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In re:

BAYONNE MEDICAL CENTER,

Debtor-in-Possession.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

HONORABLE MORRIS STERN

CASE NO. 07-15195 (MS)

Chapter 11

**DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE
BANKRUPTCY CODE FOR THE FIRST AMENDED JOINT PLAN OF
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**



THIS DISCLOSURE STATEMENT, THE FIRST AMENDED JOINT PLAN OF LIQUIDATION, DATED FEBRUARY 23, 2009, ANNEXED HERETO AS EXHIBIT A, THE ACCOMPANYING BALLOTS AND RELATED MATERIALS DELIVERED HERewith ARE BEING PROVIDED BY THE DEBTOR TO KNOWN HOLDERS OF CLAIMS PURSUANT TO SECTIONS 1125 AND 1126 OF THE BANKRUPTCY CODE IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT THE PLAN PROPOSED JOINTLY BY THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M., PACIFIC TIME, MARCH 26, 2009, UNLESS EXTENDED BY ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY (THE "BANKRUPTCY COURT"). YOUR VOTE ON THE PLAN IS IMPORTANT.

THE DEBTOR AND THE COMMITTEE BELIEVE THAT THE PLAN WILL ENABLE THE ESTATE TO EFFICIENTLY LIQUIDATE ITS ASSETS FOR THE BENEFIT OF ITS CREDITORS AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11. ADDITIONALLY, THE DEBTOR AND THE COMMITTEE BELIEVE THE PLAN PRESENTS THE MOST ADVANTAGEOUS OUTCOME FOR ALL THE DEBTOR'S CREDITORS AND THAT, THEREFORE, CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE ESTATE. THE DEBTOR AND THE COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

BY ORDER, DATED FEBRUARY 23, 2009, THE BANKRUPTCY COURT APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION TO PERMIT THE HOLDERS OF CLAIMS AGAINST THE DEBTOR TO MAKE REASONABLY INFORMED DECISIONS IN EXERCISING THEIR RIGHT TO VOTE ON THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT, HOWEVER, DOES NOT CONSTITUTE A DETERMINATION ON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT AND THE RELATED DOCUMENTS SUBMITTED HERewith ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN.

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED BY THE DEBTOR FROM NUMEROUS SOURCES AND IS BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF. HOLDERS OF CLAIMS MUST RELY ON THEIR OWN EXAMINATION OF THE DEBTOR AND THE TERMS OF THE PLAN, INCLUDING THE MERITS AND RISKS INVOLVED. BEFORE

SUBMITTING BALLOTS, HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THIS DISCLOSURE STATEMENT IN ITS ENTIRETY.

FOR THE CONVENIENCE OF HOLDERS OF CLAIMS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS. CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY THEIR NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENT, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH AGREEMENT.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

I. INTRODUCTION

On April 16, 2007 (the “Petition Date”), Bayonne Medical Center (the “Debtor”) filed a petition for relief under chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtor has remained in possession of its assets and managed its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On May 3, 2007, the Office of the United States Trustee for the District of New Jersey appointed an Official Committee of Unsecured Creditors pursuant to section 1102(a)(1) of the Bankruptcy Code (the “Committee”).

The Debtor and the Committee appointed in the Debtor’s chapter 11 proceeding (the “Chapter 11 Case”) submit this disclosure statement (the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code in connection with the solicitation of votes to accept or reject their First Amended Joint Plan of Liquidation, dated February 23, 2009, a copy of which is annexed hereto as Exhibit A (the “Plan”).¹

The Bankruptcy Court has approved this Disclosure Statement as containing “adequate information” in accordance with Section 1125(b) of the Bankruptcy Code to enable a hypothetical, reasonable investor typical of the Voting Classes (as defined hereon) contained in the Plan to make an informed judgment about whether to accept or reject the Plan. A hearing to consider confirmation of the Plan (the “Confirmation Hearing”) will be held on **April 7, 2009, at 11:30 a.m.**, Eastern Time, before the Honorable Morris Stern, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of New Jersey, Martin Luther King, Jr. Federal

¹ Unless otherwise defined, all capitalized terms contained in this Disclosure Statement have the meanings ascribed to them in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition in the Plan shall control.

Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102. At the Confirmation Hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements for confirmation under the Bankruptcy Code.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan must be filed and served so they are received on or before **March 31, 2009 at 4:00 p.m.**, Eastern Time, in the manner described in Article III, Section C of this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

Attached as Exhibits to this Disclosure Statement are copies of the following documents:

- Exhibit A: The Plan;
- Exhibit B: Order of the Bankruptcy Court dated February 23, 2009 (the “Disclosure Statement Order”), among other things, approving this Disclosure Statement and establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan;
- Exhibit C: Financial Summary of Post-Petition Operations;
- Exhibit D: Liquidation Analysis;
- Exhibit E: Form of Liquidating Trust Agreement;
- Exhibit F: Known Administrative Expense Claims; and
- Exhibit G: Potential Avoidable Transfers

Voting instructions are contained in Article III Section C of this Disclosure Statement. To be counted, your original Ballot must be duly completed, executed and filed with:

Bayonne Medical Center Plan Solicitation
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

Your Ballot must be actually received at the address listed above by 4:00 p.m., Pacific Time, on **March 26, 2009**. If your Ballot is not timely received, it may not be counted in determining whether the Plan has been accepted. You are urged to carefully review the contents of the Plan and Disclosure Statement, including all exhibits annexed thereto, before making your decision to vote to accept or reject the Plan. If your Claim is impaired (as defined in Section III (B)(3) of this Disclosure Statement), you are entitled to vote to accept or reject the Plan. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights as they may presently exist.

**II. DESCRIPTION OF THE DEBTOR'S BUSINESS
AND REASONS FOR THE DEBTOR'S CHAPTER 11 FILING**

A. Description and History of the Debtor's Business

Established in 1888, the Debtor is a non-stock, non-profit corporation under the laws of the State of New Jersey, which operated a 278-bed fully accredited, acute-care hospital located in Hudson County. Since opening its doors more than a century ago, it was committed to providing quality, comprehensive, community-based healthcare services to more than 80,000 people annually.

Prior to and post-commencement of its bankruptcy case, the Debtor offered a wide spectrum of healthcare specialties, servicing every segment of the community from pediatric to elderly. Among the services offered were general internal medicine, medical

and radiation oncology; cardiology (including elective and emergency angioplasty); neurology; gastroenterology; ophthalmology; endocrinology; gynecology; hematology; mammography; bone density; emergency room; physical therapy; and family practice. Additionally, the Debtor offered comprehensive inpatient and same day surgical services, and operated a Vascular Institute and Women's Center. Additionally, post-petition, the Debtor opened a Wound and Hyperbaric Medicine Service.

The Debtor was accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American College of Surgeons for Cancer Care, the American Diabetes Association, the College of American Pathologists, the American Association of Blood Banks, the American College of Radiology, and the Intersocietal Commission for the Accreditation of Nuclear Medicine Laboratories (ICANL). Memberships included the American Hospital Association, the New Jersey Hospital Association, and the Hudson Perinatal Consortium.

The Debtor also operated the Bayonne Medical Center School of Nursing (the "Nursing School"), which has been educating nurses since 1891. The Nursing School is accredited by the New Jersey Board of Nursing and National League for Nursing Accreditation Commission. It is a partnership with Hudson County Community College which trains nurses to serve both at the Debtor and the community at large.

The Debtor has one wholly-owned (non-debtor) subsidiary, the Bayonne Medical Center Foundation (the "Foundation"). The Foundation was founded in 1982 and was funded through voluntary contributions by individuals, businesses and other foundations and its purpose is to assist in the financial support of the Debtor. As a result of the sale of

the Debtor's assets (as discussed below), the Foundation has been undergoing the process of dissolution.

B. Principals/Affiliates of Debtor's Business.

As noted above, the Debtor is a non-stock, non-profit corporation that is managed by a Board of Trustees. There are no stockholders of the Debtor's business. At the time of the filing of the bankruptcy, the Debtor's key Trustees and Officers² consisted of the following:

- (1) Herman Brockman, Chairman;
- (2) Theodore Garelick, Vice Chairman;
- (3) Robert C. Mill, Secretary; and
- (4) Daniel A. Kane, President and CEO.

Subsequent to the Chapter 11 filing, Mr. Brockman resigned from the Board of Trustees and Mrs. Ruth Dugan, who was a trustee, was promoted to Chairwoman of the Board, which position she still occupies.

C. Management of the Debtor Before the Bankruptcy Filing.

Prior to the filing of bankruptcy, the Debtor was managed by the following persons:

- (1) Daniel A. Kane, President and CEO;
- (2) Gary Terrinoni, CFO;
- (3) Richard Perry, CIO;
- (4) Eugene Greenan, VP of Corporate Compliance;
- (5) Marvin Apsel, VP of Operations;

² According to the Debtor's by-laws, only the Chairman, Vice-Chairman, Secretary and President & CEO constitute "Officers" of the Debtor. The CFO, CIO, executive vice presidents and vice presidents are considered "senior management."

- (6) Stephanie Giblin, EVP of Patient Care Services;
- (7) Vincent Lombardo, VP of Development/Foundation; and
- (8) Jennifer Dobin, VP of Human Resources.

During the course of the bankruptcy case, certain of these individuals resigned, from time to time, as part of cost-cutting initiatives by the Debtor. Others continued to serve as officers until consummation of the sale of the Debtor's hospital operations in February 2008, as discussed more fully herein.

D. The Debtor's Pre-Petition Secured Debt.

The New Jersey Health Care Facilities Financial Authority (the "Authority") issued two series of revenue bonds (the "Revenue Bonds") to provide funds for the Debtor. The Revenue Bonds are collateralized by a pledge on "Gross Receipts" of the Debtor under a Master Trust Indenture between Bayonne Hospital (the predecessor to the Debtor) and United Jersey Bank as Master Trustee (as ultimately succeeded by Bank of New York Mellon, the "Master Trustee") dated as of December 1, 1994 (as amended, the "Master Trust Indenture"). The term "Gross Receipts" is defined in the Master Indenture to include:

all receipts, revenues, income and other moneys received by or on behalf of an Obligated Issuer, including, without limitation, contributions, donations and pledges whether in the form of cash, securities or other personal property, revenues derived from all facilities of an Obligated Issuer, and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights, and the proceeds thereof, and any insurance or condemnation proceeds thereon, whether now existing or hereafter coming into existence and whether now owned or held of hereafter acquired by an Obligated Issuer; provided, however, that Gross Receipts shall not include (i) any amounts excluded from calculations of Non-Operating Revenues, (ii) rents, profits or revenues of any nature derived exclusively from property securing Non-Recourse Indebtedness, and (iii) any Related Revenues.

The Master Trust Indenture has been amended by four separate Supplemental Indentures. Payment of the Revenue Bonds is insured by Financial Security Assurance Inc. (“FSA”). In 1994, the Authority issued \$35,145,000 in Revenue Bonds (the “1994 Revenue Bonds”) in varying maturities through July 1, 2012. As of the Petition Date, the balance due on the 1994 Revenue Bonds was approximately \$11,485,000 in principal amount.

In 1998, the Authority issued \$22,725,000 in principal amount in Revenue Bonds (the “1998 Revenue Bonds”) in varying maturities from July 1, 2013 through July 1, 2027. The entire principal amount of the 1998 Revenue Bonds remains outstanding. On November 3, 2005, Lehman Brothers, Inc. (“Lehman”) provided \$1,400,000 in financing to the Debtor in exchange for a promissory note (the “Lehman Note”) issued pursuant to, and secured under, the Master Trust Indenture. Lehman is entitled to the ratable benefit of the security interest in the Gross Receipts under the Master Trust Indenture. The entire principal amount of the Lehman Note remains outstanding. On October 11, 2006, Nuveen High Yield Bond Fund (“Nuveen”) entered into a certain Loan and Security Agreement with the Debtor pursuant to which Nuveen provided the Debtor with \$10,000,000 in bridge financing (the “Bridge Loan”) evidenced by a Bond Anticipation Note (the “Nuveen Note”). The Nuveen Note was issued pursuant to, and secured by, the Master Trust Indenture. Nuveen is entitled to the ratable benefit of the security interest in the Gross Receipts under the Master Trust Indenture. The balance due under the Bridge Loan was \$9,500,000 as of the Petition Date.³

³ On December 5, 2008, Nuveen Municipal Trust (“Nuveen”) on behalf of its series Nuveen High Yield Municipal Bond Fund filed a complaint against accounting firm Withum Smith + Brown, P.C. (“WSB”) and law firm Lindabury, McCormick, Estabrook & Cooper, P.C. (“Lindabury”) regarding certain services provided by these entities to the Debtor.

On or about December 6, 2006, the Debtor granted to Pamrapo Savings Bank a mortgage on certain land in connection with an alleged \$1.9 million line of credit and a promissory note executed on or after February 15, 2007 (the “Pamrapo Note”). The entire principal amount remains due on the Pamrapo Note. As described below, the mortgage and debt asserted by Pamrapo are in dispute and are the subject of an adversary proceeding.

The Debtor has various capital lease obligations and other secured notes for equipment and improvements collateralized by the related assets. As of the Petition Date, the total asserted indebtedness for such obligations was \$3,930,000, which amount may be subject to dispute, objection, setoff or other defenses.⁴

E. Events Leading to Chapter 11 Filing

The following is a summary of the material events and circumstances that have led to the filing of this chapter 11 case.

1. The Distressed Health Care Environment in New Jersey

In recent years, acute care hospitals in New Jersey have faced significant financial challenges and these pressures had a generally negative impact on the Debtor. First, the method in which health care services are provided has changed significantly. Hospitals (including the Debtor) have been adversely impacted by competition from private doctors and other outpatient facilities and clinics providing care outside of a hospital setting that previously could only be obtained in a hospital. Accordingly, there is

⁴This amount is without prejudice to the right of the Plan Proponents to dispute that certain lease obligations asserted against the Debtor are, in fact, financings or, conversely, that certain capital leases are, in fact, true leases.

intense competition for certain profitable services now being offered in greater numbers on an outpatient basis.

At the same time, reimbursements from Medicare and Medicaid have remained flat or declined, and managed-care plans have utilized their bargaining power to keep reimbursement rates low, which has adversely affected hospital revenues. While these revenues are being reduced, overall operating costs are rising faster than inflation. The costs of medical equipment, technology and supplies continue to increase, as does the cost of professional liability insurance.

According to a study prepared by Accenture at the request of the New Jersey Hospital Association dated October 3, 2006 (the "Accenture Report"), the fiscal health of New Jersey's hospitals significantly lags behind national averages and the number of New Jersey hospital incurring operating losses in 2005 stood at 41.7% - more than double the national average of 18%. While national median operating margins increased from 2000 to 2005, those in New Jersey declined. In 2005, the median operating margin in New Jersey was 0.5% as compared to 2.8% in the United States. Accenture Report at p.10.

Second, Accenture found that there was a significant difference between the performance of hospitals in northern New Jersey and southern New Jersey. In 2004, the average operating margin of hospitals in southern New Jersey was 3.5% as opposed to an average operating margin of just 0.2% for northern New Jersey hospitals such as the Debtor. Accenture Report at p. 12.

Moreover, the Accenture Report divided New Jersey into seven regions and found that hospitals in the Hudson County region had the worst operating margins

which were -6.11% as of the period ending March 31, 2006. Hospitals in Hudson County had an average of just 3.64 days operating cash available as compared to a state-wide average of 69.93 days operating cash available as of that date. Accenture Report at p.76. According to Accenture, the reason for the weaker performance in Hudson County (as well as Essex and Union County) is that all three counties are densely populated and contain a greater number of hospitals. In addition, the payer mix is slanted toward governmental payers and large indigent populations. The United States 2000 census determined that per capita income in Bayonne was \$21,353, median household income was \$41,566 and median family income was \$52,413.

At the time of the Debtor's bankruptcy, another major problem facing New Jersey hospitals was that, since the advent of the Balanced Budget Act of 1997, Medicare reimbursement had not kept up with the cost of providing care. This became increasingly more significant over the last few years. In fact, in 2004, the American Hospital Association calculated that the average Medicare inpatient payment to cost ratio was approximately 92% in the United States. However, in 2004, New Jersey's average Medicare inpatient payment to cost ratio fell to 88%, resulting in a 13.6% operating loss for New Jersey hospitals for Medicare inpatients. Accenture Report at p. 26. Similarly, in 2004 New Jersey Medicaid payment to cost ratio was 73%, resulting in a 36.9% operating loss for New Jersey hospitals treating Medicaid patients. Ironically, for most New Jersey hospitals, Medicare is the best payor, whereas elsewhere in the United States Medicare payment rates fall far below commercial insurance payors.

Further exacerbating the situation, the cost of professional liability insurance in New Jersey had skyrocketed. New Jersey hospitals have seen their

malpractice costs increase 180% from 2000 to 2004, increasing from \$53.3 million to \$149.1 million according to the New Jersey Hospital Association. Accenture Report at p. 77.

2. The Debtor's Liquidity Crisis

The problems discussed above facing hospitals in New Jersey generally had also taken their toll on the Debtor's hospital operations. The Debtor's bankruptcy filing was precipitated by a liquidity crisis because it was unable to generate sufficient cash flow to meet operating needs. Prior to the filing, the Debtor attempted to reduce its expenses, with particular attention to labor costs by reducing its workforce by 100 employees in 2006. As an additional effort to curtail expenses, the Debtor was constrained to move its Senior Health Center and its Community Crossings Program which provided free screening and education programs from a community location to the hospital facility.

Revenue from the Medicare and Medicaid programs accounted for approximately 60% and 2% respectively of the Debtor's net patient revenue in 2005. However, as noted above, the cost of providing services to Medicare and Medicaid patients, particularly those with longer stays, exceeded the reimbursement received by the Debtor. In addition, because the criteria for Medicare admissions was more stringent, more patients were treated on an outpatient basis. Also, depending on a patient's condition and certain criteria being met, a number of patients previously admitted as inpatients were being admitted under an "observational status" category (approximately 500 cases in 2006), which yielded a much lower level of reimbursement relative to a regular admission. Further, consistent with then-prevailing trends, the Debtor lost

significant volume as physicians directed patients to free-standing facilities outside of the hospital in increasing numbers.

In 2006, the Debtor recorded 44,955 outpatient visits, 30,406 emergency room visits and 8,353 admissions. The Debtor had 1,065 employees, 945 of which were affiliated with the Hospital Professional and Allied Employees (HPAE) and Operating Engineers Local 68 (AFL-CIO) unions. More than 255 physicians were affiliated with the Debtor. The Debtor was a substantial provider of charitable care. Because many residents in Bayonne have a modest income and lack insurance, the Debtor was used by these residents as a primary health care provider. During 2006, the Debtor provided \$8,746,000 in charity care.⁵ In 2006, the Debtor had total unrestricted revenue of \$102,237,000 and suffered a net operating loss of \$39,573,000 on an unaudited basis.⁶

The Debtor's losses continued through 2007 and by April 2007, it became apparent that the Debtor needed to seek the protections of the Bankruptcy Court. The Debtor was losing hundreds of thousands of dollars each week and the Debtor was unable to continue to fund the magnitude of such losses. To protect the value of the estate, the Debtor elected to seek bankruptcy protection. As discussed below, only through the commencement of the Chapter 11 Case was the Debtor able to procure a new \$30 million working capital facility to sustain operations.

⁵ In connection therewith, the New Jersey Healthcare Subsidy Fund was established for various purposes, including the distribution of charity payments to hospitals statewide. In 2006, the Debtor received \$3,980,000 in subsidy payments for charitable care.

⁶ These are approximated numbers.

F. Significant Events During the Bankruptcy Case

1. The Debtor's Post-Petition Credit Agreement with KIMCO

As noted, at the time of the bankruptcy filing, the Debtor was unable to meet its operating expenses and otherwise service its debts. To enable the Debtor to operate under the auspices of chapter 11, the Debtor sought, and ultimately obtained, a debtor in possession financing facility. The debtor in possession financing facility was structured as a post-petition line of credit in the aggregate principal amount of up to \$30 million, subject to certain restrictions and limitations. An essential feature of the financing was that the Debtor was utilizing previously unencumbered real estate as part of the Collateral offered to Kimco as security for the Post-Petition Financing. (As of February 12, 2007, this real estate was appraised to have a value of approximately \$43 million.)⁷ The Post-Petition Financing operated in two stages. First, the Debtor requested interim loans and advances totaling \$10 million (with an initial draw of \$2 million). Any remaining availability under the Post-Petition Financing up to \$30 million would become available for the Debtor's use after the satisfaction of an environmental site assessment.

On April 16, 2007, the Debtor filed a motion for entry of an order (i) authorizing it to enter into the Debtor-in-Possession Credit Agreement (the "Postpetition Credit Agreement" or the "DIP Loan") with Kimco Capital Corporation ("Kimco") in its capacity as Lender ("Lender") and Administrative Agent ("Agent") pursuant to sections 363 and 364 of the Bankruptcy Code and granting liens, security interests and

⁷ During the course of the case, it was determined that the market value of the real property was less than set forth in the appraisal.

superpriority claims, (ii) granting adequate protection and authorizing the Debtor's use of cash collateral pursuant to Sections 361(2) and 363(c)(2) of the Bankruptcy Code.

The Debtor's request to enter into the DIP Loan was the subject of numerous and extensive objections from, among others, the Master Trustee and FSA, which instead requested an immediate orderly sale or wind-down of the Debtor's operations. Following extensive hearings and negotiations, the Debtor agreed to request use of the DIP Loan proceeds on limited and interim bases, resulting in the entry of sixteen (16) interim orders authorizing the Debtor to enter into the Postpetition Credit Agreement and obtain post-petition financing pursuant to sections 363 and 364 of the Bankruptcy Code and granting liens, security interests and superpriority claims to the Agent for the benefit of the Lender during the course of this case. Each of these requests for funding was subject to approved budgets.

Pursuant to the Postpetition Credit Agreement and the Interim Financing Orders, Kimco was granted a first lien on all of the Debtor's owned real property (each, a "Fee Property") and leased real property (each, a "Leased Property", and each Fee Property and Leased Property being referred to individually as an "Obligor Property" as defined in Section 4.9 of the Postpetition Credit Agreement).

2. The Debtor's Use of Cash Collateral

As noted in Section II.D. above, prior to the Petition Date, the Debtor entered into a Master Trust Indenture dated as of December 1, 1994, as supplemented, by and between the Debtor and the Master Trustee. After the Petition Date, the Master Trustee filed a Proof of Claim on behalf of itself, the Bond Trustee, FSA, Lehman and Nuveen (collectively, the "MTI Secured Creditors"), in the aggregate amount of

\$46,673,886.79, which amount was asserted as due and owing to the MTI Secured Creditors as of the Petition Date.

As of the Petition Date, the Debtor's obligations arising under the Master Indenture were secured by, inter alia, a first priority lien in the Gross Receipts of the Debtor, as defined in the Master Indenture (collectively, the "Pre-Petition Collateral"). Prior to the Petition Date, the Master Trustee filed UCC-1 financing statements and continuations to perfect its interest in the Pre-Petition Collateral.

After the Petition Date, in connection with the DIP Loan, the Debtor sought the use of the MTI Secured Creditors' cash collateral. This request was also the subject of extensive objections and litigation, resulting in the negotiated uses of cash collateral, pursuant to a budget, and each on a limited time period co-extensive with the borrowings under the DIP Loan. In connection with the granting of the Debtor's motion for authority to use cash collateral and provide adequate protection, the MTI Secured Creditors were granted replacement liens, additional security interests, and rights designed to protect the MTI Secured Creditors against any potential diminution of their interest in the Pre-Petition Collateral pursuant to the Interim Cash Collateral Orders. In addition, the MTI Secured Creditors were granted second liens on each Obligor Property⁸ granted as security to Kimco for the Postpetition Credit Agreement.

Through the Interim Cash Collateral Orders, the Debtor and the Committee acknowledged that the Master Trustee held, for the benefit of the MTI Secured Creditors, a valid, perfected, first priority lien and security interest in the Pre-Petition Collateral. However, the Committee expressly reserved certain rights to

⁸ The First Interim Cash Collateral Order only granted a second lien on the Obligor Property to FSA, Lehman and Nuveen.

continue to investigate and challenge the value of the Pre-Petition Collateral as of the Petition Date, the amount of the Secured Creditors secured claim against the Debtor's estate and whether there had been any diminution of the value of the Pre-Petition Collateral since the Petition Date. These issues were ultimately resolved by a global settlement between the Debtor, the Committee and the Secured Creditors, dated September 23, 2008, fixing the amount of the Secured Creditors' claims and determining which assets are subject to the Secured Creditors' liens and which assets are unencumbered property of the Debtor's estate.

3. The Debtor's Sale Process

As noted above in connection with the hotly contested requests for post-petition liquidity, certain of the Debtor's creditors, including the Secured Creditors, favored a prompt sale of the Debtor's assets, either as a going concern or pursuant to a straight liquidation. Ultimately, the Debtor's ability to use post-petition financing under the DIP Loan and through the use of cash collateral was the subject of a compromise whereby the Debtor agreed to pursue a "dual track": (a) seek to restructure its expenses and operations as part of a stand-alone reorganization; or (b) investigate and pursue the sale of substantially all of its assets. The Debtor did not believe that a shut-down of its operations was in the best interest of the greater Bayonne Community. To implement the sale path, on May 15, 2007, the Debtor filed an application to employ and retain Cain Brothers as its investment banking firm on the terms and conditions set forth in the May 11, 2007 engagement agreement (the "Cain Brothers Agreement"). On June 7, 2007, Cain Brothers' retention was authorized and approved by the Court on the terms and conditions set forth in the Cain Brothers Agreement.

Over the next several months, the Debtor, its professionals, the Committee and other parties in interest participated in a sale process. During this process, the Debtor provided potential bidders who signed confidentiality agreements with access to certain books and records and facilities, including access to an electronic data room, to perform due diligence in connection with a potential sale. The Debtor also reviewed its executory contracts to determine whether they are beneficial or burdensome to the Debtor's estate. Given the complexity of the Debtor's not-for-profit, highly regulated industry and inability to sell the assets simply, the sale process proceeded in a manner and pace different than traditional chapter 11 asset sales.⁹ The sale process consisted of, among other things, contacting and assisting potential purchasers, collecting due diligence materials and establishing an electronic data room. Approximately 125 potential buyers, including not-for-profit local, not-for-profit national and for-profit entities were contacted. Ultimately, thirteen (13) parties signed confidentiality agreements and accessed the electronic data room. In addition, six parties made site visits to the facility, with five parties having indicated interest and engaged in discussion and negotiations with the Debtor's professionals concerning a potential transaction with the Debtor.

While the sale process was continuing, the Debtor continued to try to improve its business operations by curtailing expenses. By the summer of 2007, the Debtor's financial condition was continuing to decline. The Debtor was losing hundreds of thousands of dollars each week. Compounding these losses, the Debtor learned that Kimco would not advance the entire \$30 million provided for in the DIP Financing

⁹ These complexities include, without limitation, the need to address certain state regulations (i.e., Community Health Care Assets Protection Act) to the extent the Debtor would seek to enter into a reorganization transaction with a for-profit third party

Facility, but would instead limit the Debtor's advances under the DIP Loan to approximately \$20 million.

The Debtor continued to seek alternative avenues of financing. The Debtor requested that the State of New Jersey advance future charity care funds to the hospital. Although some charity care funds were advanced to the Debtor, the funds were insufficient to prevent the Debtor from further financial decline. In October 2007, HCFFA conditionally agreed to provide the Debtor with \$2,500,000 in financing to help cover the Debtor's operating shortfall while the Debtor sought a buyer. The Debtor received \$2,500,000 in loan proceeds from HCFFA in or about December 2007.

In addition, on October 29, 2007, the Mayor and City Council of the City of Bayonne approved a resolution authorizing the City of Bayonne to loan up to \$6,000,000 to the Debtor in order to meet its working capital shortfall while seeking a buyer that would continue to operate an acute care healthcare facility in Bayonne. Thereafter, such monies were provided to the Debtor.

Meanwhile, the Debtor, in consultation with the Committee and the MTI Secured Creditors, agreed that the most feasible way to preserve the Debtor's on-going health care operations, which were critical to the greater Bayonne community, was through an orderly sale process. As such, the Debtor's attentions were focused primarily upon locating an acceptable purchaser for all or substantially all of the Debtor's assets, preferably with stalking horse bidder and the opportunity for other interested parties to overbid at an auction.

The Debtor believed that it was in the best interests of its estate and creditors to sell the assets through an auction. As may be required by the Debtor's

fiduciary obligations, the Debtor considered all qualified bids for assets submitted in accordance with a bidding procedures order; however, it was the Debtor's paramount concern for the benefit of the greater Bayonne community to sell all or substantially all of the assets to a single bidder who will continue to operate a hospital and provide other health care related services. Further, it was critical that the Debtor achieve a sale of the assets as quickly as possible before its funding was exhausted.

Based upon the marketing process described above, the Debtor received two final bids, with one resulting in the execution of an Asset Purchase Agreement (the "APA") between the Debtor, on the one hand, and IJKG LLC, a New Jersey limited liability company ("IJKG"), Newco Real Estate, a New Jersey limited liability company wholly owned by IJKG ("Newco Real Estate"), and Opco, a New Jersey limited liability company wholly owned by IJKG ("Opco" and together with Newco Real Estate, "Buyer" or the "Purchaser"), on the other hand.

On or about September 25, 2007, the Debtor filed its Application for (I) Authority to Sell All or Substantially All of Its Assets, (II) Authority to Assume and Assign Executory Contracts and Unexpired Leases, and (III) Approval of the Auction Procedures Related Thereto (the "Initial Sale Motion") [Doc. No. 626] seeking approval of a sale proposal from IJKG (the "Initial Sale Proposal") as a stalking horse bid. At a hearing on September 28, 2007, the Court failed to approve the transaction with IJKG and advised the Debtor that if it could not obtain a better offer, the Court would consider a closure plan for the Debtor's hospital at a hearing on October 5, 2007.

Subsequent to the September 28 hearing, the Debtor continued to look for a purchaser for the assets and to try to better the initial IJKG transaction. As the Debtor

was looking for another purchaser, the Debtor's liquidity crisis was exacerbated by various continuing objections to the use of cash collateral and restrictions placed on the Debtor's spending. The Court prohibited the Debtor from paying any post-petition expenses other than essential or critical creditors. At this point, it was unclear whether the Debtor could continue to operate, and the Debtor's administrative solvency, let alone its ability to reorganize, appeared slim.

The Debtor located another purchaser for its assets, Urban Suburban, LLC, an entity which the Debtor and the Committee believe was a joint venture partner with Fortis Property Group USA. On October 31, 2007, the Court conducted an auction of the two bidders, IJG and Urban Suburban. After considering the two bids, the Debtor's Board of Trustees voted in favor of Urban Suburban proposal. The economics of the Urban Suburban transaction were as follows: (a) the purchase price was \$22.5 million, (b) the \$2,500,000 from HCFFA would be assumed and repaid by the buyer, (c) the \$6 million loan from the City of Bayonne would be assumed and repaid by the buyer, (d) with respect to the Union, approximately \$2.2 million in pension payments would be assumed and paid by the buyer; (e) all of the cure costs, either as agreed to by the buyer and the non-debtor contract party, or as otherwise ordered by the Court, would be paid by the buyer; (f) to the extent that the sale would not close on or before December 31, 2007, the operating costs of the hospital between January 1, 2008 through and including the closing date would be paid by the buyer.

On or about November 1, 2007, the Court continued the hearing to confirm the Urban Suburban purchase of the Debtor's assets. The Court conducted an extensive evidentiary hearing in which Robert Miller, a principal of Urban Suburban

testified that Urban Suburban was a joint venture with Fortis Property Group USA and Urban Suburban had the financial wherewithal to consummate the purchase. The Court approved the sale on November 1, 2007, and thereafter, Urban Suburban was required to fund the \$2.25 million good faith deposit.

By November 2, 2007, Urban Suburban failed to make the \$2.25 million deposit and subsequently advised the Debtor that it would not complete the purchase.¹⁰ As discussed herein, the Debtor and the Committee expressly reserve and preserve any and all claims or causes of action which relate to the failed purchase.

Facing imminent shutdown of its operations due to the failure of Urban Suburban to consummate the sale, the Debtor went back to IJKG to determine if it was still interested in purchasing the Debtor's assets. IJKG agreed to renew discussions for the purchase of the Debtor's assets.

IJKG offered to purchase certain of the Debtor's assets for approximately \$41,500,000, consisting of \$100,000 cash to the Debtor's bankruptcy estate, \$7,000,000 to one of the MTI Secured Creditors, and the rest in the assumption of assorted pre- and post-petition liabilities. On November 8, 2007, the Court conducted another hearing to consider the sale to IJKG and the Court approved the Sale to the Buyer by order dated November 9, 2007 (Docket No. 816). Despite various obstacles, the sale ultimately closed, and IJKG commenced operating the hospital on February 1, 2008. As a result of the sale, the Debtor's post-petition loan from Kimco was paid or otherwise deemed

¹⁰ As discussed below, Fortis' involvement with Urban Suburban is the subject of dispute between the Debtor and the Committee, on the one hand, and Urban Suburban, its insiders Fortis on the other. All claims against Urban Suburban, Fortis Property Group USA, and their affiliates, successors and assigns, are expressly preserved by the Plan Proponents and shall be transferred to the Liquidation Trust on the Effective Date. There also may be claims against certain members of the Debtor's Board of Trustees based on the failed purchase.

satisfied in full and only Excluded Assets (as such term is defined in the Asset Purchase Agreement with the Buyer) remain in the Debtor's estate.

4. IJKG Post-Closing Litigation

In 2006, prior to chapter 11 filing, the Debtor had been notified by Medicare of an overpayment for Cost Report Year 2004. On October 23, 2006, the Debtor and Medicare entered an extended repayment plan ("CMS Repayment Plan"), requiring repayment of \$3,430,200 in 24 monthly installments. The repayment plan provides that if Debtor missed two consecutive payments, Medicare would withhold 100% of Medicare payments.

The United States takes the position that assignment of a Medicare provider agreement subjects the assignee to all of the assignor's liabilities to Medicare, any agreement or state law to the contrary notwithstanding. In an effort to avoid IJKG's assumption of the Debtor's Medicare liability, the Asset Purchase Agreement between the Debtor and IJKG provided that IJKG would not assume Debtor's Medicare provider agreement, but would instead apply for its own.

However, prior to closing on the sale, IJKG determined that it was either unable or impracticable to obtain its own Medicare provider number in a timely manner. As such, IJKG made the business decision to take an assignment of the Debtor's agreement and provider number to provide for immediate liquidity post-Sale, presumably knowing the risks and rewards attendant thereto. By agreement between the Debtor, IJKG, the United States and the relator in a False Claims Act suit against Debtor ("FCA Agreement"), the Debtor assigned its Medicare provider agreement to IJKG with the consent of the United States. The FCA Agreement was approved by the Bankruptcy Court by Order dated February 6, 2008. In settlement of claims against Debtor under the

federal False Claims Act, IJKG agreed to pay \$2.5 million to the United States, and the United States released Debtor from civil liability for the conduct involved in the False Claims Act suit.

Following the sale, in order to conserve assets for the benefit of the Debtor's creditors, as of April 28, 2008, the Debtor ceased making payments to Medicare under the pre-petition CMS Repayment Plan, and the United States has filed a pre-petition unsecured proof of claim against the Debtor for the Medicare remaining payments covered by the CMS Repayment Plan. After the Debtor stopped making payments, Medicare informed IJKG that there was a default under the CMS Repayment Plan, that IJKG was liable for the unpaid balance as assignee of Debtor's provider number, and that this amount would be deducted from Medicare payments due IJKG. On May 15, 2008, IJKG filed an adversary complaint against Debtor and certain of the MTI Secured Creditors, which was supplanted by an Amended Adversary Complaint on July 22, 2008. The Amended Complaint alleges that under the APA, the Debtor is required either to pay or to provide reserves for payment of all pre-closing liabilities to Medicare, and that all sums received by the Debtor from Medicare in connection with pre-closing services must be applied to those liabilities. As a remedy for this alleged breach of contract, IJKG has demanded that a constructive trust or equitable lien be imposed on all funds received by the Debtor or the MTI Secured Creditors from Medicare on account of pre-petition services. The Debtor, the Committee, FSA and the Master Trustee all disputed the merits of IJKG's claims and filed motions to dismiss the Amended Complaint, relying in part, upon IJKG's voluntary business decision to take assignment

of the Medicare provider agreement and subject itself to the known risks to Medicare from this assignment.

On February 3, 2009, the Bankruptcy Court issued a lengthy opinion and entered an Order granting in substantial part motions by the Debtor, the Committee and the MTI Secured Creditors to dismiss five counts of the First Amended Complaint filed in the IJKG Adversary Proceeding. Specifically, the Bankruptcy Court dismissed all counts of the First Amended Complaint as against the MTI Secured Creditors, as to all remedies. In addition, the Bankruptcy Court dismissed all counts of the First Amended Complaint as against the Debtor's estate, in all respects and as to all remedies, *except* for causes of action relating to a narrow set of specific claims. The damage remedy as to the surviving claims have been limited to damages against the Debtor's estate only, and IJKG's efforts to impose a constructive trust, compel an escrow or segregate funds already received by the Debtor or its secured creditors was expressly denied.

5. Global Settlement with the Debtor's Secured Creditors

On or about February 25, 2008, the Master Trustee and FSA commenced an adversary proceeding against the Debtor and the Committee by filing a Verified Complaint to (i) determine the extent, validity and priority of liens pursuant to (a) the Master Trust Indenture and (b) various Court Orders, (ii) for turnover of collateral to the Master Trustee, and (iii) for an injunction against further expenditures by the estate pending the Court's determination as to the Secured Creditors' liens (the "MT Adversary Proceeding").

Following months of negotiations among the Debtor, Secured Creditors and the Committee, the parties reached a global settlement agreement which was approved by the Court on September 23, 2008 (the "Secured Creditor Settlement"), with

respect to the treatment of the Secured Creditors' liens and claims arising under the Master Trust Indenture and the potential challenges to those liens and claims asserted by the Committee and the Debtor. The Secured Creditor Settlement has paved the way for an orderly liquidation of the Debtor's estate pursuant to the proposed Joint Plan.

As a result of the Secured Creditor Settlement, a minimum distribution to unsecured creditors should be made possible while allowing the Secured Creditors prompt access to their collateral without the time, expense and risks of protracted litigation over the amount of their secured claims. The salient terms of the Secured Creditor Settlement are as follows:¹¹

- Joint Plan of Liquidation. The settlement will be further implemented by a Joint Plan of liquidation consistent with the Settlement Agreement (the "Conforming Joint Plan"); however, the settlement is not conditioned upon a confirmation of the Conforming Joint Plan. The Secured Creditors agree to unconditionally support and vote in favor of a Conforming Joint Plan and the Debtor and Committee agree not to file or support a Joint Plan that is not a Conforming Joint Plan. In the event of the confirmation of a Joint Plan that is not a Conforming Joint Plan, the settlement shall control to the extent of any inconsistency. The settlement shall also survive dismissal of the case or conversion of the case to a chapter 7 liquidation.¹²
- Secured Creditor Allocation. Certain assets of the estate are being allocated to the secured creditors are \$10 million of the Postpetition Pre-Closing Patient Receivables (as defined in the Secured Creditor Settlement), the Other Receivables (as defined in the Secured Creditor Settlement), the Prepetition Pre-Closing Patient Receivables (as defined in the Secured Creditor Settlement), and certain reserve funds held by the Bond Trustee. The Postpetition Pre-Closing Patient Receivables shall be transferred to the Secured Creditors net of the collection fees due MD-X Solutions, Inc., shall be allocated to the Secured Creditors in "as is" "where is" condition without any representations or warranties and deemed to be subject to the liens and claims of the Secured Creditors (the "Secured Creditor Allocation"). The Secured Creditor Allocation shall be

¹¹ This recitation intended as a summary only. To the extent of any discrepancy between this summary and the Secured Creditor Settlement, the terms of the Secured Creditor Settlement shall control.

¹² The Plan annexed as Exhibit A to this Disclosure Statement is the "Conforming Joint Plan" referenced in the Secured Creditor Settlement.

subject to, and conditioned upon, any valid right of setoff, recoupment, counterclaim or any other defense of any third parties. Except as set forth in the Secured Creditor Settlement, the Secured Creditors expressly waive and relinquish any claims, causes of action or any other recourse against the Debtor's estate with respect to any item of the Secured Creditor Allocation, regardless of the Secured Creditors' recovery or failure to recover thereon. The Secured Creditors shall be solely responsible for all costs and expenses of collection of the assets subject to the Secured Creditor Allocation. The Secured Creditors shall have the sole right to collect and distribute these assets, as well as the right to compromise and settle any claims relating to these assets without further approval of the Bankruptcy Court and without consultation or notice to the Debtor or Committee, with all such recoveries to be treated as part of an allowed, secured claim of the Secured Creditors (the "Allowed Secured Claim").

- Unsecured Creditor Allocation. All assets other than the Secured Creditor Allocation, including, but not limited to, the assets expressly listed in the Secured Creditor Settlement, shall be retained or transferred to the Debtor's estate, shall be deemed free and clear of the Secured Creditors' liens, and shall be allocated to and pursued and collected by the Debtor, the Committee or the Liquidating Trustee to be appointed under the Conforming Joint Plan, provided, however, that the Secured Creditors shall share in these recoveries to the extent of their Allowed Deficiency Claim (as defined below), subject to the provisions of the Secured Creditor Settlement.
- Treatment of Claims. The Secured Creditor Settlement provides and the Conforming Joint Plan shall provide for the treatment of the claims of the Secured Creditors and other creditors as follows:
 - Upon approval of the Secured Creditor Settlement, the Secured Creditors shall receive all rights associated with the Allowed Secured Claim.
 - One half of the Postpetition Pre-Closing Patient Receivables shall be paid by the Debtor to the Master Trustee within one business day after the entry of an Order approving the settlement, and the balance shall be paid by the Debtor to the Master Trustee on or before December 23, 2008.
 - One half of the Prepetition Pre-Closing Patient Receivables held by the Debtor shall be paid to the Master Trustee within one business day after the entry of an Order approving the settlement, with the balance paid by the Debtor to the Master Trustee on or before December 23, 2008. On and after December 23, 2008, all Prepetition Pre-Closing Patient Receivables shall be directed to the Master Trustee, and any such amounts received or held by any

party, including the Debtor (net of any collection costs paid by the estate), shall be promptly forwarded to the Master Trustee, subject to any valid setoff and/or recoupment rights of third parties as set forth in the Secured Creditor Settlement.

- The Secured Creditors shall be granted an allowed general unsecured claim in the amount of \$46,673,886.79 (the “Allowed Deficiency Claim”), less a dollar for dollar reduction for every dollar received by the Secured Creditors on account of (i) the Allowed Secured Claim and (ii) the Secondary Distribution (defined below).
- The Secured Creditors shall waive and relinquish any administrative claim against the estate.
- Pursuant to the Conforming Joint Plan, all allowed administrative claims, priority claims, and, if any, secured claims (other than the Allowed Secured Claim) shall be paid in full by the estate.
- Pursuant to the Conforming Joint Plan, all allowed general unsecured claims, other than the Allowed Deficiency Claim, shall be paid by the estate pro rata from the first \$3 million of funds available for distribution after payment of administrative expenses and priority claims (the “Primary Distribution”).
- If funds remain in the estate after the Primary Distribution, any remaining funds up to \$1 million shall be paid by the estate to the Secured Creditors (the “Secondary Distribution”).
- If funds remain in the estate after the Secondary Distribution, any remaining funds shall be shared and distributed as follows (the “Final Distribution”): (a) to the extent that the Allowed Deficiency Claim is equal to or exceeds the aggregate of all other allowed general unsecured claim, all allowed general unsecured claims and the Allowed Deficiency Claim shall share all remaining estate assets 50%/50%; provided, however, that if the amount of the Allowed Deficiency Claim is greater than fifty-five percent (55%) of the entire amount of all allowed general unsecured claims, then the distribution allocation to the Secured Creditors shall be fifty percent (50%) plus the percentage by which the Allowed Deficiency Claim exceeds fifty-five percent (55%) of the aggregate pool of allowed general unsecured claims; by way of illustration, if the Allowed Deficiency Claim represents 60% of the entire amount of all allowed general unsecured claims, then the distribution under this section would be allocated fifty-five percent (55%) to the Secured Creditors and forty-five percent (45%) to the other general unsecured creditors; (b) to the extent that the Allowed Deficiency

Claim is less than the aggregate of all other allowed general unsecured claims, the Allowed Deficiency Claim and all allowed general unsecured claims shall share pro rata.

Pursuant to the Secured Creditor Settlement Agreement, certain assets were reserved for the Estate and the Holders of allowed general unsecured claims. Those assets include:

- Cash on hand with the Debtor, except for the \$10 million to be allocated to the Secured Creditors on account of the Secured Creditor Reserve and any other amounts required to be paid or turned over to the Secured Creditors in connection with the Settlement.
- All Pre-Closing Patient Receivables except as allocated to the Secured Creditors above.
- Any proceeds from QualCare and its affiliated entities.
- Any MedQuist settlement proceeds.
- Any funds drawn under the Kimco DIP financing line, except to the extent that such funds constitute a portion of the \$10 million to be allocated to the Secured Creditors on account of the Secured Creditor Reserve Fund.
- The proceeds of the disposition of the Financial Services Building or any other real estate owned by the Debtor (other than the escrow from the sale of the Bell Building or any pre-petition rent owed by BMC Radiation Oncology Services LLC).
- MTM Equipment and any proceeds thereof.
- Any Chapter 5 claims.
- Any claims arising from, related to, or in connection with the failed sale of the Debtor's assets to Urban Suburban, LLC.
- Any claims against Pamrapo Savings Bank.
- D&O claims/claims against third parties.
- Any and all claims arising or relating to conduct after the Petition Date, except as otherwise allocated in the Secured Creditor Settlement Agreement.

IJKG has filed an appeal from the Order approving the Secured Creditor Settlement Agreement. The essence of the objection and the appeal by IJKG is that the Debtor and the Secured Creditors should be required to indemnify IJKG from potential liabilities resulting from IJKG's decision to assume the Debtor's Medicare provider agreement and provider number as part of the consummation of the sale of the Debtor's business. IJKG asserts that these liabilities could be several million dollars over time and should be paid by the estate and/or the Secured Creditors from Medicare payments already received by the Debtor's estate (and, under the Secured Creditor Settlement, the Secured Creditors) or to be received in the future. As noted above, in connection with the Adversary Proceeding filed by IJKG, the Debtor, the Committee and the Secured Creditors dispute that IJKG has any claim against the Debtor's estate for breach of the APA or otherwise.

As of the date hereof, the appeal is still pending before the District Court and its outcome and impact upon the estate is uncertain. To the extent that IJKG succeeds on the appeal and if IJKG all succeed on all of its claims against the Debtor, there is a real and genuine risk that the Debtor and the Committee will be unable to confirm the Plan and that there will be no distributions to General Unsecured Creditors.

6. The Estate's Employment of Professionals

During the course of this proceeding, the Court approved the employment of the following professionals:

- Cooley, Godward & Kronish LLP – Bankruptcy Counsel for Debtor, retained nunc pro tunc to April 16, 2007;
- Connell Foley LLP – Local Bankruptcy Counsel for Debtor, retained nunc pro tunc to April 16, 2007;

- Lindabury, McCormick, Estabrook & Cooper PC – General Counsel for Debtor, retained nunc pro tunc to April 16, 2007;
- FTI Cambio, LLC – Financial Advisors To The Debtor, retained nunc pro tunc to April 16, 2007;
- Amper, Politziner & Mattia, P.C. as Accountants and Financial Advisors to the Debtor, retained nunc pro tunc to May 15, 2007;
- Cain Brothers & Company LLC – Debtor’s Investment Banking Firm, retained June 7, 2007;
- Sills, Cummis & Gross, PC – Counsel for the Official Committee Of Unsecured Creditors, retained effective May 2, 2007;
- Weiser LLP – Financial Advisor to Official Committee of Unsecured Creditor, retained effective May 7, 2007;
- Kurtzman Carson Consultants – Servicing/Information Agent, retained nunc pro tunc to April 16, 2007;
- SAK Management Services, LLC – Medical Operations Advisor for Health Care Ombudsman Suzanne Koenig, as Patient Care Ombudsman, retained nunc pro tunc to May 18, 2007; and
- Arent Fox LLP – Counsel for Health Care Ombudsman Suzanne Koenig, as Patient Care Ombudsman, retained nunc pro tunc to May 18, 2007.

7. Pending Adversary Proceedings

- a. IJKG LLC, IJKG OPCO LLC, and IJKG PROPCO LLC, Plaintiffs, v. BAYONNE MEDICAL CENTER, INC., AETNA US HEALTHCARE, THE BANK OF NEW YORK, as Master Trustee, and FINANCIAL SECURITY ASSURANCE, INC., Defendants.
Adv. Proc. No. 08-01540 (MS)**

As discussed above, on May 15, 2008, IJKG LLC, IJKG OPCO LLC, and IJKG PROPCO LLC (collectively “IJKG”) filed a Complaint against the Debtor for Breach of Contract (Count 1), Breach of Duty of Good Faith and Fair Dealing (Count 2), Promissory Estoppel (Count 3), Unjust Enrichment (Count 4) and Equitable Subrogation (Count 5) relating to Debtor’s sale of its assets approved by the Bankruptcy Court (the

“IJKG Adversary Proceeding”). The Debtor, together with other parties-in-interest, filed motions to dismiss the complaint, which are currently pending. The various defendants, including the Debtor, dispute the claims being made by IJKG and intend to vigorously defend the allegations against the Debtor. The Committee was granted leave to intervene in the IJKG Adversary Proceeding and joined in the Debtor’s defense.

On February 3, 2009, the Bankruptcy Court issued a lengthy opinion and entered an Order granting in substantial part motions by the Debtor, the Committee and the MTI Secured Creditors to dismiss five counts of the First Amended Complaint filed in the IJKG Adversary Proceeding. Specifically, the Bankruptcy Court dismissed all counts of the First Amended Complaint as against the MTI Secured Creditors, as to all remedies. In addition, the Bankruptcy Court dismissed all counts of the First Amended Complaint as against the Debtor’s estate, in all respects and as to all remedies, *except* for causes of action relating to a narrow set of specific claims. The damage remedy as to the surviving claims has been limited to damages against the Debtor’s estate only, and is estimated to be a maximum of approximately \$248,000. IJKG’s efforts to impose a constructive trust or assert an equitable lien upon funds already received by the Debtor or its secured creditors was expressly denied. As the Bankruptcy Court recognized in its February 3, 2009 opinion, “the claimed \$248,000 in CMS settlement installments undertaken by IJKG is a manageable sum for this estate,” even if such sums are determined to constitute administrative expense of the estate. Thus, although the remaining claims in the IJKG Adversary Proceeding could adversely affect the dividend that will be paid to unsecured creditors in this case, the Plan Proponents do not believe that the affect will be substantial.

**b. OFFICIAL COMMITTEE OF UNSECURED CREDITORS,
Plaintiff, v. PAMRAPO SAVINGS BANK, S.L.A., Defendant.
Adv. Proc. No. 08-02256(MS)**

On September 16, 2008, the Committee commenced an adversary proceeding (the “Pamrapo Adversary Proceeding”) by filing a complaint against Pamrapo Savings Bank, S.L.A. (“Pamrapo”), seeking to recover an alleged preferential transfer in the amount of \$1 million and to avoid a mortgage made in favor of Pamrapo on certain real property owned by the Debtor commonly known as 423 Avenue E, 425 Avenue E and 14 East 29th Street in Bayonne, New Jersey (the “Mortgaged Properties”). The \$1 million payment was made and the mortgages were granted by the Debtor to Pamrapo prior to the commencement of the bankruptcy case. Pamrapo has filed an Answer to the complaint, contesting its allegations therein. The Committee filed a motion for summary judgment, which was withdrawn after the Bankruptcy Court granted Pamrapo’s request to conduct discovery. The parties are currently conducting discovery in accordance with a scheduling order approved by the Bankruptcy Court.

The Mortgaged Properties have an appraised value of nearly \$2 million. The Debtor, with the consent of Pamrapo, has listed the Mortgaged Properties for sale. If the Committee succeeds in the Pamrapo Adversary Proceeding, the amount recovered either from the \$1 million payment or the Mortgaged Properties upon sale will be used, in part, to fund the projected dividend to General Unsecured Creditors. To the extent that the Committee is unsuccessful in the Pamrapo Adversary Proceeding, the projected distributions to General Unsecured Creditors will be negatively affected. Specifically, if the Committee is unsuccessful in the Pamrapo Adversary Proceeding, Pamrapo would have an Allowed Other Secured Claim in Class 3 and the right to assert a deficiency claim to be treated as an Allowed General Unsecured Claim in Class 4A. In the event

that the Committee is successful in the Pamrapo Adversary Proceeding, then, depending on the outcome of such proceeding, Pamrapo may either have an Allowed General Unsecured Claim, in whole or in part, in Class 4A, or in the event that Pamrapo's claim is subordinated, in whole or in part, then Pamrapo may not have any claim under Classes 3 or 4A. The ultimate determination about Pamrapo's claims under Class 3 and/or Class 4A shall be determined as part of the Pamrapo Adversary Proceeding.

8. Potential Adversary Proceedings

In addition to the adversary proceedings which have already been commenced, the Debtor and the Committee expressly reserve, retain and preserve claims and causes of action as follows and without limitation:

- a. All causes of action arising under Chapter 5 of the Bankruptcy Code and any state or federal law fraudulent conveyance or preference statutes;
- b. All claims arising from the failed purchase of the Debtor by Urban Suburban and any entities or individuals related, affiliated or connected thereto;
- c. All claims and causes of action against the Debtor's current and former officers and directors for violations of the Trustees and Officers' fiduciary duties to BMC and/or its creditors, including, without limitation, claims relating to: (a) loan transactions with Pamrapo Savings Bank; (b) the potential transaction with St. Vincent's Hospital in Staten Island; (c) potential divided loyalty of the Chairman of the Debtor's Board of Trustees; (d) potential self-dealing and gross mismanagement by the Debtor's trustees and officers; (e) improper accounting of vendor transactions; (f) improper financial and audit statements; (g) improper transactions with respect to certain parcels of real estate located on Broadway in Bayonne and transactions involving real estate owned by the Debtor and sold prior to the Petition Date;
- d. All claims and causes of action against third parties relating to the claims set forth in subparagraph (c), including claims against purchasers of property and professionals hired by the Debtor.

9. Other Non-Bankruptcy Legal Proceedings

In addition to the proceedings discussed above, the Debtor is currently involved in a number of medical malpractice, employment practices and collections matters that primarily relate to pre-petition matters. In many instances, plaintiffs asserting claims against the Debtor have voluntarily agreed to waive any claim they may have against the Debtor's estate (and forego any distribution from the estate to which they may have been entitled) and have limited their recovery to available insurance coverage in exchange for relief from the automatic stay in order to commence or continue prosecution of their claims during the pendency of the Debtor's bankruptcy case. Most of the medical malpractice and employment practices matters are now proceeding to liquidate their claims against the Debtor and any plaintiffs still having claims against the Debtor's estate will likely be covered by the Debtor's insurance policies. Because of the uncertainty regarding the outcome of these claims, it is not possible to estimate what claims, if any, may be made against the Estate that may exceed available insurance coverage.

10. Establishment of Bar Dates

(A) Prepetition Claims Bar Date. On April 22, 2008, the Bankruptcy Court entered an Order (the "Bar Date Order") in accordance with Bankruptcy Rule 3003(c) fixing May 30, 2008 at 4:00 p.m. Pacific Time (the "Prepetition Claims Bar Date") as the last day for the filing of proofs of claim in this case for all claims against the Debtor arising prior to April 16, 2007 (the "Petition Date"). Certain claims were excepted from the provisions of the Bar Date Order (the "Excepted Claims") and were not required to be filed on or before the Prepetition Claims Bar Date. Excepted Claims included: (a) claims already duly filed in the Case with the Claims Agent, or with the

Clerk of the Bankruptcy Court; (b) claims listed in the Debtor's schedules of assets and liabilities, or as listed in any supplements or amendments thereto (the "Schedules"), if the claimant does not dispute the amount or manner in which its claim is listed in the Schedules or the nature of the claim and if such claim is not designated therein as "contingent," "unliquidated," "subject to adjustment," "disputed," or "unknown" (or assigned a zero amount); (c) claims arising on or after the Petition Date (which are covered by the Administrative Claims Bar Date, as defined below); and (d) claims for damages stemming from the rejection of executory contracts and unexpired leases where the rejection takes place after April 3, 2008.

Any proof of claim required to be filed pursuant to the provisions of the Bar Date Order and not filed on or before the Claims Bar Date have been forever barred from assertion against the Debtor and the property of the Debtor, and the holder of such claim is not entitled to vote on this Plan or to participate in any distribution in this case.

(B) Administrative Claims Bar Date. On April 22, 2008, the Bankruptcy Court entered an Order (the "Administrative Claims Bar Date Order") fixing May 30, 2008 at 4:00 p.m. (Pacific Time) as the deadline (the "Administrative Claims Bar Date") by which any person or entity that holds or may hold an administrative expense claim arising post-bankruptcy for the period April 16, 2007 through February 1, 2008 at 12:01 a.m., allowable under section 330, 503(b), 507(a)(2) or 1114(e) of the Bankruptcy Code (an "Administrative Claim") must file a statement in writing setting forth the claim. The Administrative Claims Bar Date did not apply to: (a) Fees payable to the Office of the United States Trustee pursuant 28 U.S.C. §1930; (b) Administrative Claims that had already been fixed and approved by order of the Court; (c)

Administrative Claims that had been paid in full at any time prior to the Administrative Claims Bar Date; (d) Administrative Claims of governmental units that are subject to Bankruptcy Code section 503(b)(I)(D); and (e) Administrative Claims of professionals of the Debtor or the Committee arising under Bankruptcy Code sections 327, 328, 330, 331, 503(b)(2) or 1103.

Any Administrative Claim required to be filed pursuant to the provisions of the Administrative Claims Bar Date Order and not filed on or before the Administrative Claims Bar Date have been forever barred from assertion against the Debtor and the property of the Debtor, and the holder of such Administrative Claim is not entitled to vote on this Plan or to participate in any distribution in this case.

III. SUMMARY OF THE PLAN

The following is a brief summary of certain provisions of the Plan. This summary does not purport to be complete, and Creditors are urged to read the Plan in full. A copy of the Plan is annexed hereto as Exhibit A.

A. Introduction

Pursuant to the Plan, the Debtor and the Committee propose an orderly liquidation of the Debtor's remaining Assets. The Plan provides that the proceeds from the liquidation of the Debtor's Assets will be distributed to Creditors in accordance with the distributive provisions and priority scheme of the Bankruptcy Code and consistent with the Secured Creditor Settlement. The Plan will be implemented by establishing a Liquidating Trust that will be administered by the Liquidating Trustee. On the Effective Date, the Debtor's Assets, except for the D&O and Tort Claims, will be transferred to the Liquidating Trust for the benefit of Creditors. The Liquidating Trustee will be responsible for liquidating the Assets that comprise the Liquidating Trust Estate. On the

Effective Date, the D&O and Tort Claims will revert in the Debtor and will be prosecuted by the Debtor Representative. The proceeds of the D&O and Tort Claims, if any, will be transferred to the Liquidating Trust. The Liquidating Trustee will make distributions to Creditors in accordance with the terms of the Plan.

B. Voting Procedures and Requirements

1. Ballots and Voting Deadlines

Accompanying this Disclosure Statement is a Ballot for acceptance or rejection of the Plan. Your Claims may be classified in multiple classes. When you vote and return your Ballot, please indicate the Class or Classes in which your Claims are classified by marking the appropriate space provided on your Ballot for such purpose.

The Bankruptcy Court has directed that, to be counted for voting purposes, Ballots for the acceptance or rejection of the Plan must be filed with the Solicitation Agent, Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245, by no later than **4:00 p.m. Pacific Time on March 26, 2009** (the “Voting Deadline”). Ballots not actually received by the Voting Deadline may not be counted, and Ballots that do not indicate either an acceptance or rejection of the Plan will be deemed to constitute an acceptance of the Plan. If you have any questions regarding the procedure for voting, please contact:

Bayonne Medical Center Plan Solicitation
c/o Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245

It is important for all Creditors that are entitled to vote on the Plan to exercise their right to vote to accept or reject the Plan. Even if you do not vote to accept

the Plan, you may be bound by the Plan if it is accepted by the requisite Holders of Claims and confirmed by the Bankruptcy Court.

2. Parties in Interest Entitled to Vote

Any Holder of a claim against the Debtor whose Claim has not been Disallowed previously by the Bankruptcy Court, is entitled to vote to accept or reject the Plan if such Claim is impaired under the Plan and either (a) such Holder's Claim has been scheduled by the Debtor and is not scheduled as disputed, contingent or unliquidated, or (b) such Holder has filed a proof of Claim before the Bar Date. Any Claim to which an objection has been filed is not entitled to vote unless the Bankruptcy Court, upon application of the Holder to whose Claim an objection has been made, temporarily allows such Claim in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Bankruptcy Court on or before the Voting Deadline. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

3. Definition of Impairment

Pursuant to section 1124 of the Bankruptcy Code, a class of claims is impaired under a plan unless, with respect to each claim of such class, the plan:

(1) leaves unaltered the legal, equitable, and contractual rights of the Holder of such claim or equity interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the Holder of a claim or equity interest to demand or receive accelerated payment of such claim or equity interest after the occurrence of a default:

- (A) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in Section 365(b)(2) of the Bankruptcy Code;
- (B) reinstates the maturity of such claim or interest as it existed before such default;
- (C) compensates the Holder of such claim or interest for any damages incurred as a result of any reasonable reliance on such contractual provision or such applicable law;
- (D) if such claim or such interests arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the Holder of such claim or such interest (other than the debtor or an insider) for actual pecuniary loss incurred by such Holder as a result of such failure; and
- (E) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the Holder of such claim or interest.

4. Classes Impaired under the Plan

The Claims in Class 1 (Priority Non-Tax Claims), to the extent Allowed, are not impaired and, therefore, are deemed to have accepted the Plan.

The Claims in Class 2 (MTI Secured Claim), to the extent Allowed, are impaired and are entitled to vote to accept or reject the Plan.

The Claims in Class 3 (Other Secured Claims), to the extent Allowed, are not impaired and, therefore, are deemed to have accepted the Plan. To the extent there is more than one Other Secured Claim, each such Claim will be deemed to be a separate sub-class.

The Claims in Class 4A (General Unsecured Claims) are impaired and are entitled to vote to accept or reject the Plan.

The Claims in Class 4B (MTI Unsecured Claim) is impaired and is entitled to vote to accept or reject the Plan.

C. Confirmation Procedure

1. Confirmation Hearing

A hearing before the Honorable Morris Stern, United States Bankruptcy Judge, has been scheduled for **April 7, 2009 at 11:30 a.m. Eastern Time**, at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102 to consider confirmation of the Plan. The Confirmation hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing.

2. Procedure for Objections

Any objection to confirmation of the Plan must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed with the Bankruptcy Court and served on counsel for the Debtor and the Committee and all parties who have filed a notice of appearance **by 4:00 p.m. Eastern Time on March 31, 2009**. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Plan only if it meets all the requirements of Section 1129 of the Bankruptcy Code. Among the requirements for confirmation are that the Plan be: (a) accepted by all impaired classes of Claims that are entitled to vote or, if rejected by an impaired class, that the Plan “does not discriminate

unfairly” against and is “fair and equitable” with respect to such class; (b) feasible; and (c) in the “best interests” of creditors impaired under the Plan. The Bankruptcy Court also must find that:

- The Plan has classified Claims in a permissible manner;
- The Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and
- The Plan has been proposed in good faith.

4. Classification of Claims

Section 1122 of the Bankruptcy Code requires the Plan to place a Claim in a particular Class only if such Claim is substantially similar to the other Claims in such class. The Plan creates separate classes to deal respectively with priority claims, secured claims and unsecured claims. The Debtor and the Committee believe the Plan’s classifications place substantially similar Claims in the same class and, thus, meet the requirements of section 1122 of the Bankruptcy Code.

5. Voting and Acceptance of the Plan

As a condition to confirmation of the Plan, the Bankruptcy Code requires each class of “impaired” Claims entitled to vote on the Plan to vote to accept the Plan. The Bankruptcy Code defines acceptance of a plan by a class of Creditors as acceptance by Holders of two-thirds (2/3) in dollar amount and more than one-half (1/2) number of those claims actually voting. Holders of Claims who fail to vote will not be counted as either accepting or rejecting the Plan. A vote, moreover, may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that it was not made or solicited in good faith.

Classes of claims that are not “impaired” under a plan of orderly liquidation are conclusively presumed to have accepted the plan and, therefore, are not entitled to vote. Classes of claims that receive no distribution under a plan are conclusively presumed to have rejected the plan and are not entitled to vote.

6. Best Interests Test

The “best interests” of creditors test requires that each Holder of a Claim receive or retain under the Plan property of a value that is not less than the value such Holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. To determine what members of each impaired Class of Claims would receive if the Debtor were liquidated, the Bankruptcy Court must determine the dollar amount that a liquidation of the Debtor’s assets would generate in the context of a Chapter 7 liquidation sale. The amount available for satisfaction of Claims would consist of the proceeds resulting from the sale, reduced by the Claims of secured creditors, to the extent of the value of their collateral, and the costs and expenses of the liquidation.

Because the Plan is a plan of orderly liquidation, each Class of Creditors will receive substantially the same treatment it would receive if the Debtor’s Assets were liquidated pursuant to Chapter 7 of the Bankruptcy Code, except that the Estate will neither be taxed with the additional expenses and commissions of a trustee nor delayed by a trustee’s appointment and need to become familiar with this complex matter. Annexed as Exhibit “D” is a liquidation analysis prepared by the Debtor’s accountants, reflecting a greater distribution to creditors pursuant to the Plan than creditors would receive in a hypothetical Chapter 7 case. Accordingly, the Debtor believes the Plan satisfies the “best interests” of creditors test.

7. The Feasibility Test

The “feasibility” test requires the Bankruptcy Court to find that confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtor. Because the Debtor already has ceased operations and the Plan contemplates an orderly liquidation of the Debtor’s assets, confirmation of the Plan will not be followed by a liquidation or further reorganization.

8. The Fair and Equitable Test

If any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan despite such non-acceptance under the “cram down” provisions set forth in Section 1129(b) of the Bankruptcy Code. To obtain such confirmation, the Debtor and the Committee must show, among other things, that the Plan “does not discriminate unfairly” against and is “fair and equitable” with respect to each impaired Class of Claims that has rejected the plan.

Under section 1129(b) of the Bankruptcy Code, a plan is “fair and equitable” to a class if, among other things, the plan provides: (a) with respect to secured claims, that each Holder of a claim included in the rejecting class will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interest, that the Holder of any claim or equity interest that is junior to the claims or equity interest of such class will not receive or retain on account of such junior claim or equity interest any property at all unless the senior class is paid in full. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are similar to those of the

dissenting class and if no class receives more than it is entitled to receive on account of its claim or interest.

9. Other Requirements of Section 1129

The Debtor and the Committee believe that the Plan meets all the other technical requirements of section 1129 of the Bankruptcy Code, including that the Plan has been proposed in good faith.

THE DEBTOR AND THE COMMITTEE SHALL SEEK CONFIRMATION OF THE PLAN IF LESS THAN THE REQUISITE AMOUNTS OF CLAIMS OR INTERESTS IN ANY ONE OR MORE CLASSES VOTE TO ACCEPT THE PLAN.

D. Classification of Claims and Interests and Their Treatment Under the Plan

The Plan classifies Claims into five (5) Classes, and also provides for payment of Allowed Administrative Expenses and Priority Tax Claims. For each Class, the Plan states whether the Claims are impaired and whether Holders of the Claims will receive various types of distributions under the Plan. The Classes and payments to be made and treatment proposed to be accorded to Allowed Claims of each Class under the Plan are summarized and described below. After Confirmation and upon the occurrence of the Effective Date, the Plan binds the Debtor and all creditors, whether or not such creditor has accepted the Plan, and the Debtor shall be discharged of liability for the payment of debts to the extent authorized under the Bankruptcy Code.

1. Unclassified Claims

Pursuant to section 1123(a)(1) of the Bankruptcy code, Claims of a kind specified in Sections 507(a)(1) or (8) of the Bankruptcy Code are not to be designated in

a class. Thus, Administrative Claims and Priority Tax claims against the Debtor shall be treated separately as unclassified Claims.

a. Administrative Claims

Administrative expenses are claims for fees, costs or expenses of administering the Debtor's Chapter 11 Case which are allowed under code Section 507(a)(1), including all professional compensation requests pursuant to Sections 330 and 331 of the Bankruptcy Code. The Bankruptcy Code requires that all administrative expenses including fees payable to the Bankruptcy Court and the Office of the United States Trustee which were incurred during the pendency of the case must be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment. Administrative Expense Claims are estimated to be approximately \$1,432,258.00, exclusive of Professional Compensation and Reimbursement Claims. A list of all known Administrative Expense Claims is annexed hereto as Exhibit F.

- i. Administrative Claims – General.** The Plan provides that, subject to the allowance procedures and deadlines provided in the Plan, and except to the extent that any entity entitled to payment of any Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall be paid in full, in Cash, by the Disbursing Agent from the Disbursing Agent Reserve on the later of: (a) ten (10) Business Days after the Effective Date; or (b) ten (10) Business Days after the date of entry of a Final Order determining and Allowing such Claim as an Administrative Expense Claim, or as soon thereafter as is practicable.

- ii. Administrative Claims – Other Administrative Expense Claims.** The Plan provides that any Person, other than a Holder of a Professional Compensation and Reimbursement Claim, seeking payment on account of an Other Administrative Expense Claim (to the extent that such Other Administrative Claim is not barred by the Administrative Claims Bar Date Order) shall file a request for payment of such Other Administrative Expense Claim no later than thirty (30) days after the Confirmation Date. All Other Administrative Expense Claims shall be treated as Administrative Expense Claims as set forth in subparagraph (1) above, or shall be paid on such other terms as may be mutually agreed upon between the Holder of an Allowed Other Administrative Expense Claim and the Disbursing Agent or the Liquidating Trustee, as the case may be. To the extent not covered by the prior Administrative Claim Bar Date Order, the failure to timely file a request for payment of an Other Administrative Expense Claim shall result in the Other Administrative Expense Claim being forever barred and discharged.
- iii. Administrative Claims – Professional Compensation and Reimbursement Claims.** The Plan provides that any Person seeking payment on account of a Professional Compensation and Reimbursement Claim shall file its respective Final Fee Application no later than thirty (30) days after the Confirmation

Date. All Professional Compensation and Reimbursement Claims, to the extent not previously paid, shall be paid in full, in Cash, by the Disbursing Agent from the Disbursing Agent Reserve on the later of: (a) ten (10) Business Days after the Effective Date; or (b) ten (10) Business Days after the date of entry of a Final Order determining and allowing such Claim as an Administrative Expense Claim, or as soon thereafter as is practicable. Failure to file a Final Fee Application shall result in the Professional Compensation and Reimbursement Claim being forever barred and discharged. Professional Compensation and Reimbursement Claims are estimated to be approximately \$1,200,000.00, inclusive of anticipated fees and expenses of all Professionals through the Effective Date.

b. Priority Tax Claims

The Plan provides that each Holder of an Allowed Priority Tax Claim, if any, shall receive Cash in an amount equal to such Allowed Priority Tax Claim on the later of (i) the Effective Date, and (ii) ten (10) Business Days after entry of a Final Order Allowing such Priority Tax Claim, or as soon thereafter as is practicable, but in no event later than thirty (30) days after entry of such Final Order, unless such Holder shall have agreed to different treatment of such Allowed Claim. The asserted Priority Tax Claims are approximately \$40,559.00.

c. Statutory Fees

The Plan provides that all fees pursuant to 28 U.S.C. § 1930 due and payable as of the Effective Date will be paid by the Disbursing Agent on the Effective

Date. All quarterly reports of disbursements required to be filed shall be filed in accordance with applicable bankruptcy law. Any United States Trustee quarterly fees incurred pursuant to 28 U.S.C. § 1930(a)(6) shall continue to be paid from the Liquidating Trust until entry of a final decree, or until conversion or dismissal of the Bankruptcy Case. Any and all fees due and payable after the Effective Date shall be the sole and exclusive liability of the Liquidating Trust.

2. Classified Claims

The following describes the Plan's classification of those Claims against the Debtor required to be classified under the Bankruptcy Code:

a. Class 1

Class 1 shall consist of Allowed Priority Non-Tax Claims. The Debtor believes that it has satisfied substantially all, if not all, of the Priority Non-Tax Claims. Pursuant to Orders of the Bankruptcy Court, the Debtor was authorized to pay the priority unpaid wages, salaries and commissions up to the statutory limits. In connection with the sale of the Debtor's assets to IJKG, LLC, the Debtor assumed and assigned the Collective Bargaining Agreement ("CBA") with the union representing the Debtor's employees. At the time of assumption of the CBA, the Debtor either had cured its defaults under the CBA and satisfied any priority wage, salary and benefit claims arising under the CBA or such claims were assumed by the assignee of the CBA. To the extent there remain any Allowed Priority Non-Tax Claims, such Holder thereof will receive Cash in an amount equal to such Allowed amount of such Claim, without interest, on the later of (a) ten (10) Business Days after the Effective Date; or (b) ten (10) Business Days after the date of entry of a Final Order Allowing such Priority Non-Tax Claim, or as soon thereafter as is practicable. The Allowed Priority Non-Tax Claims are unimpaired. Holders of Allowed

Priority Non-Tax Claims, therefore, are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

b. Class 2

Class 2 consists of the Allowed MTI Secured Claim. Under the Plan, the Holder of the Allowed Class 2 Claim shall be treated in accordance with the Secured Creditor Settlement. The Holder of the Allowed Class 2 Secured Claim shall receive, in full and final satisfaction of its Allowed Class 2 Secured Claim, the Secured Creditor Allocation.

Class 2 is impaired under the Plan.¹³ Therefore, the Holder of the Class 2 Secured Claim is entitled to vote to accept or reject the Plan. Under the Secured Creditor Settlement, the Holder of the Class 2 Claim has agreed to vote in favor of the Plan, which is a Conforming Joint Plan.

c. Class 3

Class 3 shall consist of Allowed Other Secured Claims. In the sole discretion of the Plan Proponents, the Holder of an Allowed Class 3 Other Secured Claim shall be treated in one of the following ways:

- (i) on the Effective Date, the legal, equitable, and contractual rights of each Holder of an Allowed Other Secured Claim shall be reinstated in accordance with the provisions of section 1124(2) of the Bankruptcy Code notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the Holder of an Allowed Other Secured Claim to demand or receive payment of such Allowed Other Secured Claim before the stated maturity of such Allowed Other Secured Claim from and after the occurrence of a default,

¹³ Notwithstanding the designation of the Class 2 Secured Claim as impaired, the Plan Proponents reserve the right to argue that the treatment of the Class 2 Secured Claim renders the Claim unimpaired and, therefore, that the Holder of the Class 2 Secured Claim is conclusively presumed to have accepted the Plan pursuant to 11 U.S.C. § 1126(f). Pursuant to the Secured Creditor Settlement, the Holder of the Class 2 Secured Claim is obligated to vote in favor of the Plan, provided that the Plan is consistent with the terms of the Secured Creditor Settlement.

provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, covenants regarding corporate existence, or covenants prohibiting certain transactions or actions contemplated by the Plan or conditioning such transactions or actions on certain factors, shall not be enforceable as to any breach that occurred on or prior to the Effective Date or any breach determined by reference back to a date preceding the Effective Date;

(ii) on the Effective Date, the Holder of an Allowed Other Secured Claim shall (a) retain a Lien securing such Allowed Other Secured Claim and (b) receive deferred Cash payments from the Liquidating Trust totaling at least the value of such Allowed Other Secured Claim as of the Effective Date;

(iii) on the Effective Date, the collateral securing such Allowed Other Secured Claim shall be surrendered to the Holder of such Allowed Other Secured Claim in full satisfaction of such Allowed Other Secured Claim; or

(iv) the Holder of an Allowed Other Secured Claim shall be paid, in Cash, an amount equal to such Holder's Allowed Other Secured Claim, on the later of (a) ten (10) Business Days after the Effective Date, or (b) ten (10) Business Days after the date of entry of a Final Order allowing such Claim as an Other Secured Claim, or as soon thereafter as is practicable. To the extent the collateral securing an Allowed Other Secured Claim has been or is to be sold pursuant to an Order of the Bankruptcy Court, the amount to be paid to the Holder of such Allowed Other Secured Claim pursuant to the preceding sentence shall be net of the costs of sale of such collateral and otherwise subject to the rights of the Debtor or the Liquidating Trustee pursuant to 11 U.S.C. § 506(c).

The failure to object to any Other Secured Claim in the Chapter 11 Case shall be without prejudice to rights of the Debtor or the trustee of the Liquidating Trust to contest or otherwise defend against such Claim in the Bankruptcy Court when and if such Claim is sought to be enforced by the Holder of such Other Secured Claim.

All pre-petition Liens on property of the Debtor held with respect to an Allowed Class 3 Claim shall survive the Effective Date and continue in accordance with the contractual terms or statutory provisions governing such Claim until such Allowed Claim is paid in full, at which time such Lien shall be released, shall be deemed null and void, and shall be unenforceable for all purposes; provided, however, that the Debtor or the trustee of the Liquidating Trust, as the case may be, may condition delivery of any final payment upon receipt of an executed release of the Lien. Any and all Liens securing any Other Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Except as provided in the Secured Creditor Settlement Agreement, nothing in the Plan precludes the Debtor or the Liquidating Trustee from challenging the validity of any alleged Lien on any asset of the Debtor or the value of the property that secures any alleged Lien.

Class 3 Other Secured Claims are unimpaired and, therefore, are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

Class 3 shall not affect any General Unsecured Claim for any allowed deficiency claim of the holder of an Other Secured Claim.

d. Class 4: General Unsecured Claims

Unsecured Claims are divided into two classes under the Plan. Class 4A shall consist of all Allowed General Unsecured Claims, including claims for damages arising from the rejection of an unexpired lease or executory contract and deficiency claims of Other Secured Creditors. The term “General Unsecured Claim” is defined under the Plan to exclude the MTI Unsecured Claim. The MTI Unsecured Claim is classified in Class 4B. The Allowed Class 4B Claim shall be treated consistent with the

Secured Creditor Settlement. The MTI Secured Creditors were granted an Allowed Unsecured Claim in the amount of \$46,673,886.79, less a dollar for dollar reduction for every dollar received by the MTI Secured Creditors on account of their Allowed Secured Claim (classified in Class 2) and (ii) the Secondary Distribution.

The Plan provides for distribution of the funds that were allocated to the Holders of Allowed General Unsecured Claims under the Secured Creditor Settlement. In general, the Plan provides that all Allowed Class 4A Claims shall be paid pro rata from the first \$3 million of funds available for distribution after payment of administrative expenses and priority claims (the “Primary Distribution”). If funds remain for distribution after the Primary Distribution, any remaining funds up to \$1 million shall be paid to the MTI Secured Creditors as holders of an Allowed Class 4B Claim (the “Secondary Distribution”). If funds remain for distribution after the Secondary Distribution, any remaining funds shall be shared and distributed as follows (the “Final Distribution”): (a) to the extent that the Allowed Class 4B Claim is equal to or exceeds the aggregate of all other allowed Class 4A Claims, all Allowed Class 4A and Allowed Class 4B Claims will share all remaining estate assets 50%/50%; provided, however, that if the amount of the MTI Unsecured Claim is greater than fifty-five percent (55%) of the entire amount of all Allowed General Unsecured Claims, then the distribution allocation to the Allowed Class 4B Claim shall be fifty percent (50%) plus the percentage by which the Allowed General Unsecured Claim of the Master Trustee exceeds fifty-five percent (55%) of the aggregate pool of Allowed General Unsecured Claims. By way of illustration, if the MTI Unsecured Claim represents 60% of the entire amount of all Allowed General Unsecured Claims, then the distribution under this section would be

allocated fifty-five percent (55%) to the Master Trustee and forty-five percent (45%) to the holders of other Allowed General Unsecured Claims; (b) to the extent that the Allowed General Unsecured Claim of the Master Trustee is less than the aggregate of all other Allowed General Unsecured Claims, the Master Trustee and holders of all other Allowed General Unsecured Claims shall share pro rata.

The potential distributions to be provided to holders of Allowed General Unsecured Claims are summarized in the following chart:

	Amount of Distribution	Distribution
Primary Distribution	\$0 - \$3,000,000	Pro Rata to Holders of Allowed Class 4A Claims
Secondary Distribution	\$3,000,001 - \$4,000,000	Allowed Class 4B Claim
Final Distribution	Over \$4,000,000 <u>and</u> Class 4B claim equal to or more than Class 4A claim, but not greater than 55% of all allowed general unsecured claims (4A + 4B)	Share 50/50 between Class 4A and Class 4B
	Over \$4,000,000 <u>and</u> Class 4B claim is greater than 55% of all allowed general unsecured claims (4A + 4B)	Class 4B = 50% + (x-55)% Remainder to Class 4A
	Over \$4,000,000 <u>and</u> Class 4B claim less than Class 4A claim	<i>Pro Rata</i> among all 4A and 4B Claims

Class 4A and Class 4B are impaired, and the Holders of Allowed Class 4A Claims and Allowed Class 4B Claim are entitled to vote to accept or reject this Plan.

E. Means for Execution of the Plan

1. Disbursing Agent and Disbursing Agent Reserve.

The Disbursing Agent shall be appointed for the purpose of receipt and distribution of all funds required to be disbursed to Holders of Allowed Administrative Expense, Other Administrative Expense, Professional Compensation and Reimbursement, Priority Tax and Class 1 Claims, and to pay all fees pursuant to 28

U.S.C. § 1930 due and payable as of the Effective Date (collectively, the “Confirmation Funds”). The Disbursing Agent shall establish an escrow account (the “Disbursing Agent Reserve”) into which the Debtor shall deposit before the Confirmation Hearing an amount of Cash equal to the amount of the Confirmation Funds. To the extent that any Administrative Expense, Other Administrative Expense, Professional Compensation and Reimbursement, Priority Tax, and Class 1 Claims is contingent or unliquidated, the Plan Proponents may estimate the amount of such Claims for purposes of creating the Disbursing Agent Reserve. At least three (3) days before the Confirmation Hearing, each Professional asserting a Professional Compensation and Reimbursement Claim shall serve on the Disbursing Agent an estimate of the maximum amount of compensation and reimbursement of expenses to be asserted in the Chapter 11 Case from the Petition Date through the Effective Date.

2. Establishment of Liquidating Trust

Immediately prior to the Effective Date, the Debtor shall execute the Liquidating Trust Agreement, which shall establish the Liquidating Trust. The Liquidating Trust shall be designated as the Estate representative pursuant to Section 1123(b)(3) of the Bankruptcy Code.

3. Transfer of Assets

On the Effective Date, in accordance with the Confirmation Order, all estate the assets (the “Assets”), except the D&O and Tort Claims, will be irrevocably transferred and assigned to the Liquidating Trust, and will be held in trust for the benefit of all Holders of Allowed Claims pursuant to the terms of the Plan and of the Liquidating Trust Agreement. Except as otherwise provided in the Plan, the Estate’s title to the

Assets will pass to the Liquidating Trust on the Effective Date, free and clear of all Claims and Equity Interests in accordance with section 1141 of the Bankruptcy Code.

On the Effective Date, the D&O and Tort Claims will revert in the Debtor. The Debtor Representative shall be authorized to institute and to prosecute through final judgment or settlement the D&O and Tort Claims. The proceeds of the D&O and Tort Claims shall be transferred to the Liquidating Trust for the benefit of the Holders of Allowed Class 4A and Allowed Class 4B Claims, in accordance with the provisions of this Plan and the Secured Creditor Settlement Agreement.

Notwithstanding the foregoing, the Plan Proponents reserve the right to modify the Plan to exclude certain other assets from transfer to the Liquidating Trust. The Liquidating Trustee will pay, or otherwise make distributions on account of, all Allowed Claims against the Debtor in accordance with the Plan.

4. Effect of Transfer

For federal and applicable state income tax purposes, the transfer of the Assets to the Liquidating Trust will be a disposition of the Assets directly to and for the benefit of the Beneficiaries of the Liquidating Trust in partial satisfaction of their Claims, immediately followed by a deemed contribution of the Assets by the Beneficiaries to the Liquidating Trust. The Beneficiaries will be treated as the grantors and deemed owners of the Liquidating Trust.

5. Appointment of Liquidating Trustee

On the Effective Date, the Liquidating Trustee will be appointed. The Debtor and the Committee have nominated Allen D. Wilen of Amper, Politziner & Mattia as the Liquidating Trustee.

6. Establishment of GUC Account

On the Effective Date or as soon as practicable thereafter, the Liquidating Trustee shall create the GUC Account. The GUC Account shall consist of all Assets belonging to the Liquidation Trust Estate that are not part of the Secured Creditor Allocation. The Liquidating Trustee shall make periodic distributions to Holders of Allowed Class 4A Claims and Allowed Class 4B Claims from the GUC Account in accordance with the Plan.

7. Professionals for the Liquidating Trustee

The Liquidating Trustee may employ professionals in his/her discretion to assist the Liquidating Trustee in discharging the responsibilities described in the Liquidating Trust Agreement. All such professionals retained by the Liquidating Trustee shall be compensated in accordance with the procedures set forth below for compensation of the Liquidating Trustee's professionals. The Liquidating Trustee is authorized to pay the reasonable compensation and expenses incurred by the Liquidating Trustee's professionals in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, in accordance with the procedures set forth in Section 8.8 of the Plan.

8. Establishment of the Reserve

From the GUC Account, the Liquidating Trustee shall create a reserve in an amount sufficient to pay for the post-Effective Date expenses of the Liquidating Trust (including compensation to the Liquidating Trustee and his Professionals and compensation to the respective trustees of the Trusts). In addition, in accordance with the terms of this Plan or the Liquidating Trust Agreement, the Liquidating Trustee may include in the Reserve funds to pay Disputed Claims in the event that all or a portion of

such Claims become Allowed Claims. As a Disputed Claim is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Disputed Claim shall be released from the respective account and shall be distributed in accordance with the terms of this Plan to either (i) the Holder of the Disputed Claim that has become an Allowed Claim, or (ii) if Disallowed, the Holders of Allowed Claims. Consistent with the Plan, the Liquidating Trustee, in its sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Reserve, as appropriate, and upon satisfaction of all Allowed Claims required to be paid from the Reserve, to transfer amounts held therein to the GUC Account.

9. Vesting of Authority in Debtor Representative

Upon the Effective Date, the then-current members of the board of trustees and officers of the Debtor shall be relieved of their positions and corresponding duties and obligations. The Debtor Representative shall be responsible for effectuating transfers of Assets in accordance with this Plan and otherwise satisfying the Debtor's obligations under the terms of this Plan.

On and after the Effective Date, the Debtor Representative shall have full and complete authority to act on behalf of and bind the Debtor without further action or approval of the Bankruptcy Court or the board of trustees of the Debtor. After the D&O and Tort Claims are liquidated and the proceeds are transferred to the Liquidating Trust Estate in accordance with this Plan, the Debtor Representative shall be empowered, but not directed, to effectuate the dissolution of the Debtor in accordance with the laws of the State of New Jersey.

F. Preservation of the Debtor’s Claims, Demands and Causes of Action

All claims, demands and causes of action of any kind or nature whatsoever held by, through or on behalf of the Debtor and/or the Estate against any other Person, including, but not limited to, all Avoidance Actions, arising before the Effective Date and which have not been resolved or disposed of before the Effective Date, are preserved in full for the benefit of the Liquidating Trust, whether or not such claims or causes of action are specifically identified in this Disclosure Statement.

G. The Avoidance Action Recoveries

Pursuant to Chapter 5 of the Bankruptcy Code, a trustee (and a debtor-in-possession) has the authority to avoid certain transfers made by the Debtor prior to or after the petition date and to recover those transfers for the benefit of the bankruptcy estate (the “Avoidance Actions”). Annexed as Exhibit G is a list of transfers from the Debtor which may be subject to avoidance through an Avoidance Action to be commenced after confirmation of the Plan. Any recoveries made in connection with the Avoidance Actions, and all other Liquidation Proceeds, will be deposited into the Liquidating Trust to be disbursed in accordance with the Plan.

H. Procedure for Determination of Claims

1. Disputed Claims

No payment or other distributions will be made to Holders of Claims unless and until such Claims are Allowed Claims pursuant to a Final Order. If a Claim is not an Allowed Claim on the Effective Date or when payment is otherwise due under the Plan, payment of the Allowed Claim will be made when the Claim becomes an Allowed Claim after the Effective Date or as otherwise specifically provided in the Plan. At the time of any payments or other distributions to Holders of Allowed Claims in any Class,

an amount sufficient to have paid each Holder of a Disputed Claim in such Class its Pro Rata share of such distribution, calculated as though such Disputed Claim were an Allowed Claim, shall be reserved for the potential benefit of the Holder of the Disputed Claim, and thereafter distributed as set forth above.

2. Objections to Claims

The Liquidating Trustee shall have the right and standing to (i) object to and contest the allowance of any Disputed Claim, (ii) compromise and settle any objections to Disputed Claims without Bankruptcy Court approval, subject to the notice procedures set forth herein, and (iii) litigate to final resolution objections to Disputed Claims. No distribution shall be made pursuant to the Plan to a Holder of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

All objections to Claims must be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the one hundred eightieth (180th) day after the Effective Date, except as extended by an agreement between the claimant and the Liquidating Trustee, or by order of the Bankruptcy Court upon a motion filed by the Liquidating Trustee. If an objection has not been filed to a proof of Claim within this 180-day period, the Claim to which the proof of Claim relates shall be treated as an Allowed Claim for purposes of distribution under this Plan; provided, however, that if the Holder of the Claim is a debtor under any chapter of the Bankruptcy Code, the deadline shall be thirty (30) days after the Liquidating Trustee obtains relief from stay or other relief that will permit the filing of an objection to such Claim.

3. Resolution of Disputed Claims

If the Holder of a Disputed Claim and the Liquidating Trustee agree to a settlement of such Holder's Disputed Claim where the amount in dispute does not exceed

\$100,000, the Liquidating Trustee shall be authorized to enter into and effectuate such settlement without any further notice or approval of the Bankruptcy Court, and the settled Claim shall be deemed an Allowed Claim. If the Holder of a Disputed Claim and the Liquidating Trustee agree to a settlement of such Holder's Disputed Claim where the amount in dispute exceeds \$100,000, the Liquidating Trustee shall provide notice of the proposed settlement (with a 10-day period to object) to the Persons or Entities on the Post-Effective Date Notice List. If no objection is received within the 10-day period, the settled Claim shall be deemed to be an Allowed Claim, without the need for further review or approval of the Bankruptcy Court or any other party. If an objection to a proposed settlement is received within the 10-day period and such objection cannot otherwise be resolved, then the Liquidating Trustee shall schedule a hearing in the Bankruptcy Court to resolve the objection.

4. Treatment of Contingent Claims

Until such time as a contingent Claim or a contingent portion of a Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a Disputed Claim for all purposes related to distributions under the Plan. The Holder of a contingent Claim will only be entitled to a distribution under the Plan when and if such contingent Claim becomes an Allowed Claim.

I. Termination of the Committee; Creation of PEDCC

On the Effective Date, the Committee shall be dissolved, the retention and employment of the Committee's Professionals shall terminate and the members of the Committee will be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Case, other than for purposes of filing and/or objecting to applications for

final Fee Applications filed in the Chapter 11 Case. On the Effective Date, the Committee shall be replaced by a post-Effective Date official creditors' committee (the "PEDCC"). The PEDCC's sole function and responsibility shall be to advise and instruct the Liquidating Trustee in the performance of the Liquidating Trustee's duties and obligations under the Plan with respect to the liquidation of Assets belonging to the Holders of Allowed Claims in Class 4A and Class 4B of the Plan. The identities of the persons that will serve on the PEDCC as of the Effective Date will be filed with the Court no later than five (5) days before the Confirmation Hearing.

J. Discontinuation of the Debtor's Business

The Debtor shall conduct no business and have no employees after the Effective Date. Upon the Effective Date, the then-current officers and members of the Board of Trustees of the Debtor shall be relieved of their positions and corresponding duties and obligations; provided, however, that the Liquidating Trustee shall be appointed as the representative of the Debtor that is responsible for effectuating transfers of Assets in accordance with this Plan and otherwise satisfying the Debtor's obligations under the terms of this Plan. On and after the Effective Date, the responsible officer shall have full and complete authority to act on behalf of and bind the Debtor without further action or approval of the Bankruptcy Court or the board of trustees of the Debtor. On and after the Effective Date and the transfer of all remaining property of the Estate to the Liquidating Trust Estate in accordance with this Plan, the Debtor will not continue to exist. The Liquidating Trustee shall be empowered, but not directed, to effectuate the dissolution of the Debtor in accordance with the laws of the State of New Jersey.

IV. THE LIQUIDATING TRUSTEE

A. Appointment of the Liquidating Trustee

In the Confirmation Order, the Liquidating Trustee will be appointed to serve without bond pursuant to the terms of the Liquidating Trust Agreement and will be bound to perform as required by the Plan and the Liquidating Trust Agreement.

B. Duties of the Liquidating Trustee

On the Effective Date, the Liquidating Trustee will be the representative of the Estate as that term is used in Bankruptcy Code section 1123(b)(3)(B) and will have the rights and powers provided for in the Bankruptcy Code in addition to any rights and powers granted herein and in the Liquidating Trust Agreement. In his capacity as the representative of the Estate, the Liquidating Trustee will be the successor-in-interest to the Debtor with respect to all claims, actions, and other interests constituting the Liquidation Trust Estate. The Liquidating Trustee will hold all rights, title, and interest in and to the assets of the Liquidating Trust on behalf of the Beneficiaries, and will pay from the Liquidating Trust all ordinary and necessary costs of protecting and preserving the Assets. The Liquidating Trustee will administer the Liquidating Trust, will dispute or otherwise agree to settle claims, will liquidate the Assets of the Liquidating Trust and will make distributions from the Liquidating Trust, all in accordance with the terms of the Plan and the Liquidating Trust Agreement. Unless otherwise excused or exempted from doing so by the Bankruptcy Code, the Liquidating Trustee will abide by all laws, including tax laws and regulations, and will prepare or cause to be prepared all local, state, or federal tax returns, filings, and/or reports that are necessary or appropriate. The Liquidating Trustee also shall have sole and exclusive authority for the retention of Professionals to assist in any manner after the Effective Date.

C. Powers of the Liquidating Trustee

The Liquidating Trustee will have the power to take any and all actions which, in the business judgment of the Liquidating Trustee, are necessary or appropriate to fulfill his obligations under the Plan and Liquidating Trust Agreement. The Liquidating Trustee shall have all of the powers described in the Liquidating Trust Agreement, including, among other things: (a) the power to sell, lease, license, abandon or otherwise dispose of all remaining assets of the Liquidating Trust Estate subject to the terms of the Plan; (b) the power to effect distributions under the Plan to the Holders of Allowed Claims; (c) the authority to pay all costs and expenses of administering the Liquidating Trust Estate after the Effective Date, including the power to employ and compensate Persons or Entities, including Professionals (which may, but need not, include Professionals previously or currently employed in the Chapter 11 Case), reasonably necessary to assist the Liquidating Trustee in the performance of his duties under the Liquidating Trust Agreement and this Plan, and to obtain and pay premiums for insurance and any other powers necessary or incidental thereto; (d) the power to implement the Plan including any other powers necessary or incidental thereto; (e) the authority to settle Disputed Claims, Avoidance Actions, Causes of Action, or disputes as to amounts owing to the Estate; (f) the authority to participate in any post-Effective Date motions to amend or modify the Plan or the Liquidating Trust Agreement, or appeals from the Confirmation Order; (g) the authority to participate in actions to enforce or interpret the Plan; and (h) the power to bind the Liquidation Trust.

All requests for payment of fees and expenses by the Liquidating Trustee and any Professionals employed thereby shall be served (with a 10-day period to object) on the Post-Effective Date Notice List. If no objection is received, by the Liquidating Trustee or

such professional within the 10-day period, the Liquidating Trustee may pay the fees and expenses without the need for further review or approval of the Bankruptcy Court or any other party. If an objection to the payment of fees and expenses incurred by the Liquidating Trustee or professionals employed by the Liquidating Trustee is received within the 10-day period, and such objection cannot otherwise be resolved, the Liquidating Trustee shall schedule a hearing in the Bankruptcy Court to resolve the objection. If an objection is received, the Liquidating Trustee shall timely pay the undisputed portion of the invoice and shall reserve monies in the amount of the disputed portion of the invoice pending such resolution. All fees and expenses of administration of the Liquidating Trust Estate and representation of the Liquidating Trustee shall be paid from the Reserve and the GUC Account, as applicable, after approval as specified above.

The Liquidating Trustee may use the Debtor's existing bank accounts (as of the Effective Date) to the extent possible and desired by the Liquidating Trustee. The Liquidating Trustee may close the Debtor's existing bank accounts, at his discretion, and transfer all amounts therein to one or more accounts, in accordance with the terms of the Plan. The Liquidating Trustee may also invest some or all of the funds that would otherwise be deposited into the accounts established pursuant to the Plan in allowed investments under applicable non-bankruptcy law.

The authority of the Liquidating Trustee will commence as of the Effective Date and will remain and continue in full force and effect until all of the Assets are liquidated in accordance with the Plan, the funds in the Liquidating Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or reports

have been filed with the appropriate state or federal regulatory authorities and the Order closing the Chapter 11 Case is a Final Order.

D. Limitation on Liability of the Liquidating Trustee

Subject to applicable law, the Liquidating Trustee will not be liable for any act he may do or omit to do as Liquidating Trustee under the Plan and the Liquidating Trust Agreement while acting in good faith and in the exercise of his reasonable business judgment; nor will the Liquidating Trustee be liable in any event except for gross negligence, willful fraud or willful misconduct. The foregoing limitation on liability also will apply to any Person (including any professional) employed by the Liquidating Trustee and acting on behalf of the Liquidating Trustee in the fulfillment of the Liquidating Trustee's duties hereunder or under the Liquidating Trust Agreement. The Liquidating Trustee and all Liquidating Trustee Professionals shall also be entitled to indemnification out of the assets of the Liquidating Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits or claims that the Liquidating Trustee may incur or sustain by reason of being or having been a Liquidating Trustee of the Liquidating Trust or for performing any functions incidental to such service; provided, however, that the foregoing shall not relieve the Liquidating Trustee and the Liquidating Trustee's Professionals from liability for bad faith, willful misfeasance, reckless disregard of duty, gross negligence, fraud, self-dealing or breach of fiduciary duty.

E. Termination of the Liquidating Trust Estate

The existence of the Liquidating Trust and the authority of the Liquidating Trustee will commence as of the Effective Date and will remain and continue in full force and effect until all of the Assets are liquidated in accordance with the Plan, the funds in

the Liquidating Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or reports have been filed with the appropriate state or federal regulatory authorities and the Order closing the Chapter 11 Case is a Final Order.

At such time as the Liquidating Trust has been fully administered (i.e., when all things requiring action by the Liquidating Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final Distribution Date, the Liquidating Trustee will file an application for approval of its final report and the entry of the final decree by the Bankruptcy Court.

V. TREATMENT OF EXECUTORY CONTRACTS

A. Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Contracts and unexpired leases of the Debtor will be deemed rejected, other than: (i) Executory Contracts and unexpired leases that were previously assumed, assumed and assigned or rejected by Final Order of the Bankruptcy Court (which contracts will be treated in accordance with such Final Order) and (ii) the D&O Insurance Policies. The Confirmation Order will constitute an order approving: (i) such rejection on the Effective Date; and (ii) assumption of the Debtor's D&O Insurance Policies to the Liquidating Trust Estate on the Effective Date. The Confirmation Order will also constitute a determination that no default by the Debtor exists with respect to any of the D&O Insurance Policies requiring Cure.

B. Rejection Claims Bar Date

All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or unexpired leases under this Plan, if any, must be filed with the Bankruptcy Court within thirty (30) days after the Confirmation Date. Any Claims arising from the rejection of an Executory Contract or unexpired lease under this Plan not filed within

such time will be forever barred from assertion against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trust Estate, the Liquidating Trustee, and their respective property unless otherwise ordered by the Bankruptcy Court or provided in this Plan. All Claims arising from the rejection of any Executory Contract shall be treated as, Class 4A General Unsecured Claims in accordance with the terms of this Plan.

VI. MODIFICATION OF THE PLAN

The Plan and any Exhibits thereto may be modified by the Debtor and the Committee, or the Liquidating Trustee, as applicable, from time to time in accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019. The Plan and any Exhibits thereto may be modified by the Debtor and the Committee at any time before the entry of the Confirmation Order pursuant to section 1127(a) of the Bankruptcy Code; and (ii) after the entry of the Confirmation Order, the Debtor and the Committee, or the Liquidating Trustee, as applicable may, upon Order of the Bankruptcy Court, amend or modify the Plan and any Exhibits thereto, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, by contacting the Debtor's counsel at (973) 535-0500 or by reviewing such document on the internet at <http://www.kcellc.net/bayonne>. The documents annexed to this Disclosure Statement or contained in any modification or

supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

VII. CONDITIONS TO CONFIRMATION AND THE EFFECTIVE DATE

The Plan will become effective on the first Business Day after the Confirmation Order becomes a Final Order (unless the requirement of a Final Order is waived by the Debtor and the Committee). The Liquidating Trustee will file a notice of Effective Date with the Bankruptcy Court as soon as practicable after the Effective Date and shall serve such notice on all parties entitled to notice under Bankruptcy Rule 2002.

A. Conditions to the Occurrence of the Effective Date

The following are conditions precedent to the occurrence of Confirmation and the Effective Date, each of which must be satisfied or waived in writing:

(a) the Confirmation Order, authorizing and directing that the Debtor take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, and other agreements or documents created in connection with the Plan and the transactions contemplated thereby, including, without limitation, the transactions contemplated by the Liquidating Trust Agreement, shall have been entered and become a Final Order (Unless the requirements of a Final Order is waived by the Debtor and the Committee);

(b) the statutory fees owing to the United States Trustee shall have been paid in full;

(c) the Liquidating Trustee has accepted, in writing, the terms of his service and compensation, and such terms and compensation shall have been approved by the Bankruptcy Court in the Confirmation Order;

(d) the Liquidating Trust has been established; and

(e) all other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtor and the Committee or, if waivable, waived by the Person or Persons entitled to the benefit thereof.

B. Effect of Failure of a Condition

If each condition to the Effective Date has not been satisfied or duly waived within thirty (30) days after the Confirmation Date, then (unless the period for satisfaction or waiver of conditions has been extended at the joint option of the Plan Proponents for a period not exceeding sixty (60) days) upon motion by any party in interest, made before the time that each of the conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Plan Proponents or the Liquidating Trustee, as the case may be, before the Bankruptcy Court enters a Final Order granting such motion. If the Confirmation Order is vacated pursuant to Section 13.2 of the Plan, the Plan shall be deemed null and void in all respects, and nothing contained herein shall (A) constitute a waiver or release of any Claims by or against the Debtor or (B) prejudice in any manner the rights of the Debtor or the Committee.

C. Waiver of Conditions

The Debtor and the Committee, jointly and in their sole discretion, may waive any or all of the conditions to Confirmation and the Effective Date, in whole or in part, at any time, without notice or an Order of the Bankruptcy Court. In that event, the Debtor and the Committee will be entitled to render any or all of their performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived, including, but not limited to, the right to perform under any circumstances which would moot any appeal, review, or other challenge of any kind to the Confirmation Order if the Confirmation Order is not stayed pending such appeal, review, or other challenge. The failure to satisfy or to waive any condition may be asserted by the Debtor or the Committee regardless of the circumstances giving rise to failure of such condition to be satisfied (including any action or inaction by the Debtor). The failure of the Debtor or the Committee to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

VIII. RETENTION OF JURISDICTION

Notwithstanding Confirmation of the Plan and the occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction for the purposes set forth in the Plan, including, but not limited to, the following:

(1) To determine the type, Allowance and payment of any Claims upon any objections thereto (or other appropriate proceedings) by the Liquidating Trustee or any other party-in-interest entitled to proceed in that manner;

(2) Except as otherwise limited herein, to recover all assets of the Debtor and property of the Debtor's Estate, wherever located;

(3) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(4) To hear any other matter not inconsistent with the Bankruptcy Code;

(5) To enter a final decree closing the Chapter 11 Case;

(6) To ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(7) To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on or instituted by the Liquidating Trustee after the Effective Date;

(8) To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided herein;

(9) To determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;

(10) To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations,

indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

(11) To adjudicate any adversary proceeding or other proceeding commenced by the Estate, the Committee or the Liquidating Trustee against Pamrapo Savings Bank, S.L.A. and, without limitation, any adversary proceeding or other proceeding which may be commenced against any Person or Entity arising from, related to, or in connection with any avoidance action; the D&O and Tort Claims; claims against third parties (including purchasers of property and professionals hired by the Debtor) relating to the facts and circumstances surrounding the D&O and Tort Claims; and the failed sale of the Debtor's assets to Urban Suburban, LLC;

(12) To adjudicate or resolve disputes concerning the Secured Creditor Settlement or any Claim or right preserved under the Secured Creditor Settlement;

(13) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

(14) To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Claims Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder or for any other purpose.

IX. GENERAL PROVISIONS

A. Settlement of Claims and Controversies; Releases and Injunctions

The provisions of the Plan shall constitute a good faith compromise and settlement of claims or controversies relating to the contractual and legal rights that a Holder of a Claim may have with respect to any Claim, or any distribution to be made on account of such Holder's Allowed Claim.

Except as otherwise provided in the Plan, the Confirmation Order will provide that all persons and entities who have held, hold, or may hold Claims against the Debtor are permanently enjoined, on and after the Confirmation Date, from (A) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, (B) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or Order against the Debtor, the Liquidating Trust or the Liquidating Trustee on account of any such Claim, (C) creating, perfecting or enforcing any encumbrance of any kind against the Debtor or against the property or interests in property of the Debtor on account of any such Claim and (D) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor or against the property or interests in property of the Debtor on account of any such Claim. Such injunction shall extend for the benefit of the Debtor Representative, Liquidating Trustee and any successors of the Debtor, and to any property and interests in property subject to the Plan.

B. Extension of Payment Dates

If any payment date falls due on any day which is not a Business Day, then such due date will be extended to the next Business Day.

C. Notices

Because certain Persons may not desire to continue to receive notices after the Effective Date, this Plan provides for the establishment of a Post-Effective Date Notice List. Persons on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under this Plan (as described herein). Any Person desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Liquidating Trustee and its counsel. On or before sixty (60) days after the Effective Date, the Liquidating Trustee shall compile a list of all Persons on the Post-Effective Date Notice List and file such list with the Bankruptcy Court. Those parties set forth in Section 13.10 of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request. Any notice required or permitted to be provided under the Plan will be in writing and served by regular postage prepaid first class mail, overnight mail, hand-delivery, facsimile or e-mail.

D. Closing of the Case

At such time as the Liquidating Trust has been fully administered (i.e., when all things requiring action by the Liquidating Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final Distribution Date, the Liquidating Trustee will file an application for approval of its final report and the entry of the final decree by the Bankruptcy Court.

E. Interest

Whenever interest is to be computed under the Plan, interest will be simple interest and not compounded. Unless otherwise specifically provided for in the Plan or the Confirmation Order, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim will be entitled to interest accruing on or after the Petition Date on any Claim.

F. Confirmation by Non-Acceptance Method

The Debtor and the Committee will request, if necessary, confirmation of the Plan pursuant to Bankruptcy Code section 1129(b) with respect to any impaired Class of Claims which does not vote to accept the Plan.

G. Severability

The provisions of the Plan shall not be severable unless the Debtor and the Committee agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

H. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey, without giving effect to the principles of conflicts of law of such jurisdiction.

I. No Admissions or Waivers

Notwithstanding anything herein to the contrary, nothing contained in the Plan or in this Disclosure Statement shall be deemed an admission by any entity with respect to any matter set forth herein. If the Plan is not confirmed (or, if confirmed, does not

become effective), no statement contained herein or in the Plan may be used or relied on in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case against the Debtor or the Committee. The Debtor and the Committee further reserve any and all of their rights as against all Persons in the event the Plan is not confirmed.

J. Successors and Assigns

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

K. Rounding of Distribution

Notwithstanding any other provision of the Plan, whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

L. Minimum Distribution

As set forth in the Plan, if the amount of Cash to be distributed to the Holder of an Allowed Claim is less than \$25 on a particular Distribution Date, the Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than \$50. Notwithstanding the preceding sentence, if the amount of Cash distribution to any Holder of an Allowed Claim never aggregates more than \$50, then the Liquidating Trustee shall not be required to distribute Cash to any such Holder.

M. Undeliverable Distributions

Distributions will be delivered to the address of the Holder of such Claim as indicated on the records of the Debtor, or a filed proof of Claim, as applicable. If any Allowed Claim Holder's distribution is returned as undeliverable, no further distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address. Undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a distribution becomes deliverable. In an effort to ensure that all Holders of valid Claims receive their allocated distributions, the Liquidating Trustee will file with the Bankruptcy Court a listing of unclaimed distribution Holders. This list will be maintained and updated as needed for as long as the Chapter 11 Case stays open. Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution within three months after the first attempted delivery shall have its Claim for such undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtor, the Debtor Representative, the Liquidating Trust Estate, the Disbursing Agent Reserve, the Reserve, or the Liquidating Trustee, or their respective property. In such cases, any Cash held for distribution on account of such Claims shall be property of the Liquidating Trust Estate, free of any restrictions thereon, and shall revert to the account from which such payment was originally issued to be distributed pursuant to the Plan. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

Within 20 days after the end of each Quarter following the Effective Date, the Liquidating Trustee shall make all distributions that become deliverable during the

preceding Quarter, except as otherwise provided herein. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind.

N. Setoff and Recoupment Rights Preserved

The Liquidating Trustee may exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made or account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the Holder of such Allowed Claim. Setoff is an equitable right that allows parties to cancel or offset mutual debts to each other by asserting the amounts owed, subtracting one from the other, and paying only the balance. Setoff avoids what has been called the “absurdity of making A pay B when B owes A.”

In the context of the Plan, recoupment is the right of the Liquidating Trustee to have an Allowed Claim reduced by reason of some claim the Debtor or the Liquidating Trust has against the Holder of the Allowed Claim arising out of the very transaction giving rise to the Claim.

Although the Liquidating Trustee has discretion to exercise the right of setoff or recoupment, neither the failure to effect a setoff or recoupment nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Liquidating Trustee of any such claims, rights and causes of action that the Liquidating Trust may possess against such Holder.

O. Payment of Statutory Fees and Filing of Quarterly Reports

All fees payable pursuant to 28 U.S.C. §1930, as determined by the Bankruptcy Court at or in conjunction with the Confirmation Hearing, will be paid on or before the Effective Date and, thereafter, pending entry of a final decree. All quarterly reports of disbursements required to be filed by applicable bankruptcy law will be filed in accordance with applicable bankruptcy law. The United States Trustee will continue to be paid by the Liquidating Trustee until entry of the final order or decree, or upon conversion or dismissal of the Bankruptcy Case.

P. Exculpation

To the extent allowed by Section 1125(e) of the Bankruptcy Code, neither the Debtor nor its officers or trustees, nor the Committee and its members, nor any of the Chapter 11 Professionals, nor the Disbursing Agent will have or incur any liability to any Holder of a Claim or Interest, or any other party-in-interest, Person or Entity or any of their respective agents, employees, representatives, financial advisors, attorneys, affiliates or any of their successors or assigns, for any act or omission occurring after the Petition Date and in connection with, relating to, or arising out of the Chapter 11 Case, formulation, negotiation or implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan except for their bad faith, willful malfeasance, reckless disregard of duty, gross negligence, willful fraud, willful misconduct, self-dealing or breach of fiduciary duty as determined by a Final Order of the Bankruptcy Court.

The Liquidating Trustee will not be liable for any act he may do or omit to do as Liquidating Trustee under the Plan and the Liquidating Trust Agreement while acting in

good faith and in the exercise of his reasonable business judgment; nor will the Liquidating Trustee be liable in any event except for gross negligence, willful fraud or willful misconduct. The foregoing limitation on liability also will apply to any Person (including any Liquidating Trustee Professional) employed by the Liquidating Trustee and acting on behalf of the Liquidating Trustee in the fulfillment of the Liquidating Trustee's duties hereunder or under the Liquidating Trust Agreement. The Liquidating Trustee and all Liquidating Trustee Professionals shall also be entitled to indemnification out of the assets of the Liquidating Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits or claims that the Liquidating Trustee may incur or sustain by reason of being or having been a Liquidating Trustee of the Liquidating Trust or for performing any functions incidental to such service; provided, however, that the foregoing shall not relieve the Liquidating Trustee and the Liquidating Trustee's Professionals from liability for bad faith, willful misfeasance, reckless disregard of duty, gross negligence, fraud, self-dealing or breach of fiduciary duty.

The Liquidating Trust is deemed to release each Person and Entity exculpated under Subsection 12.4 of the Plan from any liability arising from any act or omission occurring after the Petition Date and in connection with, relating to or arising out of the Chapter 11 Case, except as provided herein.

Q. D&O and Tort Claims and Limitations Thereon

Notwithstanding any provision of this Plan or any Order entered in the Case to the contrary, the confirmation of the Plan or the entry of the Confirmation Order shall not release, waive, limit or affect the ability of the Debtor Representative to pursue claims which are "Covered Claims" (as defined herein) under any and all Officers and Directors

Liability Policies issued to the Debtor, including but not limited to that certain Claim Made Insurance Policy Number 966-24-02 (replacing Policy No. 625-40-58) issued by National Union Fire Insurance Company of Pittsburgh, PA/AIG, and any replacement or continuation thereof (hereinafter, collectively, the “D&O Policies,” each a “D&O Policy”). As used herein, the term “Covered Claims” shall mean claims and causes of action which are of the type of claims and causes of action (i) which are covered under a D&O Policy, or (ii) which would be covered under a D&O Policy or otherwise constitute a Claim (as defined in a D&O Policy) or a Loss (as defined in a D&O Policy) under a D&O Policy, even if the insurance carrier that issued the applicable D&O Policy disclaims or denies coverage thereunder because of, among other things, (i) any defense to coverage or payment which the insurance carrier has or may have under the D&O Policy, including, but not limited to, the failure of any Insured to have provided timely notice of such claims, or (ii) other defenses to coverage which the insurance carrier may raise as a result of the non-compliance with, or breach of, the terms, conditions, obligations or limitations of the D&O Policy. No Insured shall be under any obligation to expend personal funds to obtain a determination as to coverage under the D&O Policy (the “Coverage Determination”). However in the event an Insured determines not to seek a Coverage Determination, the Insured shall promptly notify the Debtor Representative of same, and if the Debtor Representative desires, at its sole option and discretion, that the Insured obtain a Coverage Determination, the Insured will cooperate with the Debtor Representative in seeking a Coverage Determination, so long as the Debtor Representative agrees to bear all reasonable expenses to be incurred by such Insured in seeking a Coverage Determination.

R. Right to Revoke Plan Prior to Effective Date.

The Debtor and the Committee reserve the right to revoke or withdraw the Plan prior to the Effective Date and to file subsequent plans of reorganization. If the Plan is withdrawn or revoked, or if confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims, but excepting the settlement embodied in the Secured Creditor Settlement Agreement), assumption or rejection of Executory Contracts or leases affected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against the Debtor or any other person, (ii) prejudice in any manner the Debtor's or any other Person's rights, or (iii) constitute the Debtor's or any other Person's admission of any sort.

X. CERTAIN TAX CONSEQUENCES OF THE PLAN

SUBSTANTIAL UNCERTAINTY EXISTS WITH RESPECT TO THE TAX ISSUES DISCUSSED BELOW. THEREFORE, EACH HOLDER OF A CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL OR OTHER TAX CONSEQUENCES OF THE PLAN. NO RULINGS HAVE BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. ALL CREDITORS ARE URGED TO CAREFULLY REVIEW THE TAX DISCLOSURE PROVIDED HEREIN.

The Liquidating Trust Agreement will conform to the guidelines set forth by the IRS regarding grantor trusts. The Liquidating Trust should be treated as a grantor trust if

it is operated in accordance with the Liquidating Trust Agreement. A grantor trust generally is disregarded for federal and state income tax purposes. Claimants having an interest in a grantor trust are treated as directly owning the assets of the trust and are required to report their proportionate share of its gain, loss, income, and deduction (without regard to the timing of distributions from the trust).

It is uncertain how the grantor trust rules would apply to the extent it is unknown which claimants ultimately will receive distributions from the Liquidating Trust.

Because the Liquidating Trust should be recognized as a grantor/liquidating trust and the Beneficiaries are its grantors, the Beneficiaries will be taxed on the Liquidating Trust's income under the grantor trust rules. Assets held by the Liquidating Trusts will be treated as if they had been disbursed to the Beneficiaries in satisfaction of their Claims under the Plan and immediately thereafter transferred by the Beneficiaries to the Liquidating Trust. The Beneficiaries will be treated as owning the assets held by the Liquidating Trustee in order to accomplish the orderly liquidation of the Assets. The Beneficiaries will be taxed currently on any income realized by the Liquidating Trust without regard to whether the Beneficiaries actually receive a distribution from the Liquidating Trust. The Liquidating Trustee will file a tax return reporting the income and will give each of the Beneficiaries, as beneficiaries, an appropriate tax statement indicating the Beneficiary's share of the income of the Liquidating Trust. The IRS will then collect taxes on the post-Effective Date income, if any, of the assets held by the Liquidating Trust from the Beneficiaries.

It is possible that the IRS may treat the Liquidating Trust as one or more complex trusts taxable under IRC Section 641, in which event the tax features of the Liquidating

Trust would be different from those stated above, including, among other things, potentially a tax on the Liquidating Trust itself as well as a tax on the Beneficiaries.

In all events, the Liquidating Trustee will be responsible for preparing and filing the tax returns and for paying the tax liability of the Liquidating Trust, if any, out of the Liquidating Trust's assets.

THE FOREGOING IS A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN COULD BE COMPLEX AND, IN MANY AREAS, UNCERTAIN. THEREFORE, EACH HOLDER OF A CLAIM IS STRONGLY URGED NOT TO RELY ON THE FOREGOING AND TO CONSULT HIS OR HER OWN TAX ADVISOR REGARDING SUCH CONSEQUENCES.

XI. RECOMMENDATION AND CONCLUSION

The Debtor and the Committee believe the Plan provides the best available alternative for maximizing the recoveries that Creditors may receive from the Estate. Therefore, the Debtor and the Committee recommend that all Creditors that are entitled to vote on the Plan vote to accept the Plan.

**BAYONNE MEDICAL CENTER
Debtor and Debtor-in-Possession**

By: */S/ Ruth Dugan*

Ruth Dugan
Chair, Board of Trustees

Dated: February 23, 2009

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
BAYONNE MEDICAL CENTER**

By: */S/ Mickey McCabe*

H. Mickey McCabe, Chair

Dated: February 23, 2009

Exhibit A
(First Amended Joint Plan)

Exhibit B

*(Order Approving Disclosure Statement and Fixing
Time for Filing Acceptances or Rejections of First
Amended Joint Plan)*

Exhibit C

(Summary of Financial Operations)

Exhibit D

(Liquidation Analysis)

Exhibit E

(Proposed form of Liquidating Trust Agreement)

Exhibit F

(Known Administrative Expense Claims)

Exhibit G

*(Potential Avoidable Transfers
To be filed prior to Confirmation)*

Exhibit C

(Financial Summary of Post-Petition Operations)

Bayonne Medical Center
Summary of Post-Petition Operations¹
Estimated and Unaudited Statements of Operations (in thousands)

	April 16, 2007 through May 31, 2007	June 2007	July 2007	August 2007	September 2007	October 2007	November 2007
Revenues	10,173	7,228	7,427	6,897	5,961	7,024	6,208
Operating Expenses	14,395	10,081	9,513	8,981	7,888	9,154	8,146
Other Income and Expenses	637	310	379	417	344	368	366
Reorganizing Items	225	488	865	553	587	1,210	582
Net Profit	(5,084)	(3,651)	(3,330)	(3,054)	(2,858)	(3,708)	(2,886)

	December 2007	January 2008	February 2008	March 2008	April 2008	May 2008	June 2008
Revenues	6,455	8,161	---	---	---	---	---
Operating Expenses	8,509	9,298	3,175	246	190	3	7
Other Income and Expenses	427	35	874	(10)	(4)	(7)	(43)
Reorganizing Items	284	695	1,206	280	269	248	381
Net Profit	(2,765)	(1,867)	(5,255)	(516)	(455)	(244)	(345)

¹ The Debtor operated a hospital business from April 16, 2007 through February 1, 2008. This exhibit is an unaudited estimate of the Debtor's Operating Costs and Expenses from April 2007 through December 2008 that is subject to revision and modification by the Debtor. Operating information for January 2008 is not available at this time.

	July 2008	August 2008	September 2008	October 2008	November 2008	December 2008	TOTAL
Revenues	96	283	221	322	110	73	66,639
Operating Expenses	3	35	3	10	3	3	89,643
Other Income and Expenses	(35)	(37)	(33)	(100)	(22)	(14)	3,852
Reorganization Items	257	222	196	343	678	320	9,889
Net Profit	(129)	63	55	69	(549)	(236)	(36,745)

Exhibit D

(Liquidation Analysis)

**Bayonne Medical Center
Liquidation Analysis**
(unaudited)

	Estimated Balance Sheet 12/31/2008	Estimated Liquidation Value 12/31/2008
<u>Current Assets:</u>		
Cash & cash equivalents	4,346,684	4,346,684
Avoidance Actions	N/A	400,000
<u>Total Current Assets</u>	4,346,684	4,746,684
<u>Fixed Assets:</u>		
Real Property [†]	1,500,000	--
<u>Other Assets:</u>		
Pamrapo Litigation		Unknown
Fortis Litigation		Unknown
D&O Litigation		Unknown
<u>Total Assets Available for Liquidation</u>	\$ 5,846,684	\$ 4,746,684
<u>Liabilities:</u>		
Net funds available for Chapter 7 Administrative expenses		4,746,684
Estimated Chapter 7 Administrative expenses 2074292		(500,000)
Estimated funds available for Chapter 11 Administrative expenses		4,246,684
Estimated Chapter 11 Administrative expenses		(3,675,000)
Estimated funds available for distribution to Administrative Priority claims		571,684
Estimated Administrative Priority Claims		(3,543,959)
Estimated available funds for distribution to unsecured creditors (Unsecured Creditors claim is \$53.3 million)		\$ (2,972,275)
Estimated percentage distribution		\$ (0.06)

- 1) Property is subject to a contested mortgage in the amount of \$2MM held by Pamrapo Savings Bank SLA. If Pamrapo prevails, it is not anticipated that there will be any value in the Real Property over and above Pamrapo's claim.

EXHIBIT E

(Form of Liquidating Trust Agreement)

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (“Liquidating Trust Agreement” or “Agreement”), dated as of _____, 2009, by and among Bayonne Medical Center, debtor and debtor in possession (the “Debtor”), and Allen D. Wilen, not individually but solely in his capacity as trustee hereunder (the “Liquidating Trustee” or “Trustee”) is hereby being executed to facilitate the implementation of the Joint Plan of Liquidation of Bayonne Medical Center (as amended, modified or supplemented, the “Plan”), which provides for the establishment of the Liquidating Trust (as defined below) created by this Liquidating Trust Agreement, and the administration and disposition of the Liquidating Trust Assets (as defined below), all for the benefit of the holders of certain Claims as set forth in the Plan. The Liquidating Trustee’s powers and duties are as set forth herein.

WHEREAS, on April 16, 2007 (the “Petition Date”), the Debtor commenced its reorganization case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code;

WHEREAS, under Section 1121 of the Bankruptcy Code, the Debtor and the Official Committee of Unsecured Creditors jointly filed the Plan;

WHEREAS, on _____, 2009, the United States Bankruptcy Court for the District of New Jersey entered an order confirming the Plan (the “Confirmation Order”);

WHEREAS, the Plan will become effective on the Effective Date (as defined in the Plan);

WHEREAS, Allen D. Wilen of Amper, Politziner & Mattia, LLP is hereby being appointed Liquidating Trustee;

[WHEREAS, a Post-Effective Date official creditor’s committee (“PEDCC”), with the powers set forth in the Plan, has been duly appointed, presently consisting of the individuals identified on Schedule 1 hereto.]

WHEREAS, the Plan provides, inter alia, for:

- (a) the transfer to the Liquidating Trust, on the Effective Date, of all of the Debtor’s right, title and interest in (i) all Cash; (ii) all Avoidance Actions; (iii) all inventory; (iv) all patents, licenses and intangibles; (v) all accounts receivable and any other amounts owed to the Debtor, whether due prior or subsequent to the Petition Date; (vi) any other rights, privileges, deferred taxes, claims, causes of action or defenses, or any proceeds thereof, whether arising by statute or common law, and whether arising under the laws of the United States, other countries, or applicable state or local law; and (vii) all of the Debtor’s books and records. (collectively, the “Liquidating Trust Assets”), all as more particularly described on Schedule 2 hereto (which Schedule 2 shall be updated to include any such Liquidating Trust Assets that may be transferred to the Debtor or the Estate after the execution of this Agreement);

- (b) the distribution of proceeds of the Liquidating Trust Assets, in accordance with the terms of the Plan, for the benefit of those holders of Allowed Claims on whose behalf such distribution may be made in accordance with the terms of the Plan (collectively, the “Beneficiaries”);
- (c) federal income tax purposes, (i) the Beneficiaries are to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets and (ii) the Debtor is to treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as a deemed transfer to the Beneficiaries followed by a deemed transfer by the Beneficiaries to the Liquidating Trust;
- (d) the establishment of the GUC Account in an amount sufficient to pay for the post-Effective Date expenses of the Liquidating Trust (including compensation to the Liquidating Trustee and his Professionals and compensation to the respective trustees of the Trusts) and Reserve funds to pay Disputed Claims in the event that all or a portion of such Claims become Allowed Claims; and
- (e) the administration of the Liquidating Trust and the Liquidating Trust Assets by the Liquidating Trustee for the purposes and in the manner set forth in this Liquidating Trust Agreement;

WHEREAS, the Liquidating Trust is intended to be treated as a liquidating trust pursuant to Treasury Regulations, Sec. 301.7701-4(d), and as a grantor trust subject to the provisions of Subtitle A, Chapter 1, Subchapter J, Part 1, Subpart E of the Tax Code (hereinafter defined) owned by the Beneficiaries as grantors.

WHEREAS, unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan;

NOW, THEREFORE, pursuant to the Plan and in consideration of the premises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

ARTICLE 1

DECLARATION OF TRUST

1.1 Purpose of the Liquidating Trust. The Debtor and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, applicable tax statutes, rules and regulations, to the extent incorporated in this Agreement, hereby constitute and create a trust (the “Liquidating Trust”) for the purpose of winding down certain affairs of the Debtor and liquidating the Liquidating Trust Assets for the benefit of the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidating Trust, through the Liquidating Trustee, shall (i) pending the reduction to Cash of the Liquidating Trust Assets (and any non-Cash proceeds thereof), manage, and

collect and obtain proceeds from, the Liquidating Trust Assets, with the goal of reducing the Liquidating Trust Assets (and any non-Cash proceeds thereof) to Cash, (ii) make distributions pursuant to this Agreement, the Plan and the Confirmation Order, and (iii) take such steps as are reasonably necessary to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Agreement. The Liquidating Trust shall not have authority to engage in a trade or business, and no portions of the Liquidating Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the Liquidating Trust Assets (and any non-Cash proceeds thereof), with the goal of maximizing such assets for the benefit of the Beneficiaries.

1.2 Name of the Liquidating Trust. The Liquidating Trust established hereby shall be known as the “Bayonne Medical Center Liquidating Trust”. In connection with the exercise of its powers, the Liquidating Trustee may use such name or such variation thereof as it sees fit, and may transact the business and affairs of the Liquidating Trust in such name.

1.3 Transfer of Assets to Create Liquidating Trust. Debtor and the Estate hereby irrevocably grant, release, assign, transfer, convey and deliver the Liquidating Trust Assets to the Liquidating Trust, as of the Effective Date, to have and to hold unto the Liquidating Trustee and his successors in trust and to be applied as specified in the Plan and this Agreement. Upon such transfer of the Liquidating Trust Assets, and receipt of such required approvals, except as may otherwise be provided herein or in the Plan, the Debtor shall retain no interest in such Liquidating Trust Assets. On the Effective Date and from time to time, the Debtor shall execute and deliver or cause to be executed and delivered to or upon the order of the Liquidating Trustee any and all such documents, in recordable form where necessary or appropriate, and the Debtor shall take or cause to be taken such further or other action, as the Liquidating Trustee may reasonably deem appropriate, to vest or perfect in or confirm to the Liquidating Trustee, title to and possession of all of the Liquidating Trust Assets. In connection herewith, the Liquidating Trustee shall be responsible for establishing and maintaining such accounts as the Liquidating Trustee shall deem necessary and appropriate to carry out the provisions of this Liquidating Trust Agreement, and to perform all obligations specified for the Liquidating Trust Trustee under the Plan, the Confirmation Order and this Liquidating Trust Agreement.

1.4 Acceptance by Liquidating Trustee. The Liquidating Trustee hereby accepts (a) the appointment to serve as Liquidating Trustee; (b) the transfer of the Liquidating Trust Assets on behalf of the Liquidating Trust; and (c) the trust imposed on him by this Liquidating Trust Agreement. The Liquidating Trustee agrees to receive, hold, administer and distribute the Liquidating Trust Assets and the income or other proceeds derived therefrom, if any, pursuant to the terms of the Plan, the Confirmation Order and this Agreement. The Liquidating Trustee agrees to accomplish all activities reasonably necessary to ensure the transfer of the Liquidating Trust Assets to the Liquidating Trustee on behalf of the Liquidating Trust.

ARTICLE 2

LIQUIDATING TRUSTEE - GENERALLY

2.1 Appointment. The initial Liquidating Trustee shall be Allen D. Wilen.

2.2 Term of Service. The Liquidating Trustee shall serve until (a) the termination of the Liquidating Trust in accordance with Article 9 of this Agreement, or (b) the Liquidating Trustee's resignation, death, or removal, all in accordance with the provisions hereof.

2.3 Services. The Liquidating Trustee shall be entitled to engage in such other activities as he deems appropriate that are not in conflict with the Plan, this Agreement, the Liquidating Trust or the interests of the Beneficiaries. The Liquidating Trustee shall devote such time as is necessary to fulfill all of his duties as Liquidating Trustee.

2.4 Resignation, Death or Removal Liquidating Trustee. The Liquidating Trustee may resign at any time upon ninety (90) days' written notice to the PEDCC. Such resignation may become effective prior to the expiration of such ninety (90) day notice period upon the appointment of a permanent or interim successor Liquidating Trustee. The Liquidating Trustee may be removed by the Bankruptcy Court upon application for good cause shown, which application may be brought by any two members of the PEDCC or any other party in interest. In event the Liquidating Trustee position becomes vacant, the vacancy shall be filled by the Bankruptcy Court upon submissions from any interested party or parties. Upon appointment pursuant to this Section 2.4, and upon the execution of an instrument accepting the appointment and delivering said acceptance instrument to the Bankruptcy Court, the successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

2.5 Trust Continuance. The death, resignation or removal of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency (other than any agency of such Liquidating Trustee as a Liquidating Trustee) created pursuant to this Liquidating Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the successor Liquidating Trustee agrees that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee and all its heirs and legal and personal representatives, successors or assigns.

2.6 Compensation and Expenses of Liquidating Trustee. The Liquidating Trustee shall be entitled to receive reimbursement of reasonable, actual and necessary costs, fees (including attorneys' fees) and expenses incurred by the Liquidating Trustee in connection with the performance of his duties hereunder, and compensation on the following schedule:

[To be provided ?]

2.7 Retention of Professionals. The Liquidating Trustee may retain and engage such attorneys, accountants and other professionals and persons as may be necessary to carry out his duties under this Agreement, including any law firm of which any successor Liquidating Trustee is a partner or otherwise affiliated from time to time. The fees and expenses of all such professionals shall be borne exclusively by the Liquidating Trust, and such professionals may be compensated monthly upon submission of invoices to the Liquidating Trustee and counsel for the PEDCC. All requests for payment of fees and expenses by the Liquidating Trustee and any professionals employed thereby shall be served (with a 10-day period to object) on the Post-Effective Date Notice List. If no objection is received, by the Liquidating Trustee or such Professional within the 10-day period, the Liquidating Trustee may pay the fees and expenses

without the need for further review or approval of the Bankruptcy Court or any other party. If an objection to the payment of fees and expenses incurred by the Liquidating Trustee or professionals employed by the Liquidating Trustee is received within the 10-day period, and such objection cannot otherwise be resolved, the Liquidating Trustee shall schedule a hearing in the Bankruptcy Court to resolve the objection. If an objection is received, the Liquidating Trustee shall timely pay the undisputed portion of the invoice and shall reserve monies in the amount of the disputed portion of the invoice pending such resolution. All fees and expenses of administration of the Liquidating Trust Estate and representation of the Liquidating Trustee shall be paid from the Reserve and the GUC Account, as applicable, after approval as specified above.

2.8 Court Approval for Payment. The foregoing paragraphs 2.6 and 2.7 notwithstanding, the Liquidating Trustee may seek Bankruptcy Court authorization before the payment of any fees to the Liquidating Trustee or professionals.

2.9 Liquidating Trustee as Successor in Interest to the Debtor and Committee. The Liquidating Trustee is the successor in interest to the Debtor and the Committee, and thus, after the Effective Date, to the extent the Plan requires an action by the Debtor, the action shall be taken by the Liquidating Trustee on behalf of the Debtor and the Creditors' Committee, as applicable. The Liquidating Trustee may not materially amend or alter the terms and provisions of this Plan. The Liquidating Trustee shall succeed to all of the Debtor's rights under the Debtor's insurance policies. To the extent that a Claim has been tendered to an insurance provider prior to the Effective Date, no further action shall be required by the Liquidating Trustee to continue the matter. To the extent that a Claim has not been tendered to an insurance provider prior to the Effective Date, the Liquidating Trustee shall have the right to tender such Claim.

ARTICLE 3

POWERS AND LIMITATIONS OF LIQUIDATING TRUSTEE

3.1 General Powers of Liquidating Trustee. In connection with the administration of the Liquidating Trust, except as otherwise set forth herein, the Liquidating Trustee is authorized to perform only those acts necessary and desirable to accomplish the purposes of the Liquidating Trust. The Liquidating Trust shall succeed to all of the rights of the Debtor necessary to protect, conserve and liquidate all Liquidating Trust Assets as quickly as reasonably practicable consistent with the purposes of the Liquidating Trust. Subject to the limitations set forth in this Agreement, the Plan and the Confirmation Order, and in addition to any powers and authority conferred by law, by the Plan and the Confirmation Order, or by any other section or provision of this Agreement, the Liquidating Trustee may exercise all powers granted him hereunder related to, or in connection with, the administration and liquidation of Liquidating Trust Assets, and distribution of cash flow and other net proceeds derived therefrom to the PEDCC for the benefit of the Beneficiaries in accordance with this Agreement, the Plan and the Confirmation Order. Without limiting, but subject to, the foregoing, the Liquidating Trustee shall be expressly authorized:

(a) To sell, lease, license, abandon or otherwise dispose of all remaining assets of the Liquidating Trust Estate subject to the terms of the Plan.

(b) To effect distributions under the Plan to the Holders of Allowed Claims.

(c) To pay all costs and expenses of administering the Liquidating Trust Estate after the Effective Date, including the power to employ and compensate Persons to assist the Liquidating Trustee in carrying out the duties hereunder, and to obtain and pay premiums for insurance and any other powers necessary or incidental thereto.

(d) To implement the Plan including any other powers necessary or incidental thereto.

(e) To settle Disputed Claims, Avoidance Actions, Causes of Action, or disputes as to amounts owing to the Estate.

(f) To participate in any post-Effective Date motions to amend or modify the Plan or this Liquidating Trust Agreement, or appeals from the Confirmation Order.

(g) To participate in actions to enforce or interpret the Plan.

(h) To bind the Liquidating Trust.

(i) To open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make distributions and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Liquidating Trust.

(j) To receive, conserve and manage the Liquidating Trust Assets.

(k) To hold legal title to any and all Liquidating Trust Assets.

(l) To establish, fund and administer the Reserve in accordance with and pursuant to the Plan, the Confirmation Order and this Agreement.

(m) To enter into contracts and other business arrangements.

(n) To represent the Liquidating Trust before governmental and other regulatory bodies.

(o) Subject to the applicable provisions of the Plan, to collect and liquidate the Liquidating Trust Assets pursuant to the Plan.

(p) To remove Liquidating Trust Assets or the situs of administration of the Liquidating Trust from one jurisdiction to another at any time or from time to time.

(q) To make decisions regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trust and to pay, from the Reserve, the fees and charges incurred by the Liquidating Trust on or after the Effective Date for fees of

professionals, disbursements, expenses or related support services relating to the implementation of this Agreement, without application to the Bankruptcy Court

(r) To pay all lawful, expenses, debts, charges and liabilities of the Liquidating Trust.

(s) To withhold from the amount distributable to any Person such amount as may be sufficient to pay any tax or other charge that the Trustee has determined, in his sole discretion, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof. In the exercise of his discretion and judgment, the Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions of this section.

(t) To enter into any agreement or execute any document required by or consistent with the Plan and the purposes of the Liquidating Trust and perform all obligations thereunder.

(u) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of his choice, any assets if he concludes that they are of no benefit to the Liquidating Trust.

(v) If any performance under this Agreement by the Liquidating Trustee is subject to the laws of any state or other jurisdiction in which the Liquidating Trustee is not qualified to act as trustee, to nominate and appoint a Person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee that security as designated by the Liquidating Trustee; confer upon such trustee any and all of the rights, powers, privileges and duties of Liquidating Trustee, subject to the conditions and limitations of this Agreement and applicable law; require such trustee to be answerable to the Liquidating Trustee for all monies, assets and other property that may be received in connection with the administration of all property; and remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the other Liquidating Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(w) To invest Cash as deemed appropriate by the Liquidating Trustee (in consultation with the PEDCC) in Cash equivalents; provided, however, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a "liquidating trust", within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

(x) To hold title to any investment in his name as Liquidating Trustee or in a nominee name.

(y) To collect amounts due, and to exercise all voting and other rights (including, without limitation, any foreclosure or similar rights) under or attendant to any notes, accounts receivable, general partnership interests, limited partnership interests, stock holdings,

settlement agreements or other contracts or contract rights or other assets comprising Liquidating Trust Assets or proceeds thereof.

(z) To sue and be sued.

(aa) To delegate any or all of the discretionary power and authority herein conferred at any time with respect to any portion of the Liquidating Trust Assets or other powers enumerated herein to any one or more reputable individuals or recognized institutional advisors or investment managers or consultants without any liability for any action taken or omission made because of such delegation, except for liability specifically provided for in this Liquidating Trust Agreement.

(bb) To take all other actions consistent with the provisions of this Agreement, the Plan and the Confirmation Order that the Liquidating Trustee deems reasonably necessary or desirable to administer the Liquidation Trust for the purpose thereof.

3.2 Limitations on the Liquidating Trustee. Anything in this Trust Agreement to the contrary notwithstanding, the Liquidating Trustee shall not do or undertake any of the following:

(a) Take any action in contravention of the Plan, the Confirmation Order or this Agreement.

(b) Take any action that would significantly jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(c) Lend any Liquidating Trust Assets to the Liquidating Trustee.

(d) Purchase Liquidating Trust Assets from the Liquidating Trust.

(e) Transfer Liquidating Trust Assets to another trust with respect to which the Liquidating Trustee serves as trustee.

(f) Grant liens on any of the Liquidating Trust Assets,

(g) Guaranty any debt incurred by any third party.

3.3 Liquidating Trustee Conflicts of Interest. If the Liquidating Trustee determines, in the exercise of the Liquidating Trustee’s discretion, that he has a material conflict of interest with respect to any matter, the PEDCC may exercise the Liquidating Trustee’s rights and authorities with respect to such matter. If neither the Liquidating Trustee nor the PEDCC is able to act on behalf of the Liquidating Trust with respect to any particular matter, the Liquidating Trustee, after notice to the United States Trustee, may request the Bankruptcy Court to approve the Liquidating Trustee’s choice of a designee to act on behalf of the Liquidating Trust solely with respect to such matter, with such designee’s authority to act on behalf of the Liquidating Trust to terminate upon the matter’s conclusion.

ARTICLE 4

LIABILITY OF LIQUIDATING TRUSTEE

4.1 Trustee Standard of Care; Exculpation; Limitation on Liability. Neither the Liquidating Trustee, nor any partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee shall be personally liable for any act or omission in connection with affairs of the Liquidating Trust to any Beneficiary of the Liquidating Trust, the Liquidating Trust, or any other Person, except for such of the Liquidating Trustee's acts or omissions as shall constitute fraud, willful misconduct, gross negligence, willful disregard of their duties, or material breach of the Plan or this Agreement. Persons dealing with the Liquidating Trustee, or seeking to assert claims against the Liquidating Trustee, shall have recourse only to the Liquidating Trust Assets (excluding any fund to pay administrative costs) to satisfy any liability incurred by the Liquidating Trustee to such persons in carrying out the terms of this Agreement.

4.2 Indemnification. Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustee and any partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee shall be defended, held harmless and indemnified from time to time by the Liquidating Trust against any and all losses, claims, damages, taxes, suits, costs, expenses (including attorney's fees and disbursements) and liabilities to which such indemnified parties may be subject by reason of such indemnified party's execution in good faith and in a manner that the Person reasonably believed to be consistent with the terms of the Plan and this Agreement of its duties pursuant to the discretion, power and authority conferred on such Person by this Agreement, the Plan or the Confirmation Order; provided, however, that the indemnification obligations arising pursuant to this section shall indemnify neither the Liquidating Trustee nor any partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee for any actions taken by such indemnified parties that constitute bad faith, willful misfeasance, reckless disregard of duty, gross negligence, fraud, self-dealing or breach of fiduciary duty. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this section shall be payable only from the Liquidating Trust Assets and such right to payment shall be prior and superior to any other rights to receive on behalf of Beneficiary any distribution of Liquidating Trust Assets or proceeds thereof.

4.3 Bond. The Liquidating Trustee shall not be obligated to give any bond or surety for the performance of any of his duties, unless otherwise ordered by the Bankruptcy Court; if so ordered, all costs and expenses of procuring a bond shall be deemed expenses of the Liquidating Trust.

4.4 No Liability for Acts of Predecessor Liquidating Trustees. No successor Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidating Trustee unless a successor Liquidating Trustee expressly assumes such responsibility.

4.5 Reliance by Liquidating Trustee on Documents, Mistake of Fact or Advice of Counsel. Except as may be otherwise provided in this Agreement, the Liquidating Trustee may

rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee to be genuine and to have been presented by an authorized party. Also, the Liquidating Trustee shall not be liable if he acts based on a mistake of fact before having actual knowledge of an event. The Liquidating Trustee shall not be liable for any action taken or suffered by the Liquidating Trustee in reasonably relying upon the advice of counsel or other professionals engaged by the Liquidating Trustee in accordance with this Agreement.

4.6 Insurance. The Liquidating Trustee may purchase errors and omissions insurance with regard to any liabilities, losses, damages, claims, costs and expenses he may incur, including but not limited to attorneys' fees, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its gross negligence or willful misconduct, with respect to the implementation and administration of the Liquidating Trust and this Agreement.

ARTICLE 5

DUTIES OF LIQUIDATING TRUSTEE

5.1 General. The Liquidating Trustee shall have all duties specified in the Plan, the Confirmation Order and this Agreement.

5.2 Books and Records. The Liquidating Trustee shall maintain in respect of the Liquidating Trust books and records relating to the Liquidating Trust Assets and income and proceeds realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in such detail and for such period of time as may be necessary to enable him to make full and proper reports in respect thereof. Except as expressly provided in this Agreement, the Plan or the Confirmation Order, nothing in this Agreement is intended to require the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets or proceeds therefrom.

5.3 Final Accounting of Liquidating Trustee. The Liquidating Trustee shall within sixty (60) days after the termination of the Liquidating Trust or his resignation, removal, liquidation or death (in which case, the obligation contained in this section shall pass to the Liquidating Trustee's estate), render a final accounting containing at least the following information:

- (a) A description of the Liquidating Trust Assets.
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during the Liquidating Trustee's term of service, including their source and nature.
- (c) Separate entries for all receipts of principal, income or other proceeds.

(d) The ending balance of all Liquidating Trust Assets (including any proceeds thereof) as of the date of the Liquidating Trustee's accounting, including the Cash balance on hand and the name and location of the depository where it is kept.

(e) All known liabilities owed by the Liquidating Trust.

The final accounting shall be presented to the Bankruptcy Court for approval, and the PEDCC shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and the discharge of the Liquidating Trustee.

5.4 Establishment of the GUC Account; Reserve.

(a) On the Effective Date or as soon as practicable thereafter, the Liquidating Trustee shall create the GUC Account. The GUC Account shall consist of all Assets belonging to the Liquidating Trust Estate that are not part of the Secured Creditor Allocation. The Liquidating Trustee shall make the initial distribution to Holders of Allowed Class 4A Claims and, if sufficient funds exist, to Holders of Allowed Class 4B Claims, on the first Business Day which is thirty (30) days after the Effective Date or as soon as practical thereafter. The Liquidating Trustee shall make additional distributions to Holders of Allowed Class 4A Claims and Allowed Class 4B Claims in the exercise of his sound discretion, based on the amount of Liquidation Proceeds on hand, whether there remain any unpaid Administrative Expense Claims or Priority Claims and the amount of General Unsecured Claims that are Allowed at the time.

(b) The Liquidating Trustee shall create from the GUC Account a reserve in an amount sufficient to pay for the post-Effective Date expenses of the Liquidating Trust (including compensation to the Liquidating Trustee and his Professionals). In addition, in accordance with the terms of the Plan or the Liquidating Trust Agreement, the Liquidating Trustee may include in the Reserve funds to pay Disputed Claims in the event that all or a portion of such Claims become Allowed Claims. As a Disputed Claim is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Disputed Claim shall be released from the respective account and shall be distributed in accordance with the terms of the Plan to either (i) the Holder of the Disputed Claim that has become an Allowed Claim, or (ii) if Disallowed, the Holders of Allowed Claims. Consistent with the Plan, the Liquidating Trustee, in its sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Reserve, as appropriate, and upon satisfaction of all Allowed Claims required to be paid from the Reserve, to transfer amounts held therein to the GUC Account.

5.5 Consultation with the PEDCC. The Liquidating Trustee shall consult with the PEDCC concerning all aspects of the administration of the Liquidating Trust. The Liquidating Trustee shall use his best efforts to obtain the consent of the PEDCC with respect to any sale, refinancing or other disposition of all or a portion of any Liquidating Trust Assets (or non-Cash proceeds thereof). In the event that the PEDCC does not consent to a proposed sale, refinancing or other disposition of all or a portion of such Liquidating Trust Assets (or non-Cash proceeds thereof), the Liquidating Trustee shall apply to the Bankruptcy Court, on written notice to counsel for the PEDCC for authority to enter into the proposed transaction. With respect to any

such application, the Liquidating Trustee will have the burden of demonstrating to the Court that the proposed action is in the best interest of the beneficiaries of the Liquidating Trust.

ARTICLE 6

BENEFICIARIES

6.1 Effect of Death, Incapacity or Bankruptcy of Beneficiary. The death, incapacity or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Liquidating Trust Agreement or in the Liquidating Trust.

6.2 Standing of Beneficiary. Except as expressly provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than the Liquidating Trustee) upon or with respect to the Liquidating Trust Assets.

6.3 Release of Liability by Beneficiary. A Beneficiary shall not relieve the Liquidating Trustee from any duty, responsibility, restriction or liability as to such Beneficiary that would otherwise be imposed under this Liquidating Trust Agreement unless such relief is approved by Final Order of the Bankruptcy Court.

ARTICLE 7

DISTRIBUTIONS

7.1 Distributions from Liquidating Trust Assets. All payments to be made by the Liquidating Trustee to any Person shall be made only in accordance with the Plan, the Confirmation Order and this Agreement and from the Cash proceeds of Liquidating Trust Assets and only to the extent that the Liquidating Trust has sufficient Cash to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Liquidating Trust Agreement. Any distribution made by the Liquidating Trustee in good faith shall be binding and conclusive on all interested parties, absent manifest error.

7.2 Distributions; Withholding. The Liquidating Trustee shall make distributions at least annually, at such times, and from time to time, as the Liquidating Trustee deems appropriate from all net Cash income and all other Cash proceeds received by the Liquidating Trust; provided, however that the Liquidating Trust may retain such amounts (a) as are reasonably necessary to meet known and contingent liabilities and to maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust, (b) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs and fees (including attorneys' and other professional fees) and expenses of the Liquidating Trustee in connection with the performance of his duties in

connection with this Liquidating Trust Agreement, and (c) to satisfy all other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Agreement. All such distributions shall be made, subject to any withholding or reserve, as provided in this Agreement, the Plan or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts otherwise distributable on behalf of Beneficiaries any and all amounts, determined in the Liquidating Trustee's reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

7.3 Non-Cash Property. Any non-Cash property of the Liquidating Trust may be sold, transferred or abandoned by the Liquidating Trustee. Notice of any such sale, transfer or abandonment shall be provided to the PEDCC. If, in the Liquidating Trustee's judgment, such property cannot be sold in a commercially reasonable manner, the Liquidating Trustee shall have the right to abandon or otherwise dispose of such property, including by donation of such property to a charity designated by the Liquidating Trustee. Except in the case of willful misconduct, no party in interest shall have a cause of action against the Debtor, any partner, director, officer, employee, consultant or professional of the Debtor, the Liquidating Trust, the Liquidating Trustee or any partner, director, officer, employee, consultant or professional of the Liquidating Trust or Liquidating Trustee arising from or related to the disposition of non-Cash property in accordance with this Section.

7.4 Method of Cash Distributions. Any Cash payment to be made by the Liquidating Trust pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trust, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

7.5 Distributions on Non-Business Days. Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day. As used in this Agreement, the term "Business Day" shall mean any day other than a Saturday, Sunday or "legal holiday" as defined in Bankruptcy Rule 9006(a).

7.6 Objections to Claims.

(a) Objection Procedures. The Liquidating Trustee shall have the right and standing to (i) object to and contest the allowance of any Disputed Claim, (ii) compromise and settle any objections to Disputed Claims without Bankruptcy Court approval, subject to the notice procedure set forth in subsection (b) of this Section 7.6; and (iii) litigate to final resolution objections to Disputed Claims. No distribution shall be made pursuant to the Plan to a Holder of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. All objections to Claims must be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the one hundred eightieth (180th) day after the Effective Date, except as extended by an agreement between the claimant and the Liquidating Trustee, or by order of the Bankruptcy Court upon a motion filed by the Liquidating Trustee. Subject to the provisions of the Plan, if an objection has not been filed to a proof of Claim within the 180-day period, the Claim to which the proof of Claim relates shall be treated as an Allowed Claim for purposes of distribution under the Plan.

(b) **Resolution of Disputed Claims.** If the Holder of a Disputed Claim and the Liquidating Trustee agree to a settlement of such Holder's Disputed Claim where the amount in dispute does not exceed \$100,000, the Liquidating Trustee shall be authorized to enter into and effectuate such settlement without any further notice or approval of the Bankruptcy Court, and the settled Claim shall be deemed an Allowed Claim. If the Holder of a Disputed Claim and the Liquidating Trustee agree to a settlement of such Holder's Disputed Claim where the amount in dispute exceeds \$100,000, the Liquidating Trustee shall provide notice of the proposed settlement (with a 10-day period to object) to the Persons or Entities on the Post-Effective Date Notice List. If no objection is received within the 10-day period, the settled Claim shall be deemed to be an Allowed Claim, without the need for further review or approval of the Bankruptcy Court or any other party. If an objection to a proposed settlement is received within the 10-day period and such objection cannot otherwise be resolved, then the Liquidating Trustee shall schedule a hearing in the Bankruptcy Court to resolve the objection.

7.7 Minimum Distributions. If the amount of Cash to be distributed to the Holder of an Allowed Claim is less than \$25 on a particular Distribution Date, the Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than \$50. Notwithstanding the preceding sentence, if the amount of Cash distribution to any Holder of an Allowed Claim never aggregates more than \$50, then the Liquidating Trustee shall not be required to distribute Cash to any such Holder.

7.8 Rounding. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent, with one-half cent being rounded up to the nearest whole cent.

7.9 Setoffs and Recoupments. The Liquidating Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made or account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Liquidating Trustee of any such claims, rights and causes of action that the Liquidating Trust may possess against such Holder.

ARTICLE 8

TAXES

8.1 Income Tax Status.

(a) It is intended that the Liquidating Trust be classified for Federal income tax purposes as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" subject to the provisions of Subtitle A, Chapter 1, Subchapter J, Part I, Subpart E of the Tax Code that is owned by its creditor-beneficiaries. Accordingly, the parties hereto intend that the creditor-beneficiaries of the Liquidating Trust be treated as if they had

received a distribution of the applicable assets transferred to the Liquidating Trust and then contributed such assets to the Liquidating Trust. As such, notwithstanding anything set forth herein, the transfer of assets to the Liquidating Trust shall be treated for all purposes of the Tax Code as a transfer from the Estate to creditors to the extent the creditors are beneficiaries of the Liquidating Trust followed by a deemed transfer by the creditor-beneficiaries to the Liquidating Trust. The creditor-beneficiaries will be treated as grantors and deemed owners of the Liquidating Trust.

(b) All parties including the Debtor, the Liquidating Trustee and all creditor-beneficiaries of the Liquidating Trust must value all assets transferred to the Liquidating Trust consistently and those valuations must be used for all Federal income tax purposes. The Trustee must file returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(c) Anything set forth herein to the contrary notwithstanding, the Liquidating Trust shall not receive or retain Cash or Cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of Liquidating Trust Assets during liquidation. All income of the Liquidating Trust must be subject to tax on a current basis, including income retained in a disputed claims reserve. The taxable income of the Liquidating Trust will be allocated to and among creditor-beneficiaries who are grantors of the Liquidating Trust as required by virtue of their being grantors and deemed owners of the Liquidating Trust and they shall each be responsible to report and pay taxes due on their appropriate share of Liquidating Trust income.

(d) The Liquidating Trust shall be classified as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and in the event of any inconsistency between any term or provision herein, in the Plan or in the Disclosure Statement necessary for the Liquidating Trust to be deemed at all times a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and any other term or provision herein, in the Plan or in the Disclosure Statement, the term(s) and provision(s) necessary for the Liquidating Trust to be deemed a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) shall govern. Similarly, anything to the contrary set forth herein, in the Plan or in the Disclosure Statement notwithstanding, to the extent any term or provision herein, in the Plan or in the Disclosure Statement would result in the Liquidating Trust not being classified as a liquidating trust at all times pursuant to Treasury Regulations Section 301.7701-4(d), such term or provision shall be ineffective and reformed to the extent necessary for the Trust to be classified at all times as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d).

(e) As used in this Liquidating Trust Agreement, the following terms shall have the following meanings:

“Tax Code” shall mean the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., as amended from time to time, and corresponding provisions of any subsequent federal revenue act. A reference to a section of the Tax Code shall include a reference to any and all Treasury Regulations interpreting, limiting or expanding such section of the Tax Code; and

“Treasury Regulations” shall mean regulations promulgated under the Tax Code, including, but not limited to the Procedure and Administration Regulations, as such regulations may be amended from time to time.

8.2 Tax Returns. The Trustee shall prepare and provide to, or file with, the appropriate parties such notices, tax returns, information returns and other filings as may be required by the Tax Code and may be required by applicable law of other jurisdictions. The Trustee shall be responsible for filing all federal, state and local tax returns and information returns of the Liquidating Trust. The Trustee shall, when specifically requested by a Beneficiary in writing, make such tax information available to the Beneficiary for inspection and copying at the Beneficiary’s expense, as is necessary for the preparation by such Beneficiary of its income tax return.

ARTICLE 9

TERMINATION OF TRUST

9.1 Term. The Liquidating Trust shall terminate upon the earlier of (a) the date on which termination of the Liquidating Trust is approved by the Bankruptcy Court after all Liquidating Trust Assets (or proceeds thereof) are distributed or (b) five (5) years from the date of creation of the Liquidating Trust, unless extended by the Bankruptcy Court as provided herein. The Trustee shall at all times endeavor to liquidate expeditiously the Liquidating Trust Assets (or any non-Cash proceeds thereof), and in no event shall the Trustee unduly prolong the duration of the Liquidating Trust. The foregoing notwithstanding, in the event that the Liquidating Trustee determines that all of the Liquidating Trust Assets and/or proceeds thereof will not, despite reasonable efforts, be distributed by the date which is five (5) years from the date of creation of the Liquidating Trust, or for any other reason consistent with this Agreement and the Plan, and if warranted by the facts and circumstances, the Trustee may petition the Bankruptcy Court to extend the term of the Liquidating Trust. Each and every such extension must be for a reasonable finite period based on the particular facts and circumstances, must be subject to the approval of the Bankruptcy Court and approved upon a finding that the extension is necessary to the liquidating purpose of the Liquidating Trust and must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. Upon termination of the Liquidating Trust, the Trustee shall advise the Bankruptcy Court in writing of its termination. In the event the Trustee intends to abandon any property, it shall first offer to convey such property to the PEDCC. Upon final distribution pursuant to this Agreement, the Trustee shall retain the books, records and files that shall have been delivered to or created by the Trustee. At the Trustee’s discretion, all of such records and documents may be destroyed at any time after two years from such final distribution.

9.2 Event Upon Termination. Upon the termination of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets (including any proceeds thereof), if any, to the PEDCC for distribution in accordance with the Plan and the Confirmation Order.

9.3 Winding Up and Discharge of the Liquidating Trustee. For the purposes of winding up the affairs of the Liquidating Trust at its termination, the Liquidating Trustee shall

continue to act as Liquidating Trustee until his duties have been fully discharged. After doing so, the Liquidating Trustee, its agents and employees shall have no further duties or obligations hereunder, except as required by this Agreement, the Plan, the Disclosure Statement or applicable law concerning the termination of a trust. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, its agents and employees of any further duties, discharging the Liquidating Trustee and releasing its bond, if any.

ARTICLE 10

ADMINISTRATIVE EXPENSES

10.1 Funding. The cost and expenses of the Liquidating Trust, including, without limitation, the compensation to and the reimbursement of reasonable, actual and necessary costs, fees (including attorneys' and other professional fees) and expenses of the Liquidating Trustee in connection with the performance of his duties in connection with this Agreement, shall be paid from the Reserve (the "Trustee's Administrative Expense Fund"). The Trustee's Administrative Expense Fund shall not be subject to charge for claims against the Liquidating Trust or the Liquidating Trust Assets (including any proceeds thereof), including, without limitation, any claims under Sections 4.1 and 4.2 of this Agreement. Any funds remaining in the Trustee's Administrative Expense Fund after completion of the Trustee's activities shall be paid over to the PEDCC for distribution to the Beneficiaries under the terms of the Plan.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Amendments. The Liquidating Trustee may (after consultation with the PEDCC) propose to the Bankruptcy Court the modification, supplementation or amendment of this Liquidating Trust Agreement. Such modification, supplementation or amendment shall be in writing and filed with the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court, notice of such filing shall be served on the PEDCC, and [_____]. No modification, supplementation or amendment of this Liquidating Trust Agreement shall be effective except upon a Final Order of the Court.

11.2 Waiver. No failure by the Liquidating Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

11.3 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

11.4 No Bond Required. Any state law to the contrary notwithstanding, the Liquidating Trustee (including any successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

11.5 Irrevocability. The Liquidating Trust is irrevocable.

11.6 Division of Trust. Under no circumstances shall the Liquidating Trustee have the right or power to divide the Liquidating Trust unless authorized to do so by the Bankruptcy Court.

11.7 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without giving effect to rules governing the conflict of laws.

11.8 Retention of Jurisdiction. To the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, or this Agreement, or any entity's obligations incurred in connection therewith or herewith, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee or the Liquidating Trust, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in Section 11.11 of this Agreement or such other address as such party may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Agreement.

11.9 Severability. In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court or another court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this of this Agreement, or the application of such provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.10 Limitation of Benefits. Except as otherwise specifically provided in this Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

11.11 Notices. All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been duly given, if delivered in person or by facsimile with an electromechanical report of delivery or if sent by overnight mail or by registered or certified mail with postage prepaid, return receipt requested, to the following addresses.

If to the Debtor: Cooley Godward Kronish, LLP
1114 Avenue of the Americas
New York, NY 10036
Attn: Adam C. Rogoff, Esq.
Facsimile: (212) 479-6275

with copies to: Connell Foley LLP
85 Livingston Avenue
Roseland, NJ 07068
Attn: Stephen V. Falanga, Esq.
Facsimile: (201) 535-9217

If to the Liquidating Trustee: Allen D. Wilen, CPA
Amper, Politziner & Mattia, P.A.
2015 Lincoln Hwy.
P.O. Box 988
Edison, NJ 08818-0988
Facsimile: (732) 287-7860

If to the Creditors' Committee: Sills Cummis & Gross, P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Attn: Andrew H. Sherman, Esq.
Facsimile: (973) 643-6500

If to the PEDCC: [Address]

If to the Office of the United States Trustee Office of the United States Trustee
One Newark Center, Suite 2100
Newark, NJ 07102

Notice of any application to the Bankruptcy Court shall also be provided to the Office of the United States address as follows:

Office of the United States Trustee
One Newark Center, Suite 2100
Newark, New Jersey 07102
Attention: Mitchell B. Hausman
Telephone: (973) 645-3660
Telecopier: (973) 645-5993

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands requests, consents, notices and communications shall be deemed to have been given (a) at the time of actual delivery thereof, (b) if given by certified or

registered mail, five (5) business days after being deposited in the United States mail, postage prepaid and properly addressed, or (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed.

11.12 Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Agreement, and to consummate the transactions contemplated hereby.

11.13 Integration. This Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except a set forth herein, in the Plan or in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder.

11.14 Successors or Assigns. The terms of this Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.15 Interpretation. The enumeration and section headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise.

11.16 Relationship to the Plan. The principal purpose of this Liquidating Trust Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order shall control.

11.17 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have either executed this Liquidating Trust Agreement, or caused it to be executed on its behalf by its duly authorized officer all as of the date first above written.

BAYONNE MEDICAL CENTER

By: _____
Name:
Title:

ALLEN D. WILEN, as Trustee

EXHIBIT F

(Estimated Administrative Claims)

**Bayonne Medical Center
Case No.: 07-15195-MS**

Estimated Administrative Priority Claims¹

Claim No.	Name	Estimated Claim Amount
49	Siemens Medical Solutions Diagnostics	\$1,343.22
169	The St. John Companies	\$516.51
189	All Phase Business Supplies Inc.	\$602.43
200	QRD Technologies	\$11,448.28
230	MPowerMed Inc.	\$8,081.30
281	Nexera Inc.	\$26,203.13
28f9	Hospital Central Services Coop Inc.	\$5,709.64
292	Carroll Security Agency Inc.	\$4,030.00
360	Vincent Serafino MD Pa	\$1,500.00
363	Healthcare Quality Strategies Inc.	\$409.36
373	Alfred R. Fetter CPA	\$3,700.00
387	Crothal Services Group	\$31,325.75
389	Morrison Management Specialists Inc.	\$43,928.33
404	New York State Department of Health	\$100.00
425	U.S. Nuclear Regulatory Commission	\$6,024.73
225	Vie Healthcare Inc.	\$41,885.18
261	Advanced Receivables Strategy Inc.	\$311,991.19
179	Eileen Kaczka	Unknown
286	Research and Marketing	\$660.48
294	F & E Check Protector Sales Co	\$1,756.50

¹ The administrative priority claim amounts listed herein are estimated and not to be deemed an admission as to the validity of the claimed amounts. This estimated administrative priority claims List does not include professional fee claims. Additionally, the Debtor and Committee expressly reserve the right to amend, revise and reconcile any and all claims set forth on this estimated administrative priority list up to, and including, the date of plan confirmation.

296	Vincent Lombardo	\$4,205.00
307	Self Pay Solutions Inc.	\$63,184.48
308	Shawnda Jacobs	\$22,000.00
320	Staffing Remedies of Edison NJ	\$1,343.56
329	Judith C. Flynn	\$4,807.14
335	AmeriSource Bergen Drug Corporation	\$ 337,792.15
346	Jacqueline Height	\$1,900.53
354	Kristine DeMaria	Unknown
371	Patricia Ann Carey	\$12,210.77
392	Barbara Gnas	\$2,215.57
393	Joseph Gnas	\$2,225.34
408	Edith DeGuzman	Unknown
409	Ewa Toczynski	\$3,295.97
412	M. Luningning Ambrocio	Unknown
428	Kerri Acosta	Unknown
431	Peninsula Electric Inc.	\$22,186.10
433	Helen Barbiero	\$3,024.51
449	Progressive Radiology LLC	\$42,500.00