinics and physician practice management companies regarding mergers, acquisitions, divestitures, joint ventures and various physician services arrangements, frequently in connection with each other. Kevin has provided services in litigation matters as well as for states' attorney general's office.

Professional qualifications and memberships

Certifications: Kevin has been awarded the Chartered Financial Analyst (CFA) designation. He has also earned the Certified in Entity and Intangible Valuations (CEIV) credential from the AICPA.

Affiliations: Kevin is a member of the CFA Institute.

Education

Kevin holds a Bachelor's degree in Finance from the University of Missouri - Columbia, and a Master of Business Administration from Washington University in St. Louis.

Contact details

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Grant Thornton

W. Kevin Moentmann

CFA, CEIV

Principal, Valuation Services

Testimony Experience

1. The Estate of Randall C. Burkemper v. David L. Burkemper. Deposition testimony. Testified as to the fair market value of an interest in Burkemper. 2018.

2. Dr. Gregory Meister vs. Kansas Spine Hospital. Deposition testimony. Testified as to the value an interest in Kansas Spine Hospital. 2014-2015.

3. Hector Ozuna vs. Alpha Factors, d/ b/ a Century 21 Alpha, Edward Zimbrick, Mark Skilling, Lee & Associates, and Does 1 through 50. November 2013. Deposition/ trial testimony. Testified regarding sale-leaseback.

4. Marie Robertson vs. Directory Publishing Services. July 2012. Deposition testimony. Testified as to the fair market value of equity of Directory Publishing Services.

5. Wireless Stores, LLC and Cellular 4Less Corporation vs. Southwestern Bell Wireless, LLC et al. American Arbitration Association. Arbitration testimony. March 2012. Testified as to the fair market value of equity of The Wireless Stores.

Exhibit 2

Exhibit 2

1. We requested the following documents from Debtor:
    a) all documents provided to or relied upon by Houlihan Lokey for their June 30, 2020 valuation of Cornerstone
    b) all documents previously provided to or relied upon by Houlihan Lokey for prior valuations of Cornerstone that are incorporated into or relied upon for their June 30, 2020 valuation of Cornerstone.
    c) all documents provided to Houlihan Lokey for subsequent valuations, if any, of Cornerstone.
    d) Information provided to Houlihan Lokey by Highland for the 6/30/2020 valuations of Cornerstone for Highland, including, but not limited to the following:
        i. Pg. 3, Footnote 1 - Highland Ownership information
        ii. Pg. 4, Footnote 2 – FY 2019 Appraisals provided to Houlihan by Highland
        iii. Pg. 4, Footnote 5 – Real estate appraisals dated December 31, 2019 and Cornerstone's pro rata ownership in each real estate facility, provided by Highland
2. We requested the following documents from Crusader:
    a) All valuation analyses or valuation reports prepared by Alvarez & Marsal CRF Management, LLC regarding the valuation of Cornerstone as of June 30, 2020 (or valuation as of such other date used to determine the "perceived fair market value" referenced in the 9019 Motion);
    b) All Documents provided to or relied upon by A&M in its June 30, 2020 valuation of Cornerstone (or valuation as of such other date used to determine the "perceived fair market value" referenced in the 9019 Motion);

Exhibit 2

c) All Documents provided to or relied upon by A&M for prior valuations of Cornerstone that were incorporated into or relied upon for its June 30, 2020 valuation of Cornerstone (or valuation as of such other date used to determine the "perceived fair market value" referenced in the 9019 Motion);

d) All Documents provided to or relied upon by A&M for any subsequent valuations of Cornerstone

e) All Documents reflecting any analysis or comparison completed by A&M of any Houlihan valuations of Cornerstone.

Exhibit 3

Declaration of W. Kevin Moentmann — Exhibit 3

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

Documents Received — Valuation Date: June 30, 2020

File Name	Prepared By
CRUSADER_00001.pdf	Houlihan Lokey
CRUSADER_00030.pdf	Houlihan Lokey
Highland - Cornerstone 6.30.20 Draft (7.2.20).pdf	Houlihan Lokey
REDEEMER_004862-REDEEMER_004883.pdf	Alvarez & Marsal
REDEEMER_004862-REDEEMER_004905.pdf	Alvarez & Marsal
REDEEMER_004862-REDEEMER_004924.pdf	Alvarez & Marsal
CHG Consolidated Financials - 05.2020_ Highland056181 - Highland056183.xlsx	Cornerstone Healthcare Group
CHG Consolidated Financials - 06.2020_ Highland056668 - Highland056670.xlsx	Cornerstone Healthcare Group
CHG Consolidated Financials - 07.2020_ Highland057190 - Highland057192.xlsx	Cornerstone Healthcare Group
Home Health Financials - 05.2020_ Highland056184 - Highland056208.xlsx	Cornerstone Healthcare Group
Home Health Financials - 06.2020_ Highland056671 - Highland056701.xlsx	Cornerstone Healthcare Group
Home Health Financials - 07.2020_ Highland057193 - Highland057224.xlsx	Cornerstone Healthcare Group
Rehab Financials 05-2020_ Highland056411 - Highland056475.xlsx	Cornerstone Healthcare Group
Resolute Rehab Close July 2020 Financials_ Highland057396 - Highland057492.xlsx	Cornerstone Healthcare Group
Resolute Rehab Close June 2020 Financials_ Highland056907 - Highland056995.xlsx	Cornerstone Healthcare Group
Senior Living Close July 2020 Fin Pkg_ Highland057493 - Highland057673.xlsx	Cornerstone Healthcare Group
Senior Living Close June 2020 Financials_ Highland056996 - Highland057169.xlsx	Cornerstone Healthcare Group
SL Division Close May 2020 Financials_ Highland056476 - Highland056649.xlsx	Cornerstone Healthcare Group
Behavioral Health Close July 2020 Fin Pkg_ Highland057170 - Highland057189.xlsx	Cornerstone Healthcare Group
Behavioral Health Close June 2020 Financials_ Highland056650 - Highland056667.xlsx	Cornerstone Healthcare Group
Behavioral Health Close May 2020 Financials_ Highland056163 - Highland056180.xlsx	Cornerstone Healthcare Group
LTACH Financial Reporting Package - July 2020 - Final_ Highland057225 - Highland057395.xlsx	Cornerstone Healthcare Group
LTACH Financial Reporting Package - June 2020 - Final_ Highland056702 - Highland056906.xlsx	Cornerstone Healthcare Group
LTACH Financial Reporting Package - May 2020 - Final_ Highland056209 - Highland056410.xlsx	Cornerstone Healthcare Group
1_2020 09 23 (1089) 9010 Settlement Motion - Redeemer & Crusader POCs.pdf	Debtor
2020 09 23 (1090-1) Exhibit 1.pdf	Debtor

Exhibit 4

Exhibit 4

Declaration of W. Kevin Moentmann **Schedule 1**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

Calculation Summary **Valuation Date: June 30, 2020**

US$ in millions

REDACTED

Footnotes:

(1) Per Schedule 2.
(2) Per Schedule 4
(3) Our research of general industry capitalization rates corroborated those selected by Houlihan.
(4) Not currently assessed by Grant Thornton
(5) Adjusts normalized net working capital to remove the impact of the CARES Act grants and forgivable loans received by Cornerstone.
(5) Based on information provided by A&M, Cornerstone received a CARES Act Grant/Forgivable Loan. This range represents the possibility the grant/loan balance will be forgivable.

Declaration of W. Kevin Moentmann

Schedule 2

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

LTAC & Behavioral Health Market Approach | Indication Of Value

Valuation Date: June 30, 2020

US$ in millions

	Cornerstone	Preliminary
REDACTED		

Footnotes:

(1) Based on discount to the 25th percentile and median multiples, respectively, for differences in size compared to the public companies.

(2) Income statement items are taken from Income Statement as of May 31, 2020 for the trailing and next twelve months

(3) Valuation Multiple x Financial Statistic

Exhibit 4

Declaration of W. Kevin Moentmann **Schedule 3**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

LTAC & Behavioral Health Guideline Public Company | Comparative Valuation Multiples **Valuation Date: June 30, 2020**

US$ in 000s, except per share

REDACTED

Footnotes:

(1) Source: Capital IQ

(2) As of June 30, 2020

Exhibit 4

Declaration of W. Kevin Moentmann — **Schedule 4**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

LTAC & Behavioral Health DCF Method | GT — **Valuation Date: June 30, 2020**

US$ in millions

	6 Months
	REDACTED

Footnotes:

(1) Prospective Financial Information (PFI) for Cornerstone provided by management.

Exhibit 4

Declaration of W. Kevin Moentmann

Schedule 5

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

LTAC & Behavioral Health DCF Method | Math Check

Valuation Date: June 30, 2020

US$ in millions

6 Months
REDACTED

1) Prospective Financial Information (PFI) for Cornerstone provided by management.

Exhibit 4

Declaration of W. Kevin Moentmann — **Schedule 6**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

LTAC & Behavioral Health Weighted Average Cost of Capital ("WACC") Analyses — **Valuation Date: June 30, 2020**

REDACTED

Footnotes:

(1) Source: Capital IQ.

(2) Combined income tax rates for the selected public guideline companies are normalized at 25% (post-2017), or 38% (pre-2018) if the combined tax rate is a) below 10%, or b) above 50%, in order to offset the use of NOL carryforwards, R&D tax credits, etc.

(3) The estimated Equity Risk Premium (ERP) of 6.50%, which equals Rm - Rf, is based on the long-horizon expected equity risk premium (supply side) as published in the Duff & Phelps 2019 Cost of Capital Navigator.

Exhibit 5

Declaration of W. Kevin Moentmann **Exhibit 5**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

Comparison Summary - Houlihan HCM vs. Houlihan Crusader **Valuation Date: June 30, 2020**

US$ in millions

REDACTED

Footnotes:

(1) Houlihan broke out Behavioral Health from LTAC in the Crusader valuation.
(2) No LTIP included in Houlihan's valuation for Crusader.
(3) Debt organzied differently in both valuations.

Exhibit 6

Declaration of W. Kevin Moentmann **Exhibit 6**

Calculations and Observations on Valuation of Cornerstone Healthcare Group Holdings, Inc.

Comparison Summary - Houlihan HCM vs Houlihan Crusader vs GT Calculations **Valuation Date: June 30, 2020**

US$ in millions

REDACTED

Attachment A

(To Be Filed Under Seal)

Attachment B

(To Be Filed Under Seal)

Attachment C

(To Be Filed Under Seal)

Exhibit 5

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Counsel for UBS Securities LLC and UBS AG, London Branch

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	

UBS'S MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL WITH (I) THE OBJECTION AND (II) THE DECLARATION OF W. KEVIN MOENTMANN IN SUPPORT OF THE OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

(B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81)

UBS Securities LLC and UBS AG, London Branch (together, "UBS"), by and through their undersigned counsel, respectfully submit this motion (the "Motion to Seal") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), granting UBS leave to file unredacted versions of (i) the *Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)* (the "Objection"), (ii) the *Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)* (the "Declaration"), and (iii) certain exhibits to the Objection (the "Objection Exhibits") and the Declaration (the "Declaration Exhibits"), under seal in this proceeding.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion to Seal under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

BACKGROUND

2. On October 16, 2019, the Debtor initiated this Chapter 11 Case.[2]

3. On January 22, 2020, this Court entered the *Agreed Protective Order* [Docket No. 382] to protect the confidentiality of documents and things exchanged in this Chapter 11 Case (the "Protective Order"). Under Section 5 of the Protective Order, parties can designate proprietary,

[2] Capitalized terms not otherwise defined herein shall have the definition ascribed to them in the Objection.

personal, commercial, financial, business, or otherwise sensitive materials as "Confidential" or "Highly Confidential" in this proceeding.

4. On April 3, 2020, Redeemer filed Proof of Claim No. 72 against the Debtor's estate (the "Redeemer Claim").

5. On April 6, 2020, Crusader filed Proof of Claim No. 81 against the Debtor's estate (the "Crusader Claim").

6. On September 23, 2020, the Debtor filed the *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)* [Docket No. 1089] (the "Motion").

7. Also on September 23, 2020, the Debtor filed the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Dkt. No. 1090]. The Motion seeks approval of a stipulation, attached as Exhibit 1 to the Morris Declaration [Dkt. No. 1090-1] (the "Proposed Settlement").

8. On October 16, 2020, UBS filed the Objection and the Declaration. The Objection and the Declaration reference documents and include certain Objection Exhibits and Declaration Exhibits that were designated as "Confidential" or "Highly Confidential" under the Protective Order. UBS seeks to submit these documents to provide this Court with additional context around the Proposed Settlement, particularly regarding the valuation of the Cornerstone shares that the Proposed Settlement would allow Redeemer to retain, rather than tender to the Debtor's estate in accordance with the Arbitration Award. These materials demonstrate that the Debtor has not met its burden of establishing that the Proposed Settlement is within the range of reasonable

alternatives leading to a fair and equitable compromise in the best interests of the estate. A brief description of the documents is as follows:

- Objection Exhibit A is the Debtor's Brief in Support of its Motion for Partial Vacatur filed in the Delaware Chancery Court;
- Objection Exhibit B is Alvarez's June 4, 2020 Presentation to Redeemer;
- Objection Exhibit C is Alvarez's August 6, 2020 Presentation to Redeemer;
- Declaration Exhibit 4 is Grant Thornton's set of alternative calculations of the value of Cornerstone shares;
- Declaration Exhibit 5 is a summary of inconsistencies between the Crusader Houlihan Valuation and Debtor Houlihan Valuation;
- Declaration Exhibit 6 is Grant Thornton's valuation of the Cornerstone shares as of June 30, 2020;
- Declaration Attachment A is the *Cornerstone Valuation Analysis as of March 31, 2020*, provided to Crusader by Houlihan Lokey;
- Declaration Attachment B is the *Cornerstone Valuation Analysis as of June 30, 2020*, provided to the Debtor by Houlihan Lokey ; and
- Declaration Attachment C is the *Cornerstone Valuation Analysis as of June 30, 2020*, provided to Crusader by Houlihan Lokey.

RELIEF REQUESTED

9. By this Motion to Seal, UBS respectfully requests entry of an order, substantially in the form of the Proposed Order, allowing UBS to file these materials under seal with this Court.

BASIS FOR RELIEF REQUESTED

10. The Bankruptcy Code, Bankruptcy Rules, and Local Rules for the Northern District of Texas Bankruptcy Court authorize the Court to limit the disclosure of confidential information. Pursuant to Rule 9018 of the Bankruptcy Rules, a party may move for such relief by filing a motion to protect "trade secret[s] or other confidential research, development, or commercial information." Rule 9018(1); *see also* 11 U.S.C. § 107(b)(1).

11. Rule 9077-1 of the Local Rules for the Northern District of Texas Bankruptcy Court provides that a "party may file under seal any document that a statute or rule requires or permits to be so filed." L.B.R. 9077-1(a). When not provided for by a statute or rule, "a party may file a document under seal only on motion and by permission of the Presiding Judge." L.B.R. 9077-1(b).

12. Certain portions of the Objection, the Declaration, Objection Exhibits, and Declaration Exhibits contain protectable information or were produced by the Debtor, Redeemer, or Crusader to UBS pursuant to the Protective Order. UBS has redacted only the portions of these materials that contain such information.

NOTICE

13. Notice of this Motion to Seal shall be provided to: (a) the Debtor; (b) counsel to the Debtor; (c) counsel to the Official Committee of Unsecured Creditors; (d) counsel to Redeemer; (e) counsel to Crusader; (f) the United States Trustee; and (g) those parties requesting notice pursuant to Local Bankruptcy Rule 2002. UBS respectfully submits that such notice is sufficient and that no further notice of this Motion to Seal is required.

CONCLUSION

UBS respectfully requests that the Court enter an order, substantially in the form of the Proposed Order, granting UBS leave to file unredacted versions of the Objection, the Declaration, and certain Objection Exhibits and Declaration Exhibits under seal.

DATED this 16th day of October, 2020.

LATHAM & WATKINS LLP

By /s/ Sarah Tomkowiak

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Counsel for UBS Securities LLC and UBS AG, London Branch

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that *UBS's Motion for Leave to File Documents under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: October 16, 2020.

/s/ *Martin A. Sosland*
MARTIN A. SOSLAND

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[3]	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	

ORDER GRANTING LEAVE FOR UBS TO FILE DOCUMENTS UNDER SEAL WITH (I) THE OBJECTION AND (II) THE DECLARATION OF W. KEVIN MOENTMANN IN SUPPORT OF THE OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72), AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81)

Upon consideration of the *Motion for Leave to File Documents under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee*

[3] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81) (the "Motion to Seal")[4] filed by UBS Securities LLC and UBS AG, London Branch (together, "UBS"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motion to Seal is proper in this District pursuant to 28 U.S.C. §§ 1408-1409; and due, adequate, and sufficient notice of the Motion to Seal having been given; and having determined that the legal and factual bases set forth in the Motion to Seal establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor it is hereby:

ORDERED that the Motion to Seal is granted.

It is FURTHER ORDERED that an unredacted version of the Objection and the Declaration may be filed under seal, along with the following exhibits also filed under seal: (1) Objection Exhibit A, Debtor Brief to Vacate; (2) Objection Exhibit B, 6/4/20 Presentation; (3) Objection Exhibit C, 8/6/20 Presentation; (4) Declaration Exhibit 4, Grant Thornton's alternative Cornerstone calculations; (5) Declaration Exhibit 5, Summary of Houlihan Valuation inconsistencies; (6) Declaration Exhibit 6, Grant Thornton's Cornerstone valuation; (7) Declaration Attachment A, Crusader Houlihan March Valuation; (8) Declaration Attachment B, Debtor Houlihan June Valuation; and (9) Declaration Attachment C, Crusader Houlihan June Valuation.

End of Order

---

[4] Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Motion to Seal.

Order prepared by:

BUTLER SNOW LLP

By /s/ Martin A. Sosland

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Counsel for UBS Securities LLC and UBS AG, London Branch

Exhibit 6

Seery Deposition Exhibit 12

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	

NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

PLEASE TAKE NOTICE that pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, as made applicable to these proceedings by Rules 9014, 7026, and 7030 of the Federal Rules of Bankruptcy Procedure, UBS Securities LLC and UBS AG, London Branch (together, "UBS"), by their attorneys, will take the deposition of Highland Capital Management, L.P. (the "Debtor") regarding the Topics in Exhibit A of this Notice on October 19, 2020, at 10:00 am EST, or such other time and date agreed upon by UBS and the Debtor. The deposition will be taken upon oral examination and conducted by remote virtual means due to the ongoing Covid-19 pandemic. The deposition will be taken before a notary republic or other person authorized by law to administer oaths and will be recorded by stenographic and/or videographic means.

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, the deponent shall designate one or more officers, directors, managing agents, or other persons to testify concerning the matters set forth in Exhibit A.

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Date: October 15, 2020
Washington, D.C.

LATHAM & WATKINS LLP

By /s/ Andrew Clubok

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Counsel for UBS Securities LLC and UBS AG, London Branch

EXHIBIT A

Topics

Pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure and Rule 30(b)(6) of the Federal Rules of Civil Procedure, the Debtor shall produce one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, to testify to all facts known or reasonably available to the Debtor concerning (i) the *Debtor's Motion for Entry of an Order Approving Settlements with (A) The Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) The Highland Crusader Funds*[2] *(Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1089] (the "9019 Motion") and (ii) the *Stipulation* reached by the Debtor [Docket 1090-1] (the "Stipulation") regarding Proofs of Claim Nos. 72 and 81, including:

1. The ownership of Cornerstone Healthcare Group ("Cornerstone"), including the identities of shareholders and numbers of shares held by such shareholders.
2. All valuations of Cornerstone completed for or provided to the Debtor by Houlihan Lokey, Alvarez & Marsal CRF Management, LLC, and/or any other entity, for the period of March 2020 through the present.
3. Any information considered and/or analyses performed regarding Cornerstone that was relied upon when deciding to use or accept a "perceived fair market value" of approximately $30.5 million for the Cornerstone shares held by Crusader as referenced in the 9019 Motion.

---

[2] The Highland Crusader Funds include: Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd.

4. The value of the limited partner interests held in the Highland Crusader Funds by Eames, Ltd.
5. The documents, information, and data received and/or considered by each of Directors Dubel and Nelms and Director/CEO Seery in connection with the settlement terms set forth in the Stipulation and 9019 Motion, including without limitation, with respect to the analysis of the value of any component of the proposed settlement such as the Cornerstone shares, Eames interests, Damages Award, etc., and any other basis for accepting the proposed settlement.

Seery Deposition Exhibit 22

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Counsel for UBS Securities LLC and UBS AG, London Branch

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	:	Case No. 19-34054-sgj11
	:	
Debtor.	:	

OBJECTION TO THE PROOF OF CLAIM FILED BY REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND

[1] The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

UBS Securities LLC and UBS AG, London Branch (together, "UBS"), by and through their undersigned counsel, hereby submit this objection (the "Objection") to Proof of Claim No. 72 (the "Proof of Claim" or "Redeemer Claim"), filed by Redeemer Committee of the Highland Crusader Fund ("Redeemer"). In support of this Objection, UBS respectfully states as follows:

PRELIMINARY STATEMENT

The Redeemer Claim arises from an Arbitration Award issued by an American Arbitration Association ("AAA") panel against the Debtor. As set forth herein, however, there are fundamental flaws with several key aspects of both the Arbitration Award and the Redeemer Claim generally. For one thing, the Arbitration Award that underlies the Proof of Claim is actually two competing "final" arbitration awards—both issued by the same arbitral panel in the same proceeding, but neither of which has been confirmed, or otherwise entered as a final judgment, by any court of competent jurisdiction.

In rendering these awards, the arbitral panel impermissibly substantively (and unilaterally) modified several aspects of its first "final" arbitral award ***after*** that award had already been issued. This was improper as a matter of law. Under the long-standing common law doctrine of *functus officio*—not to mention the binding AAA Commercial Arbitration Rules that governed the arbitration proceedings in question—"anything an arbitrator does to modify a final award after it has been issued is without effect because at that point the arbitrator lacks any power to reexamine that decision." *See Hill v. Wackenhut Servs. Int'l*, 971 F. Supp. 2d 5, 12 (D.D.C. 2013); AAA R-50 ("The arbitrator is not empowered to redetermine the merits of any claim already decided."). This fact alone renders at least ***$36.5 million*** of the amounts Redeemer is claiming through its Proof of Claim unrecoverable and subject to vacatur.

Beyond that, roughly $115 million of the remaining $154 million in claims that Redeemer asserts are functionally worthless. Such amounts relate to what Redeemer refers to as its claims

for "Deferred Fees" and the "Cornerstone Award." But under the express terms of the Arbitration Award and the Crusader Fund[1] governing documents by and between Redeemer and the Debtor, Redeemer cannot recover either the "Deferred Fees" or "Cornerstone Award" amounts from the Debtor without triggering an obligation to turn over assets of great value to the Debtor. The amounts that Redeemer must turn over to the Debtor to collect on the "Deferred Fees" and "Cornerstone Award" will, in all likelihood, eclipse any actual recovery Redeemer might receive from the Debtor's estate on such claims as part of this bankruptcy. What that means is that Redeemer has grossly overstated its claim, and the true value of Redeemer's legitimate and allowable claims is unlikely to exceed $40 million, at the most.

JURISDICTION

1. This Court has jurisdiction to consider the Objection under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

2. The statutory predicates for the requested relief are section 502 of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 3007-1 of the Local Rules of the United States Bankruptcy Court of the Northern District of Texas (the "Local Rules").

BACKGROUND

A. The Debtor's Chapter 11 Bankruptcy Petition

[1] "Crusader Fund" is defined to include Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd.

3. The Debtor, Highland Capital Management, L.P. (the "Debtor" or "HCM"), is an investment management firm that manages a variety of hedge funds, structured investment vehicles, and mutual funds.

4. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for chapter 11 relief in the Bankruptcy Court for the District of Delaware. Pursuant to an order dated December 4, 2019, the Debtor's bankruptcy proceedings were transferred to this Court under the above-captioned case number.

5. On March 2, 2020, this Court entered a general *Order (I) Establishing Bar Dates for Filing Claims and (ii) Approving the Form and Manner of Notice Thereof*. (Dkt. No. 488.) Pursuant to that order, the general bar date for proofs of claim was set for April 8, 2020.

B. Redeemer's Proof of Claim

6. On April 3, 2020, Redeemer filed Proof of Claim No. 72 against the Debtor. (**Ex. A**, Proof of Claim ("POC") No. 72 at 1.) The Redeemer Claim is predicated upon what it refers to as the "Arbitration Award," which is actually two separate "final" arbitration awards issued in an arbitration proceeding that Redeemer filed against the Debtor in or around 2016. (**Ex. B**, Partial Final Award (defined below) (the "PFA") at 4.) Though its claims are principally based on the awards from this prepetition arbitration proceeding against HCM (which concerned only the Debtor's alleged prepetition conduct), the Redeemer Claim takes the position that any claims it might have are not, in fact, "prepetition claims." (Ex. A, POC Rider at 1.) Instead, Redeemer states that the Arbitration Award is actually "an executory contract under section 365 of the Bankruptcy Code" that the Debtor has not yet "moved to assume or reject." (*Id.*) Redeemer, thus, purports to be filing the Proof of Claim only "out of an abundance of caution." (*Id.*)

7. In its Proof of Claim, Redeemer asserts that it has a "Damage Claim" against the Debtor for "at least $190,824,557 plus interest that is accruing beginning as of October 16, 2019,

the date that HCM filed its bankruptcy case." (*Id.*) Redeemer then lists the "separate components of the Damage Claim," which it notes are "set forth in the Final Award." (*Id.*) The components of Redeemer's Damage Claim that are directly relevant to UBS's Objection are the so-called (1) "Deferred Fee Claim" (for which Redeemer claims $43,105,395); (2) "Distribution Fee Claim" ($22,922,608); (3) "Barclays Claim" ($30,811,366); (4) "Cornerstone Award" ($71,894,891); (5) "Legal Fees, Costs, and Expenses" ($11,351,850); and (6) 224 days of prejudgment interest calculated within the (a) "Taking of Plan Claims" ($171,576 of the $3,277,991 Redeemer claims); (b) "CLO Trades Claim" ($24,820 of $685,195); (c) "Credit Suisse Claim" ($151,085 of $3,660,130); and (d) "UBS Claim" ($112,776 of $2,600,968). (*Id.* at 1-2.)

8. In addition to the liquidated Damage Claim itself, Redeemer also asserts "an unliquidated claim for post-petition interest, attorneys' fees, costs and other expenses that continue to accrue in connection with the Damage Claim" (the "Post-Petition Claim"). (*Id.* at 2.) Redeemer cites no authority in support of this Post-Petition Claim. (*See generally id.*)

9. Lastly, Redeemer also asserts a claim for the transfer of certain interests or, in the alternative, "an unliquidated amount" for what it refers to as the "Cancellation of Limited Partnership Interests" in the Crusader Fund held by (i) HCM and Charitable DAF Fund, L.P. and (ii) Eames, Ltd. ("Eames"). (*Id.* at 2.) The claim for interests held by Eames appears to be based on certain relief set forth in the Final Award (and only the Final Award), which Redeemer claims provides for "HCM to transfer, or take all necessary steps to cause the transfer of, such interests to the Redeemer Committee for the benefit of the Crusader Fund." (*Id.*) Similarly, Redeemer claims to reserve its right to seek the distribution of funds held in the "Deferred Fee Account," or to claim an unliquidated amount if such distributions are not made. (*Id.*)

C. Background on Redeemer's Damage Claim and the Arbitration Award

10. The events giving rise to Redeemer's purported Damage Claim against HCM appear to be a series of disputes between Redeemer and HCM that arose out of their efforts to wind down the Crusader Fund—a lengthy process that began in or around 2008. (Ex. B, PFA at 2-3.) Specifically, Redeemer's Damage Claim appears to relate to a contractual "Plan and Scheme" by and between Redeemer and HCM that was meant to "enable the orderly management, sale, and distribution of the assets" of the Crusader Fund as part of their wind-down. (*Id.* at 2.)

11. In or around July 2016, Redeemer initiated an arbitration before the AAA—which the parties agreed would be subject to the AAA Commercial Arbitration Rules—and asserted, among other things, breach of contract and fiduciary duty claims against HCM. (*Id.* at 3-4.) Final hearings in the arbitration were held in September 2018. (*Id.* at 7.) Following such hearings, closing arguments, and post-hearing briefing, "the record was declared closed" on December 12, 2018. (*Id.* at 7.)

12. In early 2019, the panel of arbitrators (the "Panel") presiding over Redeemer's arbitration against HCM rendered two separate "final" arbitral awards: an initial Partial Final Award dated March 6, 2019 (the "Partial Final Award") and a subsequent Final Award dated April 29, 2019 (the "Final Award"). (*See id.*; **Ex. C**, Final Award (the "FA").) The first of these awards, the Partial Final Award, was a 56-page single-spaced reasoned decision unanimously signed by all three members of the Panel, which addressed the substantive claims and counterclaims that Redeemer and HCM had raised in the arbitration. (*See generally* Ex. B, PFA.) There are two aspects of the Partial Final Award that are relevant to this Objection:

- **Barclays LP Interests.** As part of the March 6, 2019 Partial Final Award, the Panel analyzed, discussed, and ruled on one of Redeemer's core allegations—namely, that HCM improperly transferred certain limited partner interests in the Crusader Fund that belonged to Barclays (the "Barclays LP Interests") from Barclays to an HCM affiliate, Eames. (*See, e.g.,* Ex. B, PFA at 8, 15, 20-22, 54.) The Panel not only analyzed HCM's transfers of these Barclays LP Interests, it

specifically determined in the Partial Final Award that such transfers were a "breach" of the parties' agreement and, thus, "improper." (*Id.* at 21-22, 54.) But—critically—the Panel did not treat HCM's transfers of the Barclays LP Interests to Eames as an independent wrongdoing. Instead, the Partial Final Award only ever discussed the transfer of the Barclays LP Interests in the context of one of Redeemer's broader sets of claims, known as its "Distribution Fee Claim." (*See id.* at 15; *id.* at 20 (analyzing "Payments to Barclays and Eames ***as Distributions***").) After determining that HCM's transfers of the Barclays LP Interests were "improper," (*id.* at 20-22, 54), the Panel went on to award Redeemer damages arising from such conduct as part of the Partial Final Award. In particular, the Partial Final Award provided Redeemer with a "total" of $14,452,275 in aggregate damages (plus prejudgment interest) to cover all of the "improper" conduct relating to its Distribution Fee Claim—a list that specifically included HCM's transfers of the Barclays LP Interests.[2]

- **Prejudgment Interest.** In addition to finding HCM liable for, and awarding damages arising out of, HCM's transfer of the Barclays LP Interests, the Panel also awarded Redeemer a limited amount of prejudgment interest for certain types of compensatory damages as part of the Partial Final Award. (*See e.g.*, *id.* at 48, 54-55.) In so doing, the Panel set an outside date by which the prejudgment interest would no longer run—March 6, 2019, ***the date of the Partial Final Award itself***. (*See, e.g., id.* at 54 (awarding "statutory interest of 9%, calculated on a simple basis, from the dates of taking in January and April 2016 through the date of this Partial Final Award").)

13. On March 7, 2019—the day after the Panel issued the Partial Final Award—Redeemer sent an email to the Panel, requesting that the Panel modify the Partial Final Award. (Ex. B, FA at 1.) On March 14, 2019, before HCM even had a chance to respond, the Panel unilaterally issued a "Disposition of Application for Modification of Award" (the "Modification of Award"). (*Id.*) This modification added a completely new category of damages as a result of HCM's "improper" transfer of the Barclays LP Interests—damages above and beyond the $14.5 million already ordered for such conduct in the Partial Final Award. (*Id.* at 1, 11.)

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[2] (*Id.* at 22 (concluding that "it was ***improper*** for Highland to include in the calculation of the amounts distributed to the Redeemers . . . ***[t]he Distribution Fee*** attributable to the value of the LP interests and amounts transferred to Eames"); *id.* at 54 ("[W]e find that the Respondent is ***liable*** for damages . . ." for ***"[t]he Distribution Fee*** attributable to the value of the LP interests and amounts transferred to Eames").)

14. The Panel styled this addition as a formal modification under Rule 50 of the AAA Rules to "correct any clerical, typographical, or computational errors in the award." (*Id.* at 1 n.1.) Under that Rule, however, the Debtor should have had "10 calendar days to respond to [Redeemer's] request" in writing. *See* AAA R-50. The Debtor never got that chance. HCM opposed the Modification of Award on March 17, 2019, noting that "the Panel is not empowered to take any further action beyond the issuance of its Partial [Final] Award," and requesting the Panel withdraw its Modification of Award and refrain from any further modification of the Partial Final Award. (Ex. C, FA at 2.)

15. Still, Redeemer requested—and the Panel granted—further modifications not once, but three times. (*Id.*) On April 5, 2019 (ten days after Rule 50's allotted period had closed), Redeemer submitted another formal written request to the Panel in which it asked the Panel to "award further damages in connection with the Barclays claim," as well as to "award prejudgment interest through" an extended date. (*Id.* at 2.) The Debtor again opposed Redeemer's request for such "further damages" on the basis that such post-award modifications are improper under the AAA Rules and governing law. (*Id.* at 2-3.)

16. On April 29, 2019, the Panel entered a new "Final Award" that agreed to "re-adopt all prior findings and conclusions" yet superseded and "specifically modified" portions of its prior Partial Final Award. (*Id.* at 1.) Such modifications included the correction of four non-controversial "clerical, typographical, or computational errors." (*Id.* at 11-12, 16.) But the Final Award also included a number of substantive changes to the Partial Final Award. For instance, through the Final Award, the Panel (1) awarded Redeemer an additional $21,768,743 in damages due to the transfers of the Barclays LP Interests (as well as prejudgment interest on these new damages); (2) granted injunctive relief requiring HCM to "take all necessary steps to cause the

improperly taken [] LP interests currently owned and controlled by Respondent through Eames, Ltd to be returned to Claimant"; and (3) completely reconsidered the prior time limitation on prejudgment interest that it had imposed under the Partial Final Award. (*Id.* at 15, 18.) Instead of limiting the amounts of prejudgment interest to only those amounts that ran through March 6, 2019, the Panel now held that all prejudgment interest would run indefinitely until "the earlier of the date paid or the entry of a final judgment." (*Id.* at 2, 14-15.)

17. Neither the Partial Final Award nor the Final Award (or any parts of them) has been confirmed or otherwise entered as a final judgment by any court of competent jurisdiction.

D. Redeemer and the Debtor Reach Agreement as to the Debtor's Preferred Resolution of the Redeemer Claim

18. In recent weeks, the Court, the Debtor, and parties in interest have decided to proceed towards mediation as a way to resolve certain creditor claims and negotiate a confirmable plan of reorganization or liquidation. (*See* Dkt. Nos. 817, 864, and 897 (July 8, July 14, and July 21, 2020 Hr'g Tr.).)

19. On July 8, 2020, the Debtor informed this Court that it and Redeemer had reached a settlement in principle as to Redeemer's claim amount and would file their agreement when certain language was finalized. (Dkt. 817, July 8, 2020 Hr'g Tr.) The Debtor acknowledged the settlement value of the Redeemer Claim is not as simple or straightforward as with a typical arbitration award and, instead, required negotiation on various points. (*Id.*) The Debtor has not filed a settlement agreement, and little has been shared with UBS about the settlement. UBS files this Objection to preserve its ability to object to the resolution of the Redeemer Claim and reserves its rights to make additional objections once the settlement agreement is filed. In this case, any resolution of the Redeemer Claim is of particular interest to the Debtor's other creditors, including UBS, because of a reciprocal obligation that was included in the Partial Final Award requiring

Redeemer to contribute certain shares of significant value to the Debtor's estate—value that other creditors would have a pro rata interest in.

20. UBS hereby objects to the Proof of Claim, including its characterization of the Arbitration Award as an "executory contract" and the allowance of those portions (including any Post-Petition Claim portions[3]) of the Redeemer Claim arising from the "new" relief in the Final Award. UBS further objects to any resolution of the Redeemer Claim that diminishes the value Redeemer will owe to the Debtor's estate upon payment of its claim.

ARGUMENT

I. THE ARBITRATION AWARD ON WHICH REDEEMER'S ENTIRE DAMAGE CLAIM IS BASED IS NOT AN "EXECUTORY CONTRACT."

21. Redeemer's Damage Claim against the Debtor's estate is based entirely on the "Arbitration Award." In its Proof of Claim, however, Redeemer takes the perplexing position that the Award—which arose from a prepetition arbitration proceeding concerning claims that related exclusively to prepetition conduct of the Debtor—does not actually reflect any general "prepetition claims" against the Debtor's estate. (Ex. A, POC Rider at 1.) Redeemer insists, instead, that the Award is actually "***an executory contract*** under section 365 of the Bankruptcy Code." (*Id.*) Because "HCM has not yet moved to assume or reject" the Award, Redeemer takes the position that its deadline to file a Proof of Claim "remains undetermined" and it is only filing the instant Proof of Claim "out of an abundance of caution." (*See id.* ("By filing the Proof of Claim, [Redeemer] does not concede that the amounts awarded under the Arbitration Award are prepetition claims or that it is required to file a proof of claim to be entitled to the amounts

[3] To the extent the settlement agreement proposed by the Debtor and Redeemer includes amounts for Redeemer's Post-Petition Claim, UBS objects. However, should the Court agree to allow that Post-Petition Claim and grant Redeemer post-petition interest or further relief, UBS reserves all rights to assert and seek post-petition interest or further relief in its own claim.

described herein.").) This appears to be little more than an attempt by Redeemer to transform its contingent, disputed, and unsecured prepetition litigation Damage Claim against the Debtor into something it is not—a bona fide executory contract between Redeemer and the Debtor.

22. It is axiomatic, however, that "an executory contract ***must be a 'contract'*** and not some other legal instrument." *See In re Denman*, 513 B.R. 720, 723 (Bankr. W.D. Tenn. 2014); *see also In re e2 Commc'ns, Inc*., 354 B.R. 368, 402 (Bankr. N.D. Tex. 2006) ("An executory contract ***is a contract*** where performance remains due to some extent on both sides."). That is the end of Redeemer's argument that the Arbitration Award is an "executory contract" here. The Arbitration Award simply is not a contract, much less an "executory contract" under 11 U.S.C. § 365. The mere fact that the Arbitration Award imposes certain obligations on Redeemer or the parties that are to "be performed in the future and are, thereby, executory in nature" is not dispositive:

> [T]he 'executory' nature of an obligation does not, ipso facto, imply an 'executory contract.' . . . Contract rights arise upon an offer, acceptance, and transfer of adequate consideration between at least two assenting parties. If these elements do not exist, a contract right does not exist and, thereby, an executory contract cannot exist.

See In re Denman, 513 B.R. at 723. Redeemer has not identified any legal authority suggesting an arbitration award can, should be, or ever has been interpreted to be an "executory contract" under 11 U.S.C. § 365. There is no such authority. Nor is there any indication the Debtor believes the Arbitration Award is an executory contract. Indeed, the comprehensive Schedule G of all "Executory Contracts and Unexpired Leases" filed by the Debtor many months ago makes no reference to either Redeemer or the Arbitration Award. (*See* Dkt. No. 247.) That being the case, Redeemer's attempt to recharacterize the Arbitration Award—and its related general, unsecured, contingent, and disputed Damage Claim—as an "executory contract" fails as a matter of law.

II. NEW RELIEF GRANTED BY THE FINAL AWARD IS SUBJECT TO VACATUR AND CANNOT BE THE BASIS OF ANY CLAIM AGAINST THE DEBTOR.

23. In issuing the Final Award, the Panel overstepped its fundamental authority as arbitrators. An "arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2009). This leads to a simple maxim: where an arbitrator has "exceeded the authority granted by the parties' agreement to arbitrate" in rendering an award, such an award should be vacated. *See Smith v. Transp. Workers Union of Am.*, 374 F.3d 372, 375 (5th Cir. 2004) ("If an arbitral panel exceeds its authority, it provides grounds for a court to vacate that aspect of its decision."); *Townes Telecomms., Inc. v. Travis, Wolff & Co.*, 291 S.W.3d 490, 493-94 (Tex. App. 2009) (vacating portion of award rendered "in direct contravention of the [parties'] agreement and which exceeded the powers granted to [the panel] by the parties").

24. One way in which arbitrators exceed their authority is by modifying a substantive aspect of a final award ***after*** such award has already been rendered. In fact, courts across the country have long recognized, and applied, the following "general rule" to prohibit such modifications: "[O]nce an arbitration panel renders a decision regarding the issues submitted, it becomes *functus officio* and lacks any power to reexamine that decision." *See Colonial Penn Ins. Co. v. Omaha Indem. Co.*, 943 F.2d 327, 331 (3d Cir. 1991); *Hill v. Wackenhut Servs. Int'l*, 971 F. Supp. 2d 5, 12 (D.D.C. 2013) ("This means that anything an arbitrator does to modify a final award after it has been issued is without effect because at that point the arbitrator lacks any power to reexamine that decision."). Indeed, the Northern District of Texas, the Fifth Circuit, and Texas state courts have specifically endorsed, and applied, this doctrine. *See Weinberg v. Silber*, 140 F. Supp. 2d 712, 724 (N.D. Tex. 2001) ("[T]he arbitrator shall not revisit his decision on the merits, as his authority to do so has expired."), *aff'd*, 57 F. App'x 211 (5th Cir. 2003); *Smith*, 374 F.3d at

375 ("By modifying the original award, the arbitration panel in this case exceeded the authority granted by the parties' agreement to arbitrate."); *Barsness v. Scott*, 126 S.W.3d 232, 241 (Tex. App. 2003) ("When the panel subsequently modified its original award, . . . the panel exceeded its authority.").

25. This doctrine is so pervasive that it is codified directly into the AAA's Commercial Arbitration Rules. In particular, Rule 50 of the AAA Rules—entitled "Modification of Award"—states that "within 20 calendar days after the transmittal of an award," the parties "may request the arbitrator" to "correct any clerical, typographical, or computational errors in the award," but "[t]he arbitrator is ***not*** empowered to redetermine the merits of any claim already decided." *See* AAA R-50.

26. Here, the Panel did precisely what it was not permitted to do: It rendered a comprehensive initial Partial Final Award, but then—at Redeemer's urging—issued a series of subsequent decisions to modify that Partial Final Award, in which the Panel redetermined the merits of claims previously decided. This culminated in a new "Final Award" that materially modified, and is at direct odds with, key aspects of the Panel's own prior Partial Final Award. This new Final Award improperly modified the Partial Final Award in two distinct ways.

27. **First**, the Final Award dramatically expanded HCM's purported liability for Redeemer's claim that HCM had improperly transferred the Barclays LP Interests to Eames. Whereas the Partial Final Award had awarded Redeemer total damages in the amount of $14,452,275 (and prejudgment interest through March 6, 2019) for the Distribution Fee Claim, including for HCM's "improper" transfer of Barclays LP Interests, the Panel elected in the Final Award to grant Redeemer an additional $21,768,743 in damages arising out of HCM's "improper" transfer of the Barclays LP Interests. (Ex. C, FA at 18.) That is not all. The Final Award also

awarded Redeemer prejudgment interest on these new compensatory damages—a sum that, on its own, adds yet another $9,042,623 to the mix. (*Id.*) All told, the Panel's modification of these aspects of the Partial Final Award resulted in a combined total of ***$30,811,366 in new damages*** for HCM's transfers of the Barclays LP Interests—an amount Redeemer itself now refers to as the "Barclays Claim." (Ex. A, POC Rider at 2.) On top of these additional liquidated damages, the Panel ordered HCM to "take all necessary steps to cause the improperly taken [] LP interests currently owned and controlled by Respondent through Eames, Ltd to be transferred to Claimant . . . within sixty (60) days from the date of transmittal of this Final Award"—mandatory injunctive relief that is also not mentioned anywhere in the Partial Final Award. (Ex. C, FA at 18.)

28. **Second**, in the Final Award, the Panel reconsidered its prior ruling on prejudgment interest from the Partial Final Award. The Panel had previously ordered that HCM pay Redeemer a finite amount of prejudgment interest (9% per simple interest annum) "through the date of this Partial Final Award" (March 6, 2019), (Ex. B, PFA at 14), yet the Panel threw that limitation out entirely in the Final Award. After openly acknowledging its prior ruling, (*see* Ex. C, FA at 14 ("In the March 6 Partial Final Award, we awarded damages and interest through the date of that award . . . ")), the Panel announced in the Final Award that it was doing away with that March 6, 2019 end date and, instead, all such interest would run through "the earlier of the date paid or the entry of a final judgment," (*id.* at 2, 14). In addition to the $30.8 million in additional damages for the Barclays LP Interests, the additional interest contemplated by the Final Award accounted for at least another $5,698,571 through the Petition Date.[4]

[4] Redeemer's Proof of Claim makes clear that it is also asserting claims for interest accrued ***post-petition***. (Ex. A, POC Rider at 2.) Assuming Redeemer is entitled to any additional interest post-petition (*see supra* note 4), this $5.7 million figure does not fully capture the impact that the Panel's decision in the Final Award to remove the March 6, 2019 limitation on prejudgment interest will have had on the Redeemer Claim.

29. Under Rule 50 of the AAA Rules, the only way these post-award modifications might have been allowed is if they were legitimate attempts to correct "clerical, typographical, or computational errors" in the Partial Final Award. *See* AAA R-50. They are not. For starters, the Final Award very clearly contains modifications to address four simple "clerical errors" (all four of which were self-evident typos). (Ex. C, FA at 11-12.) Any suggestion that the two major modifications discussed above were also "clerical" in nature is belied by their sweeping impact. Prior to the Final Award, the aggregate amount of compensatory damages expressly awarded to Redeemer under the original Partial Final Award would have been roughly $142 million (excluding fees and costs and assuming prejudgment interest through March 6, 2019). The two modifications that the Panel made described above, standing alone, immediately add no less than $36.5 million to that compensatory damages sum—more than a ***25% increase***. In addition to these additional monetary damages, the modifications also impose mandatory injunctive relief purporting to require HCM to take the Barclays LP Interests from Eames and transfer them to Redeemer.[5] (Ex. C, FA at 18.) Redeemer cannot seriously expect any court to view such changes that fundamentally alter—and, in this instance, significantly increase and enhance—the relief granted as a mere correction of a "clerical error."

30. The only explanation the Panel itself has for these major modifications removes all doubt that they were not "clerical" in nature. In the Final Award, the Panel tries to excuse the new damages it awarded relating to the Barclays LP Interests by claiming there was "a paragraph missing from the damages portion" that it had left out of the Partial Final Award inadvertently. (*Id.* at 9.) But courts have considered, and rejected, this exact "explanation" before. *See Wein v.*

[5] This aspect of the Panel's ruling—which purports to require HCM to dispose of the assets currently being held by a non-party to the arbitration, Eames Ltd.—is independently subject to vacatur. *See Rapid Settlements, Ltd. v. Green*, 294 S.W.3d 701, 707 (1st Cir. 2009) (upholding the trial court's decision to vacate an arbitration award "because the arbitrator exceeded his powers in issuing an award against a party not subject to arbitration").

Morris, 909 A.2d 1186, 1198 (N.J. Super. Ct. App. Div. 2006) (deciding that AAA Rule 46, the predecessor to Rule 50, does not allow modifications to address "inadvertent omissions" and "neither expressly states nor suggests that claims denied through inadvertence could also be revisited").

31. In reality, both of the modifications here are simply attempts by the Panel to "redetermine the merits of [a] claim already decided." *See* AAA R-50. Indeed, both modifications related to issues that had already been directly addressed by the Partial Final Award. Not only had they been addressed, the Panel explicitly found in the Partial Final Award that HCM was liable for both transferring the Barclays LP Interests and for prejudgment interest. (Ex. B, PFA at 53-54.) In the Final Award, however, the Panel—at Redeemer's urging—revisited these same issues and simply arrived at new, different substantive conclusions. The Panel concedes as much. With regard to prejudgment interest, the Panel freely admitted that "the March Partial Final Award contained specific language awarding interest 'through the date of this Partial Final Award,'" but decided to reach a different conclusion in the Final Award because, in its own view, the prior ruling in the Partial Final Award was "***not determinative of this issue***." (Ex. C, FA at 15.) That, however, is exactly what the Panel cannot do. Where, as here, the panel issued a partial final award as to a particular issue or issues, any partial final award on such issues is rendered, by definition, determinative of the issue. *See Fluor Daniel Intercontinental, Inc. v. GE*, 2007 WL 766290, at *2-3 (S.D.N.Y. Mar. 13, 2007); *see also Trade & Transp., Inc. v. Nat. Petroleum Charterers Inc.*, 931 F.2d 191, 195 (2d Cir. 1991). Since the Partial Final Award here specifically addressed both HCM's liability for transferring the Barclays LP Interests and the amount of prejudgment interest to which Redeemer would be entitled, "the arbitrators ha[d] no further authority, absent agreement

by the parties, to redetermine [such] issue[s]" after rendering the Partial Final Award as a matter of law. *Trade & Transp., Inc.*, 931 F.2d at 195.

32. For the above reasons, the portions of the Final Award reflecting these improper, material modifications are examples of the Panel exceeding its authority and are subject to vacatur. *Smith*, 374 F.3d at 375 ("If an arbitral panel exceeds its authority, it provides grounds for a court to vacate that aspect of its decision."). Accordingly, UBS objects to any and all portions of Redeemer's Proof of Claim that rely on, or relate to, these modifications to the Partial Final Award.

III. ANY VALUATION OF REDEEMER'S CLAIMS MUST TAKE INTO ACCOUNT RECIPROCAL OBLIGATIONS REDEEMER OWES TO THE DEBTOR.

33. In addition to the vacatur issues described above, two of the largest components of its overall Damage Claim against the Debtor's estate—namely, its claims relating to the "Cornerstone Award" and the "Deferred Fee Claim"—are amounts on which Redeemer has no legitimate hope of any real recovery. This is due entirely to reciprocal rights relating to the "Cornerstone Award" and "Deferred Fee Claim" that Redeemer owes to the Debtor itself under the terms of the Arbitration Award, as well as the binding "Plan and Scheme" that governs the conduct of the Crusader Fund dissolution.

34. **First**, Redeemer's Proof of Claim attributes $71,894,891 of its overall claims to what it refers to as the "Cornerstone Award." (Ex. A, POC Rider at 2.) This is a reference to the order in the Final Award that HCM pay $48,070,407 to purchase the Cornerstone shares from Redeemer at a fair market valuation of $3,241.43 per share (plus an additional $23,824,484 in prejudgment interest). (Ex. C, FA at 17; *see also* Ex. B, PFA at 48, 55.) Under the terms of the Final Award, however, the obligations with regard to the "Cornerstone Award" run both ways. In fact, the Final Award is clear that "[w]hen the amount awarded for the Cornerstone claim is paid by" the Debtor—including, for instance, pursuant to any confirmed plan of reorganization or

liquidation in these proceedings—Redeemer immediately "shall cause the Crusader Fund to tender its Cornerstone shares to [the Debtor]." (Ex. C, FA at 17; *see also* Ex. B, 55.)

35. In other words, upon receipt of payment by HCM of the "Cornerstone Award" portion of its claim, Redeemer must immediately cause the specific Cornerstone shares in question (which are currently in Redeemer's control) to be turned over to HCM. This remains true even if Redeemer only recovers pennies on the dollar for its overall prepetition claim under any ultimate plan of reorganization or liquidation. What that means is that the true "value" of Redeemer's "Cornerstone Award" claim must take into account the need to immediately give up the value of the Cornerstone shares themselves. Based on recent valuations of the Cornerstone shares in question, the "value" of such claim against the Debtor's estate is far less than $71.9 million. By UBS's estimate, the shares are worth approximately $40 million—potentially more. In all likelihood, Redeemer will tender more in value to HCM when it is forced to turn over the Cornerstone shares than it could ever recover on this portion of its prepetition claims.

36. **Second**, $43,105,395 of the Redeemer Claim is based on its so-called "Deferred Fee Claim." (Ex. A, POC Rider at 1.) This appears to represent the $32,313,000 HCM was ordered to pay in the Final Award as a result of Redeemer's "Deferred Fee Claim" and $10,792,395 in prejudgment interest. But under the Crusader Fund's Plan and Scheme—contracts to which both Redeemer and the Debtor are parties—Redeemer has no right to retain the full $32,313,000 of such "Deferred Fees." Instead, upon a final and full liquidation of all remaining Crusader Fund interests, such fees will take a "round trip" and the contractual Deferred Fees must be paid back by Redeemer to HCM. (Ex. B, PFA at 9 ("Deferred Fees were annual performance fees payable to Highland but deferred until, as, and when there would be a 'complete liquidation' of the Crusader Funds' assets.").) As with the obligation to turn over the Cornerstone shares, this

obligation to pay back the Deferred Fees will likely trigger upon any payment of the allowed prepetition claim amount as a result of HCM's bankruptcy. Moreover, as with its claim relating to the Cornerstone shares, Redeemer will almost certainly end up giving more to the Debtor through this pay-back obligation than it would receive on its "Deferred Fee Claim" under any plan of restructuring or liquidation.

37. In light of these reciprocal obligations owed by Redeemer to the Debtor, the $115 million in claim value that Redeemer's Proof of Claim attributes to the Cornerstone Award and Deferred Fee components is vastly overstated, to say the least. In reality, Redeemer will likely be forced to turn over assets to the Debtor that are worth markedly more than the amounts it might ultimately recover on these components of its overall Damage Claim.

CONCLUSION

38. For the foregoing reasons, UBS respectfully submits that Redeemer's Proof of Claim is improper and overstated and, thus, requests that it be appropriately reduced and disallowed.

DATED this 26 day of August, 2020.

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CERTIFICATE OF SERVICE

I, Martin Sosland, certify that the *Objection to the Proof of Claim Filed by Redeemer Committee to the Highland Crusader Fund* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: August 26, 2020.

/s/ *Martin A. Sosland*
Martin A. Sosland