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7 Attorneys for Chapter 11 Debtor
and Debtor In Possession

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 In re
13 BORREGO COMMUNITY HEALTH
FOUNDATION,
14 Debtor and Debtor In Possession.

Case No. 22-02384-11
Chapter 11 Case

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

Judge: Honorable Laura S. Taylor

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19 **PLEASE TAKE NOTICE** that, on December 4, 2023, Borrego Community
20 Health Foundation (the “Debtor”), the above-captioned debtor and debtor in
21 possession, and the Official Committee of Unsecured Creditors (the “Committee,”
22 collectively, with the Debtor, the “Plan Proponents”) filed the *First Amended Joint*
23 *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego*
24 *Community Health Foundation* [Docket No. 1168] (the “Plan”). On December 7, 2023,
25 the Court entered the *Order on Joint Motion of the Debtor and the Official Committee*
26 *of Unsecured Creditors for Entry of an Order (I) Granting Interim Approval of the*
27 *Adequacy of Disclosures in the Combined Joint Disclosure Statement and Plan; (II)*
28 *Approving Solicitation Packages and Procedures; (III) Approving the Forms of*

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1 *Ballots; (IV) Setting Related Deadlines; and (V) Granting Related Relief* [Docket No.
2 1179] (the “Approval Order”), which, among other things, provided that the Plan
3 Proponents shall file the Plan Supplement on or prior to December 11, 2023.
4 Accordingly, the Plan Proponents hereby file a supplemental appendix to the Plan
5 containing the items below, which are collectively defined as the Plan Supplement:

6
7 **PLAN SUPPLEMENT**

- 8 • **Exhibit A** - Schedule of Assumed Contracts;
- 9 • **Exhibit B** - List of Retained Causes of Action;
- 10 • **Exhibit C** - List of Excluded Parties;
- 11 • **Exhibit D** - Disputed Claims Schedule;
- 12 • **Exhibit E** - Schedule of Insurance Policies;
- 13 • **Exhibit F** - Initial Wind-Down Budget;
- 14 • **Exhibit G** - Liquidating Trust Agreement;
- 15 • **Exhibit H** - The schedule of estimated costs of administration and any
16 other funds required to be distributed upon the Effective Date as required
17 by Local Rule 3020-1; and
- 18 • **Exhibit I** - Identity of various parties referenced in the Plan at Section
19 3.107 (h), (i), and (j).

20 Dated: December 11, 2023

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Tania M. Moyron
Rebecca M. Wicks

23 By /s/ Tania M. Moyron
Tania M. Moyron

24
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and Debtor In Possession

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EXHIBIT A
Schedule of Assumed Contracts

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Borrego Community Health Foundation: Case No. 22-082384-11

Schedule 3.107(a) - Assumed Contracts

No.	Counterparty Name	Description	Term	Contract Type
1.	DAP Health	Transition Services Agreement	12-mo.	Service Agreement
2.	Oracle America, Inc.	Financial Software (NetSuite)	12-mo.	Service Agreement
3.	PairSoft	Financial Software (DocuPeak)	12-mo.	Service Agreement

EXHIBIT B
List of Retained Causes of Action

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LIST OF RETAINED CAUSES OF ACTION

Certain documents, or portions thereof, contained in the Plan Supplement¹ or referenced herein remain subject to continuing review by the Debtor. The Debtor reserves all rights to amend, revise, or supplement the Plan Supplement and any of the documents and designations contained therein, including, without limitation, this Schedule of Retained Causes of Action, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court.

Except as otherwise expressly provided in the Plan, including, without limitation, with respect to the Released Parties, all rights to commence and pursue any and all Causes of Action against any Entity, including, without limitation, Causes of Action that are not expressly identified in this Schedule of Retained Causes of Action, are reserved. Neither confirmation of the Plan nor occurrence of the Effective Date shall in any way affect such rights.

Without limiting the foregoing or the provisions of Section 17.7 of the Plan, from and after the Effective Date, the Liquidating Trust shall have all rights to enforce, commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in this Schedule of Retained Causes of Action, including, without limitation, the right to commence, prosecute or settle such Causes of Action, which shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, such Causes of Action shall include, without limitation, the following:

Item No.	Description	Nature of Action
1	Any and all Avoidance Actions, as defined in the Combined Plan, and all other claims in avoidance, recovery, and/or subordination	To be determined

¹ References herein to the “Combined Plan” refer to and, unless otherwise stated, all capitalized terms used but not defined herein have the meanings given to them in the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1168] (as it may be further amended, modified or supplemented).

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Item No.	Description	Nature of Action
2	All claims arising in connection with <i>Husam E. Aldairi, et al. v. Borrego Community Health Foundation</i> , Case No. 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego)	Equitable remedies
3	All claims arising in connection with <i>Borrego Community Health Foundation v. Inland Valley, LLC, et al.</i> , Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.)	Equitable remedies
4	All claims arising in connection with <i>Borrego Community Health Foundation v. Karen Hegets, et al.</i> , Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.)	Equitable remedies
5	All claims arising in connection with <i>Borrego Community Health Foundation v. Travelers Casualty and Surety Company of America</i> , Case No. 3-22-CV-161-L-MDD (S.D. Cal.)	Equitable remedies
6	All claims against Hemet Valley Medical Center (“HVMC”) a/k/a Hemet Global Medical Center, an affiliate of KPC Healthcare Inc., KPC Global Management LLC, and the KPC Group, based on HVMC’s failure to pay costs related to the Borrego Health Family Medicine Residency Program for academic years 2020-2021 and 2021-2022, pursuant to a Master Affiliation Agreement dated July 1, 2019, between the Debtor and HVMC.	Breach of Contract
7	All claims against any parties not released in the Combined Plan, as set forth in the definitions therein	To be determined
8	All claims against any Excluded Parties, including the Pre-Petition Fraud Parties, as set forth in the Combined Plan and in the Plan Supplement	To be determined
9	All claims against vendors, suppliers of goods or services (including attorneys, accountants, consultants or other professional service providers), utilities, contract counterparties, and other parties, as set forth in Section 17.7(b) in the Combined Plan	To be determined
10	All claims against health plans, payors, and other related providers	To be determined
11	All claims against landlords or lessors as set forth in Section 17.7(b) of the Combined Plan	To be determined
12	All claims arising against current or former tenants or lessees	To be determined

Item No.	Description	Nature of Action
13	All claims arising from damage to any of the Debtor's property	To be determined
14	All claims, rights, or other Causes of Action the Debtor may have to interplead third parties in actions commenced against the Debtor	To be determined
15	All claims for collection of a debt or other amount owed to the Debtor	To be determined
16	All claims against insurance carriers, reinsurance carriers, underwriters, surety bond issuers, or other related or similar parties relating to coverage, indemnity, contribution, reimbursement, or other matters	To be determined
17	All claims arising under or relating to the Asset Purchase Agreement and related documents as set forth in the Combined Plan.	To be determined

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EXHIBIT C
List of Excluded Parties

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LIST OF EXCLUDED PARTIES

Certain documents, or portions thereof, contained in the Plan Supplement² or referenced herein remain subject to continuing review by the Debtor. The Debtor reserves all rights to amend, revise or supplement the Plan Supplement and any of the documents and designations contained therein, including, without limitation, this List of Excluded Parties, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Court.

Without in any way limiting the foregoing or the provisions of Section 17.7 of the Plan, from and after the Effective Date, the Debtor and the Liquidating Trust shall have all rights to enforce, commence and pursue, as appropriate, any and all claims against the following Excluded Parties:

Excluded Party	Defendant in Cause of Action	Prepetition Fraud Party
Alborz Mehdizadeh, D.D.S.	X	X
Alborz Mehdizadeh, Inc.	X	X
Aldairi DDS, Inc.	X	X
Aram Arakelyan, Inc.	X	X
Aved Hawatmeh, D.D.S.	X	X
Chuck Kimball	X	X
Daryl Priest	X	X
Dennis Nourse	X	X
Diana Thompson f/k/a Diana Troncoso	X	X
Douglass Ness, D.D.S.	X	X
DRP Holdings, LLC	X	X
Harry Ilsley	X	X
Hawatmeh Dental Group, P.C.	X	X
Husam Aldairi, D.D.S.	X	X
Inland Valley Investments, LLC	X	X

² References herein to the “Combined Plan” refer to and, unless otherwise stated, all capitalized terms used but not defined herein have the meanings given to them in, the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1168] (as it may be further amended, modified, or supplemented).

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James Hebets	X	X
Jilbert Bakramian, D.D.S.	X	X
Karen Hebets	X	X
Magaly Velasquez, D.D.S.	X	X
Magaly M. Velasquez DDS Professional Dental Corp.	X	X
Marcelo Toledo, D.D.S.	X	X
Marcelo Toledo, D.D.S., Inc.	X	X
Marlene Thompson, D.D.S.	X	X
Marlene Thompson, D.D.S., Inc.	X	X
Michael Hoang, D.M.D.	X	X
Mike Hickok	X	X
Mikia Wallis	X	X
Mohammed Altekreeti, D.D.S.	X	X
Ness Dental Corporation	X	X
New Millennium Dental Group of Aram Arakelyan, Inc.	X	X
Nicholas Priest	X	X
Premier Healthcare Management, Inc.	X	X
Promenade Square, LLC	X	X
Santiago Rojo, D.D.S.	X	X
Santiago A. Rojo, D.D.S., Inc.	X	X
Summit Healthcare Management, Inc.	X	X
The Hebets Company	X	X
Travelers Casualty and Surety Company of America	X	
Travis Lyon	X	X
Waleed Stephan, D.D.S.	X	X
W.A. Stephan, A Dental Corporation	X	X

As addressed in the Debtor’s concurrent litigation, the Debtor asserts claims against both the above-named individuals and entities listed as Prepetition Fraud Parties, as well as others. Discovery in these actions remain in their infancy pending resolution of the responsive pleadings and consolidation motions. The Debtor anticipates formal discovery in these actions will reveal the identities of additional

1 dentists and former employees, officers, and board members against whom the Debtor
2 may have claims. Thus, this List of Excluded parties may require later amendments
3 to allow for the additions of these unknown entities.

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Exhibit D
Disputed Claims Schedule

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Borrego Community Health Foundation: Case No. 22-082384-11

Schedule 3.107(d) - Disputed Claims as of November 30, 2023

Claim No.	Claimant
170	Abbas Eftekhari
80	Aesto, LLC
91	Aghaloo, DDS, INC.
102	Alborz Mehdizadeh
181	Alborz Mehdizadeh DDS
184	Alborz Mehdizadeh DDS
185	Alborz Mehdizadeh DDS
103	Alborz Mehdizadeh, Inc.
104	Alborz Mehdizadeh, Inc.
162	Aldairi DDS Inc
87	Ami Shah
119	Amy Berhanu-Demissie, D.D.S., PC
206	Ana Meigs
117	Anamaria Arteaga
179	Andrew Lim
9	Angelica Paola Beltran
124	Anna Navarro
106	Aram Arakelyan, D.D.S
148	Arch Specialty Insurance Company
26	Arlene Martinez-Partida
78	Ayman Hashem
98	Ayman Hashem
141	Azza Jandali
130	Berkeley Research Group, LLC
220	Bhatia, Balwant
70	Blanca Esparza
17	Blue Ox II LLC dba MyHRScreens
28	BORREGO WATER DISTRICT 005002-000 W SIDE
30	BORREGO WATER DISTRICT 005002-001 E SIDE
29	BORREGO WATER DISTRICT 005002-003 AL
201	California Department of Public Health
204	California Department of Public Health
188	City of Coachella
118	Corina Annette Velasquez
194	CORODATA MEDIA STORAGE, INC.
152	Crown Dental Group
75	Crystal Hernandez
173	DAVID TOMA
177	Debra Doran
177	Debra Doran
1	Department of Treasury - Internal Revenue Service
21	Department of Treasury - Internal Revenue Service

Claim No.	Claimant
210	Department of Treasury - Internal Revenue Service
222	Department of Treasury - Internal Revenue Service
48	Dora Elena Gallego
49	Dora Gallego, DDS
136	Douglas G Ness
151	Dr. Jorge Hernandez Zamudio DDS
199	DRP Holdings, LLC.
232	DRP Holdings, LLC.
34	Eliseo Navarro
215	Enhanced Voice and Data Networks Inc
99	Gabriel Martinez
169	Gina Garcia
113	Guadalupe Marquez, DDS
114	Guadalupe Marquez, DDS Lupe
24	Gulf California Broadcast Company
110	H. Pourshirazi DMD Inc.
58	HATTON PETRIE AND STACKLER APC
157	Himformatics LLC
112	Homayoun Pourshirazi, DMD, P.C.
161	Husam Aldairi
51	Imperial Irrigation District
52	Imperial Irrigation District
42	InfoBeyond Technology LLC
200	Inland Valley Investments, LLC.
231	Inland Valley Investments, LLC.
10	IVERSON DENTAL LABORATORIES INC.
61	James Lai
55	James Sumilat DDS
133	Janice Jones
92	Javad Aghaloo
178	John Davidson
57	Jorge Urrea
165	Jose L. Lopez, DDS
115	Jose Luis Preciado
25	Jose Macias
40	Krupal Chhotu
213	Kyoung Lee
182	Lisa Odom
59	Manlio F Orozco DDS Inc.
205	Mansoureh Yavari
153	Marcelo Toledo D.D.S., Inc.
54	Marisela Hanel
84	MARLENE M. THOMPSON, D.D.S.
74	Marquis Smith
100	Martinez & Zermeno, APDC

Claim No.	Claimant
50	MELISSA BUSIC
76	Meritain Health, Inc.
32	Metropolitan Family Medical Clinic - Foothills
33	Miguel Gutierrez Cedillo
71	MOBILE LUBE EXPRESS
223	Myrna Aguilar-Chavez
234	Naim Uka
164	Nereida Paula Terrazas
143	Ness Dental Corporation
105	New Millennium Dental Group Of Aram Arakelyan, Inc
60	Nuevo Water Company
187	Nuevo Water Company
116	ODP Business Solutions, LLC
101	Oh Jae Kwon
180	OJ Kwon
31	Pathsolutions, Inc
175	Petros, Toma & Putrus Dental Corporation
129	Pitney Bowes Inc
111	Pourshirazi & Youssefi Dental Corporation
62	Pratik Shah
46	Pravinchandra Makadia
198	Premier Healthcare Management, Inc.
228	Premier Healthcare Management, Inc.
197	Promenade Square, LLC
230	Promenade Square, LLC
53	QUANTIX CONSULTING, INC
163	Rania Georgei
89	Ricoh-USA, Inc.
37	Riverside County Tax Collector
172	Roca Dental, Inc
166	Saeed Mokhayeri
15	San Bernardino County
219	San Diego County Treasurer-Tax Collector
229	San Diego County Treasurer-Tax Collector
90	Sandeep Cheema
56	Sandra Rios
123	Sang G Shin, DDS, Inc.
207	SangEun Lee
121	Santiago A. Rojo, D.D.S., Inc.
81	Setareh Jones
35	Shawn Viramontes
12	SoCalGas
68	Southern California Real Estate Services for DRC Citrus Office, L.P.
20	Spectrum
208	STATE OF FLORIDA - DEPARTMENT OF REVENUE

Claim No.	Claimant
150	Stephan Family Dental
221	Stratus Indemand Inc
97	Sung Ahn
140	Supriya Mhaskar
73	Suraj Sharma/ VM Dental
94	Suren Chtchyan
145	Ted Im
183	Teresa Bolanos
95	The School-Aged Gap Elimination Initiative, Inc.
176	Toma & Petros, DDS, Inc.
174	Toma, Petros, Evans DDS
11	U.S. Bank, N.A. d/b/a U.S. Bank Equipment Finance
218	U.S. Department of Health and Human Services - Health Resources and Services Administration
6	UnitedHealthcare Insurance Company
65	UNIVERSAL SERVICE ADMINISTRATIVE CO. (USAC)
122	Vahan Grigoryan DDS, Inc.
83	Vanessa Steele
147	Vantage Medical Group, Inc.
186	Villamor Usita
7	Vitamin D Public Relations LLC
156	Wadie Ahwal
41	Waiel Putrus
67	WIFIBY CV
82	Won Jeong
227	Yessenia Cintron
226	Yessenia Y Cintron
212	Yvonne Kounang
38	Zhiwei Zhao

EXHIBIT E
Schedule of Insurance Policies

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Borrego Community Health Foundation: Case No. 22-082384-11

Schedule 3.107(e) - Insurance Policies

No.	Counterparty Name	Policy Type	Term
1.	Allied World Insurance Axis Privatus Markel	Director's and Officer's Liability Insurance	72-mo. Tail
2.	BETA Risk Management	General Liability / Professional Liability Insurance	Perpetual Tail
3.	BETA Risk Management	Worker's Compensation	As-Needed
4.	Evolution Risk	Employee Health Stop-Loss	12-mo. Lookback; 6-mo. Tail

SCHEDULE F
Wind-Down Budget

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Borrego Community Health Foundation: Case No. 22-082384-11

Schedule 3.107(f) - Wind-Down Budget

Wind-Down Budget	Total
Litigation Legal Fees	\$ 2,500,000
US Trustee Fees	1,000,000
Liquidating Trust Legal Fees	890,000
Liquidating Trustees Fees	850,000
Unemployment Benefits Funding	600,000
Tax Professionals	300,000
Claims & Disbursing Agent	250,000
Regulatory Reporting / Audits	200,000
Contingency	195,000
Monthly Financial Statements	160,000
Bank Fees	150,000
Financial Software License	100,000
Document Storage	100,000
Board Fees	67,500
Total Wind-Down Costs	\$ 7,362,500

EXHIBIT G
Liquidating Trust Agreement

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1 **LIQUIDATING TRUST AGREEMENT**

2 This Liquidating Trust Agreement (“Liquidating Trust Agreement” or “Agreement”),
3 effective as of [●], 2024, by and between (i) Borrego Community Health Foundation (the “Debtor”)³
4 and (ii) [●] (the “Liquidating Trustee”) and [●] (the “Co-Liquidating Trustee”), as co-trustees
5 (together with any successor trustee, collectively the “Liquidating Trustees” or “Trustees”) for the
6 benefit of the Liquidating Trust Beneficiaries.

7 **RECITALS**

8 WHEREAS, on September 12, 2022 (the “Petition Date”), Borrego Community Health
9 Foundation (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy
10 Code with the United States Bankruptcy Court for the Southern District of California (the
11 “Bankruptcy Court” or “Court”), which commenced *In re Borrego Community Health Foundation*,
12 Case No. 22-02384 (the “Bankruptcy Case”);

13 WHEREAS, on [●], the Debtor and the Committee jointly filed the *Joint Combined*
14 *Disclosure Statement and Chapter 11 Plan of Liquidation of Debtor Borrego Community Health*
15 *Foundation* [Docket No. ●] (as may be amended, supplemented, or otherwise modified from time
16 to time, the “Plan”), which was confirmed by the Bankruptcy Court on [●], 2024, pursuant to the
17 [●] [Docket No. ●] (the “Confirmation Order”);

18 WHEREAS, the Plan and the Confirmation Order provide for the establishment of a
19 Liquidating Trust (as defined in the Plan, the “Liquidating Trust”) pursuant to this Liquidating Trust
20 Agreement and the appointment of the Liquidating Trustees;

21 WHEREAS, The Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal
22 income tax purposes pursuant to sections 671-677 of the Internal Revenue Code of 1986, as
23 amended, with the Beneficiaries treated as the grantors and owners of the Liquidating Trust.

24 WHEREAS, this Agreement, including all exhibits hereto, is the “Liquidating Trust
25 Agreement” described in the Plan and shall be executed on or before the Effective Date in order to
26 facilitate implementation of the Plan.

27 **DECLARATION OF TRUST**

28 NOW, THEREFORE, in order to declare the terms and conditions hereof, and in
consideration of the premises and mutual agreements herein contained, the confirmation of the Plan
and of other good and valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, the Debtor and the Liquidating Trustees have executed this Agreement for the
benefit of the Liquidating Trust Beneficiaries entitled to share in the Liquidating Trust Assets as
provided for in the Plan.

TO HAVE AND TO HOLD unto the Liquidating Trustees and their successors or assigns in
trust, under and subject to the terms and conditions set forth herein and for the benefit of the
Liquidating Trust Beneficiaries, and for the performance of and compliance with the terms hereof

³ As used herein, “Debtor” shall include, as applicable, the Post-Effective Date Debtor, as such term
is defined in the Plan.

1 and of the Plan; provided, however, that upon termination of the Liquidating Trust in accordance
2 with Article VIII hereof, this Liquidating Trust Agreement shall cease, terminate, and be of no
further force and effect, unless otherwise specifically provided for herein.

3 IT IS FURTHER COVENANTED AND DECLARED that the Liquidating Trust Assets are
4 to be strictly held and applied by the Liquidating Trustees subject to the specific terms set forth
below.

5
6 **I.**
DEFINITION AND TERMS

7 1. Certain Definitions. Unless the context shall otherwise require and except as
8 contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall
9 have the respective meanings assigned thereto in the Plan. For all purposes of this Agreement, the
following terms shall have the following meanings:

10 1. “Cause” means (i) a Person’s willful failure to perform his material duties
11 hereunder, which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of
12 fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a
13 Person’s conviction of a felony (other than a felony that does not involve fraud, theft,
embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or
14 (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the
performance of his or her duties hereunder.

15 2. “Co-Liquidating Trustee” means [●], as the initial “Co-Liquidating Trustee”
16 hereunder and as defined in the Plan, and any successor Co-Liquidating Trustee that may be
appointed pursuant to the terms of this Agreement.

17 3. “GUC Claim Objection” means any objection filed by the Debtor and/or the
18 Committee prior to the Effective Date or the Liquidating Trustee and/or Co-Liquidating Trustee
after the Effective Date to the allowance of any General Unsecured Claim, whether filed before or
19 after the Effective Date.

20 4. “Liquidating Trust” means the “Borrego Liquidating Trust” established in
accordance with Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

21 5. “Liquidating Trust Agreement” means this Agreement.

22 6. “Liquidating Trust Beneficiaries” means the holders of Class A Trust
23 Beneficial Interests and Class B Trust Beneficial Interests.

24 7. “Liquidating Trust Expense Reserve” means \$[●] in Cash to be funded by
25 the Liquidating Trustees from the Liquidating Trust Assets into a bank account of the Liquidating
Trust on or shortly after the Effective Date for the purpose of paying Liquidating Trust Expenses
26 in accordance herewith.

27 8. “Liquidating Trust Expenses” means the costs, expenses, liabilities and
28 obligations incurred by the Liquidating Trust and/or the Liquidating Trustees in administering and
conducting the affairs of the Liquidating Trust, and otherwise carrying out the terms of the
Liquidating Trust and the Plan on behalf of the Liquidating Trust, including without any

1 limitation, indemnification obligations, any taxes owed by the Liquidating Trust, and the fees and
2 expenses of the Liquidating Trustees and professional persons retained by the Liquidating Trust or
Liquidating Trustees in accordance with this Agreement.

3 9. “Liquidating Trustee” means [●], as the initial “Liquidating Trustee”
4 hereunder and as defined in the Plan, and any successor Liquidating Trustee that may be appointed
pursuant to the terms of this Agreement.

5 10. “Material Litigation” means (i) *Husam E. Aldairi, et al. v. Borrego*
6 *Community Health Foundation*, Case No. 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San
7 Diego); (ii) *Borrego Community Health Foundation v. Inland Valley, LLC, et al.*, Case No. 3:21-
8 cv-01417-AJB-AGS (S.D. Cal.); (iii) *Borrego Community Health Foundation v. Karen Hebets, et*
9 *al.*, Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.); (iv) *Borrego Community Health Foundation*
10 *v. Travelers Casualty and Surety Company of America*, Case No. 3:22-CV-161-L-MDD (S.D.
11 Cal.); and (v) any other Litigation other than the foregoing that is determined by the Liquidating
12 Trustees to be Material Litigation.

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

17 12. “Treasury Regulations” means regulations promulgated under the Tax
18 Code, including, but not limited to the Procedure and Administration Regulations, as such
19 regulations may be amended from time to time.

20 13. “Trust Beneficial Interests” means, collectively, the Class A Trust
21 Beneficial Interests and Class B Trust Beneficial Interests.

22 2. General Construction. As used in this Agreement, the masculine, feminine and
23 neuter genders, and the plural and singular numbers shall be deemed to include the others in all
24 cases where they would apply. “Includes” and “including” are not limiting and “or” is not
25 exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring
26 specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law,
27 statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this
28 Agreement, and the words “herein,” “hereafter” and words of similar import refer to this
Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement.
Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States
dollars. References to agreements or instruments shall be deemed to refer to such agreements or
instruments as the same may be amended, supplemented, or otherwise modified in accordance
with the terms thereof.

3. Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and
made a part hereof by this reference.

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II.
ESTABLISHMENT OF THE LIQUIDATING TRUST

1. Creation and Purpose of Trust. The Debtor and the Liquidating Trustees, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code and applicable tax statutes, rules, and regulations, to the extent incorporated in this Agreement, hereby constitute and create a trust (*i.e.*, 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 Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business (except to the extent reasonably necessary to carry out, and consistent with, the liquidation purpose of the Liquidating Trust, provided that any such conduct will not affect the Liquidating Trust’s tax status as a liquidation trust). 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) and an orderly wind down of the Debtor’s affairs, with the goal of maximizing such assets for the benefit of the Liquidating Trust Beneficiaries.

2. Objectives.

1. The Liquidating Trust is established for the purpose of (a) administering the Liquidating Trust Assets including the Distributions and payments contemplated under the Plan, (b) prosecuting and/or resolving all Disputed Claims, (c) investigating and pursuing any Causes of Action the Debtor holds or may hold against any Entity, and (d) making all Distributions to the Liquidating Trust Beneficiaries provided for under the Plan. The Liquidating Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Liquidating Trust Assets consistent with this Agreement and the Plan and act as president of the Post-Effective Date Debtor.

2. It is intended that the Liquidating Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Liquidating Trustees shall, in their business judgment, make continuing best efforts to (i) dispose of or monetize the Liquidating Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Liquidating Trust, in each case in accordance with this Agreement.

3. Nature and Purposes of the Liquidating Trust. The Liquidating Trust is organized and established as a trust for the purpose of monetizing the Liquidating Trust Assets and making Distributions to Liquidating Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Liquidating Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor. For the avoidance of doubt, the Liquidating Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims.

4. Transfer of Assets and Rights to the Liquidating Trust.

1. On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all

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213 623 9300

1 Liquidating Trust Assets and related Privileges held by the Debtor to the Liquidating Trust free
2 and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as
3 provided in the Plan and this Agreement. To the extent certain assets comprising the Liquidating
4 Trust Assets, because of their nature or because such assets will accrue or become transferable
subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the
Liquidating Trust on such date, such assets shall be considered Operating Assets.

5 2. On or before the Effective Date, and continuing thereafter, the Debtor or
6 Post-Effective Date Debtor, as applicable, shall provide (i) for the Liquidating Trustees'
7 reasonable access to all records and information in the Debtor's and Post-Effective Date Debtor's
8 possession, custody or control, (ii) that all Privileges related to the Liquidating Trust Assets shall
9 transfer to and vest exclusively in the Liquidating Trust, and (iii) subject to Section 3.12, the
10 Debtor and Post-Effective Date Debtor shall preserve all records and documents (including all
11 electronic records or documents) until such time as the Liquidating Trustee directs the Post-
Effective Date Debtor that such records are no longer required to be preserved. For the purposes
of transfer of documents, the Liquidating Trust is an assignee and successor to the Debtor in
respect of the Liquidating Trust Assets and shall be treated as such in any review of confidentiality
restrictions in requested documents.

12 3. Until the Liquidating Trust terminates pursuant to the terms hereof, legal
13 title to the Liquidating Trust Assets and all property contained therein shall be vested at all times
14 in the Liquidating Trust as a separate legal entity, except where applicable law in any jurisdiction
15 requires title to any part of the Liquidating Trust Assets to be vested in the Liquidating Trustees,
in which case title shall be deemed to be vested in the Liquidating Trustees, solely in their capacity
as Liquidating Trustees. For purposes of such jurisdictions, the term Liquidating Trust, as used
herein, shall be read to mean the Liquidating Trustees.

16 5. Acceptance. The Liquidating Trustees accept the Liquidating Trust imposed by
17 this Agreement and agrees to observe and perform that Liquidating Trust, on and subject to the
18 terms and conditions set forth herein and in the Plan.

19 6. Further Assurances. The Debtor, Post-Effective Date Debtor, and any successors
20 thereof will, upon reasonable request of the Liquidating Trustees, execute, acknowledge and
21 deliver such further instruments and do such further acts as may be necessary or proper to transfer
22 to the Liquidating Trustees any portion of the Liquidating Trust Assets intended to be conveyed
hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in
the Liquidating Trustees the powers, instruments or funds in trust hereunder.

23 7. Incidents of Ownership. The Liquidating Trust Beneficiaries shall be the sole
24 beneficiaries of the Liquidating Trust and the Liquidating Trustees shall retain only such incidents
of ownership as are necessary to undertake the actions and transactions authorized herein.

25 III. 26 THE LIQUIDATING TRUSTEES

27 1. Role.

28 1. Liquidating Trustee. In furtherance of and consistent with the purpose of
the Liquidating Trust, the Plan, and this Agreement, the Liquidating Trustee, subject to the terms

1 and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as the
2 Liquidating Trustee with respect to the Class B Liquidating Trust Assets for the benefit of the
3 holders of Class B Trust Beneficial Interests and maintain, manage, and take action on behalf of
4 the Liquidating Trust.

4 2. Co-Liquidating Trustee. In furtherance of and consistent with the purpose
5 of the Liquidating Trust, the Plan, and this Agreement, the Co-Liquidating Trustee, subject to the
6 terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as
7 the Co-Liquidating Trustee with respect to the Class A Liquidating Trust Assets for the benefit of
8 holders of Class A Trust Beneficial Interests and maintain, manage, and take action on behalf of
9 the Liquidating Trust.

8 2. Liquidating Trustee Authority.

9 1. In connection with the administration of the Liquidating Trust, in addition
10 to any and all of the powers enumerated elsewhere herein, the Liquidating Trustee shall, in an
11 expeditious but orderly manner, monetize the Class B Liquidating Trust Assets, make timely
12 Distributions with respect to the holders of Class B Trust Beneficial Interests, and not unduly
13 prolong the duration of the Liquidating Trust. The Liquidating Trustee shall have the power and
14 authority and is authorized to perform any and all acts necessary and desirable to accomplish the
15 purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to
16 the Liquidating Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and
17 applicable law. The Liquidating Trustee will monetize the Class B Liquidating Trust Assets with
18 a view toward maximizing value in a reasonable time.

15 2. The Liquidating Trustee, subject to the limitations set forth in Sections 3.4
16 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate,
17 abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that
18 are part of the Class B Liquidating Trust Assets as the Liquidating Trustee determines is in the
19 best interests of the Liquidating Trust. To the extent that any action has been taken to prosecute,
20 defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims
21 and Causes of Action prior to the Effective Date, on the Effective Date the Liquidating Trustee
22 shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the
23 Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of
24 Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the
25 following “[Liquidating Trustee], not individually but solely as Liquidating Trustee for the
26 Liquidating Trust, et al. v. [Defendant]”.

23 3. Subject in all cases to any limitations contained herein, in the Confirmation
24 Order, or in the Plan, the Liquidating Trustee shall have the power and authority to:

24 a) solely as required by Section 2.4(d), hold any and all rights of the
25 Liquidating Trust and Class B Trust Beneficial Interests in or arising from the Class B Liquidating
26 Trust Assets, including collecting and receiving any and all money and other property belonging
27 to the Liquidating Trust and the right to vote or exercise any other right with respect to any claim
28 or interest relating to the Class B Liquidating Trust Assets in any case under the Bankruptcy Code
and receive any distribution with respect thereto;

1 b) open accounts for the Liquidating Trust and make Distributions of
2 Class B Liquidating Trust Assets in accordance herewith;

3 c) as set forth in Section 3.11, exercise and perform the rights, powers,
4 and duties held by the Debtor with respect to the Class B Liquidating Trust Assets, including the
5 authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a
6 representative of the Debtor's Estate with respect to the Class B Liquidating Trust
7 Assets, including with respect to the sale, transfer, or other disposition of the Class B Liquidating Trust
8 Assets;

9 d) settle or resolve any Claims other than the General Unsecured
10 Claims (but including, for the avoidance of doubt, any Litigation with respect to any Holders of
11 Disputed General Unsecured Claims);

12 e) exercise and perform the rights, powers, and duties arising from the
13 Liquidating Trustee's role as president of the Post-Effective Date Debtor;

14 f) take all steps necessary to wind-down and dissolve the Post-
15 Effective Date Debtor;

16 g) protect and enforce the rights to the Class B Liquidating Trust
17 Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any
18 applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

19 h) obtain reasonable insurance coverage with respect to any liabilities
20 and obligations of the Liquidating Trustees in the form of fiduciary liability insurance, a directors
21 and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance
22 shall be a Liquidating Trust Expense and paid by the Liquidating Trustees from the Liquidating
23 Trust Assets;

24 i) without further order of the Bankruptcy Court, but subject to the
25 terms of this Agreement, employ various consultants, third-party service providers, and other
26 professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation
27 counselors, and financial advisors, as the Liquidating Trustee reasonably deems necessary to aid it
28 in fulfilling its obligations under this Agreement; such consultants, third-party service providers,
29 and other professionals shall be retained pursuant to whatever fee arrangement the Liquidating
30 Trustee deems appropriate as long as such fees do not exceed what is allocated in the Wind-Down
31 Budget (which may be amended or modified from time to time by the Liquidating Trustee),
32 including contingency fee arrangements and any fees and expenses incurred by such professionals
33 engaged by the Liquidating Trustee shall be Liquidating Trust Expenses and paid by the
34 Liquidating Trustees from the Liquidating Trust Assets;

35 j) prepare and file as necessary (A) tax returns for the Liquidating
36 Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section
37 1.671-4(a) which includes a valuation of assets transferred to the Liquidating Trust based upon the
38 Liquidating Trustee's good faith determination of their fair market value, (B) an election pursuant
39 to Treasury Regulation 1.468B-9(c) to treat the Disputed Claim Reserve as a disputed ownership
40 fund, in which case the Liquidating Trustees will file federal income tax returns and pay taxes for

1 the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that
2 may be required under applicable law;

3 k) prepare and send annually to the Liquidating Trust Beneficiaries, as
4 required by and in accordance with applicable tax law, a separate statement stating a Liquidating
5 Trust Beneficiary's interest in the Liquidating Trust and its share of the Liquidating Trust's
6 income, gain, loss, deduction or credit, and to instruct all such Liquidating Trust Beneficiaries to
7 report such items on their federal tax returns;

8 l) to the extent applicable, assert, enforce, release, or waive any
9 attorney-client communication, attorney work product or other Privilege or defense on behalf of
10 the Liquidating Trust (including as to any Privilege that the Debtor held prior to the Effective
11 Date), including to provide any information to insurance carriers that the Liquidating Trustees
12 deem necessary to utilize applicable insurance coverage for any Claim or Claims;

13 m) request any appropriate tax determination with respect to the
14 Liquidating Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

15 n) take or refrain from taking any and all actions the Liquidating
16 Trustee reasonably deems necessary for the continuation, protection, and maximization of the
17 value of the Class B Liquidating Trust Assets consistent with purposes hereof;

18 o) take all steps and execute all instruments and documents necessary
19 to effectuate the purpose of the Liquidating Trust and the activities contemplated herein and in the
20 Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation
21 Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

22 p) exercise such other powers and authority as may be vested in or
23 assumed by the Liquidating Trustees by any Final Order;

24 q) evaluate and determine strategy with respect to the Class B
25 Liquidating Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle
26 or abandon the Class B Liquidating Trust Assets on behalf of the Liquidating Trust;

27 r) with respect to the holders of Class B Trust Beneficial Interests,
28 perform all duties and functions of the Distribution Agent as set forth in the Plan, including
29 distributing Cash from the Disputed Claim Reserve, solely on account of Disputed Claims that
30 were Disputed as of the Effective Date, but become Allowed, (the foregoing subparagraphs (i)-
31 (xvii) being collectively, the "Authorized Acts"); and

32 s) exercise such other powers as may be vested in or assumed by the
33 Liquidation Trust or the Liquidating Trustee pursuant to the Plan, Bankruptcy Court order,
34 or as may be necessary, proper and appropriate to carry out the provisions of the Plan.

35 4. The Liquidating Trustee has the power and authority to act as trustee of the
36 Liquidating Trust and perform the Authorized Acts through the date such Liquidating Trustee
37 resigns, is removed, or is otherwise unable to serve for any reason.
38

1 3. Co-Liquidating Trustee Authority.

2 1. In connection with the administration of the Class A Liquidating Trust
3 Assets, in addition to any and all of the powers enumerated elsewhere herein, the Co-Liquidating
4 Trustee shall, in an expeditious but orderly manner, in consultation with the Liquidating Trustee,
5 prosecute all GUC Claim Objections and, on behalf of the Liquidating Trustees, make
6 Distributions to holders of Class A Trust Beneficial Interests. The Co-Liquidating Trustee shall
7 have the power and authority and is authorized to perform any and all acts, after consultation with
8 the Liquidating Trustee, necessary and desirable to accomplish the purposes of this Agreement and
9 the provisions of the Plan and the Confirmation Order relating to the Class A Liquidating Trust
10 Assets, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable
11 law.

12 2. The Co-Liquidating Trustee, subject to the limitations set forth in Section
13 3.4 of this Agreement and after consultation with the Liquidating Trustee shall have the right to
14 prosecute, commence, compromise, adjust, estimate, or otherwise deal with and settle any and all
15 GUC Claim Objections.

16 3. Subject in all cases to any limitations contained herein, in the Confirmation
17 Order, or in the Plan, and after consultation with the Liquidating Trustee, the Co-Liquidating
18 Trustee shall have the power and authority to:

19 a) hold any and all rights in or arising from the Class A Liquidating
20 Trust Assets, including, but not limited to, the right to collect any and all money and other
21 property belonging to the Class A Liquidating Trust Assets (including any proceeds of the Class A
22 Liquidating Trust Assets);

23 b) perform the duties, exercise the powers, and asserts the rights of a
24 trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Class A
25 Liquidating Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

26 c) protect and enforce the rights of the Liquidating Trust with respect
27 to any Class A Liquidating Trust Assets by any method deemed appropriate, including, without
28 limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency,
moratorium, or similar law and general principles of equity;

 d) subject to applicable law, seek the examination of any Entity or
Person with respect to GUC Claim Objections;

 e) make all payments relating to the holders of Class A Trust
Beneficial Interests;

 f) assess, enforce, release, or waive any privilege or defense on behalf
of the Liquidating Trust, the Class A Liquidating Trust Assets, or the holders of Class A Trust
Beneficial Interests, if applicable;

 g) without further order of the Bankruptcy Court, but subject to the
terms of this Agreement, employ various consultants, third-party service providers, and other
professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation

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1 counselors, and financial advisors, as the Co-Liquidating Trustee deems reasonably necessary,
2 after consultation with the Liquidating Trustee, to aid him in fulfilling his obligations under this
3 Agreement; such consultants, third-party service providers, and other professionals shall be
4 retained pursuant to whatever fee arrangement the Co-Liquidating Trustee deems appropriate as
5 long as such fees do not exceed what is allocated in the Wind-Down Budget, and any fees and
6 expenses incurred by such professionals engaged by the Co-Liquidating Trustee shall be a
7 Liquidating Trust Expense and paid by the Liquidating Trustees from the Liquidating Trust
8 Assets;

6 h) take all steps and execute all instruments and documents necessary
7 to effectuate the purpose of the Liquidating Trust and the activities contemplated herein and in the
8 Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation
9 Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

9 i) with respect to the holders of Class A Trust Beneficial Interests,
10 perform all duties and functions of the Distribution Agent as set forth in the Plan, including
11 distributing Cash from the Disputed Claim Reserve, solely on account of Disputed Claims that
12 were Disputed as of the Effective Date, but become Allowed; and

12 j) exercise such other powers and authority as may be vested in or
13 assumed by the Co-Liquidating Trustee by any Final Order (the foregoing subparagraphs (i)-(x)
14 being collectively, the “Co-Liquidating Trustee Authorized Acts”).

14 4. The Co-Liquidating Trustee has the power and authority to act as a Co-
15 Liquidating Trustee and perform the Co-Liquidating Trustee Authorized Acts through the date
16 such Co-Liquidating Trustee resigns, is removed, or is otherwise unable to serve for any reason.

16 5. Any determinations by the Co-Liquidating Trustee with respect to the
17 amount or timing of settlement or other disposition of any GUC Claim Objection settled in
18 accordance with the terms of this Agreement shall be conclusive and binding on the holders of
19 Class A Trust Beneficial Interests and all other parties of interest following the entry of an order of
20 a court of competent jurisdiction approving such settlement or other disposition to the extent
21 required or obtained; *provided, however*, that any such determination that affects any Material
22 Litigation must be made with the express consent of the Liquidating Trustee.

21 4. Limitation of Authority. Notwithstanding anything herein to the contrary, the
22 Liquidating Trust and the Liquidating Trustees shall not (i) be authorized to engage in any trade or
23 business, (ii) take any actions inconsistent with the management of the Liquidating Trust Assets as
24 are required or contemplated by applicable law, the Confirmation Order, the Plan, and this
25 Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this
26 Agreement.

25 5. Binding Nature of Actions. All actions taken and determinations made by the
26 Liquidating Trustees in accordance with the provisions of this Agreement shall be final and
27 binding upon any and all Liquidating Trust Beneficiaries.

27 6. Term of Service. The Liquidating Trustee shall serve as the Liquidating Trustee
28 for the duration of the Liquidating Trust, subject to death, resignation or removal. The Co-
Liquidating Trustee shall serve as the Co-Liquidating Trustee until the Class A Liquidating Trust

1 Assets are fully administered in accordance with the Plan, upon which time the Co-Liquidating
2 Trustee shall resign in accordance with Section 3.7(b), subject to earlier death, resignation or
removal.

3 7. Resignation.

4 1. The Liquidating Trustees may resign as Liquidating Trustees of the
5 Liquidating Trust by an instrument in writing delivered to the Bankruptcy Court at least thirty (30)
6 days before the proposed effective date of resignation. The Liquidating Trustees shall continue to
7 serve as Liquidating Trustees after delivery of the Liquidating Trustees' resignation until the
8 proposed effective date of such resignation, unless otherwise ordered by the Bankruptcy Court,
9 which earlier effective date shall be no earlier than the date of appointment of a successor
10 Liquidating Trustees in accordance with Section 3.9 hereof becomes effective, unless (i) the
11 Liquidating Trustee or Co-Liquidating Trustee, as applicable, is no longer able to serve in such
role, (ii) continuing in such role imposes a material economic burden, or (iii) continuing in such
role violates law, regulation, or ethical responsibilities. In the case of (i), (ii), or (iii) in the
immediately preceding sentence, the resignation effective date shall be the proposed effective date
provided that at least thirty (30) days' prior written notice is given to the Bankruptcy Court by the
resigning party.

12 2. Once the Liquidating Trustees determine that the Class A Liquidating Trust
13 Assets have been fully administered in accordance with the Plan, the Liquidating Trustees shall
14 deliver a notice in writing to the Bankruptcy Court and the Liquidating Trustee effectuating the
15 Co-Liquidating Trustee's resignation as the Co-Liquidating Trustee and no successor Co-
Liquidating Trustee shall be appointed.

16 8. Removal.

17 1. A Liquidating Trustee or Co-Liquidating Trustee may be removed for
18 Cause immediately upon an order of the Bankruptcy Court. Upon the removal of a Liquidating
19 Trustee or Co-Liquidating Trustee pursuant hereto, such Liquidating Trustee or Co-Trustee will
resign, or be deemed to have resigned, from any role or position he or she may have at the Post-
Effective Date Debtor unless such Liquidating Trustee or Co-Liquidating Trustee agree otherwise.

20 2. To the extent there is any dispute regarding the removal of a Liquidating
21 Trustee or Co-Liquidating Trustee (including any dispute relating to any compensation or expense
22 reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to
23 consider and adjudicate such dispute. Notwithstanding the foregoing, unless the Co-Liquidating
24 Trustee is deemed to resign under Section 3.7(b), the Liquidating Trustees will continue to serve
as the Liquidating Trustees after their removal until the earlier of (i) the time when a successor
Liquidating Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii)
such date as the Bankruptcy Court otherwise orders.

25 9. Appointment of Successor.

26 1. Appointment of Successor. In the event of a vacancy by reason of the death
27 or disability (in the case of a Liquidating Trustee or Co-Liquidating Trustee that is a natural
28 person), dissolution (in the case of a Liquidating Trustee or Co-Liquidating Trustee that is not a
natural person), or removal of a Liquidating Trustee or Co-Liquidating Trustee, or prospective

1 vacancy by reason of resignation (unless the Co-Liquidating Trustee is deemed to resign under
2 Section 3.6(b)), a successor Liquidating Trustee shall be selected by the Bankruptcy Court. If a
3 final decree has been entered closing the Chapter 11 Case, the Liquidating Trustees may seek to
4 reopen the Chapter 11 Case for the limited purpose of determining the successor Liquidating
5 Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be
6 paid by the Liquidating Trust. The successor Liquidating Trustee shall be appointed as soon as
7 practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in
8 the case of resignation, on the effective date of the resignation of the then acting Liquidating
9 Trustee.

10 2. Vesting or Rights in Successor Liquidating Trustee. Every successor
11 Liquidating Trustee appointed hereunder shall execute, acknowledge, and deliver to the
12 Liquidating Trust and the exiting Liquidating Trustee, and file with the Bankruptcy Court, an
13 instrument accepting such appointment subject to the terms and provisions hereof. The successor
14 Liquidating Trustee, without any further act, deed, or conveyance shall become vested with all the
15 rights, powers, trusts and duties of the exiting Liquidating Trustee, except that the successor
16 Liquidating Trustee shall not be liable for the acts or omissions of the retiring Liquidating Trustee.
17 In no event shall the retiring Liquidating Trustee be liable for the acts or omissions of the
18 successor Liquidating Trustee.

19 10. Continuance of Liquidating Trust. The death, resignation, or removal of the
20 Liquidating Trustees shall not operate to terminate the Liquidating Trust created by this
21 Agreement or to revoke any existing agency (other than any agency of the Liquidating Trustees as
22 the Liquidating Trustees) created pursuant to the terms of this Agreement or invalidate any action
23 taken by the Liquidating Trustees. In the event of the resignation or removal of the Liquidating
24 Trustees, the Liquidating Trustees shall promptly (i) execute and deliver, by the effective date of
25 resignation or removal, such documents, instruments, records, and other writings as may be
26 reasonably requested by their successor to effect termination of the exiting Liquidating Trustees'
27 capacity under this Agreement and the conveyance of the Liquidating Trust Assets then held by
28 the exiting Liquidating Trustees to the successor Liquidating Trustees; (ii) deliver to the successor
Liquidating Trustees all non-privileged documents, instruments, records, and other writings
relating to the Liquidating Trust as may be in the possession or under the control of the exiting
Liquidating Trustees, provided, the exiting Liquidating Trustees shall have the right to make and
retain copies of such documents, instruments, records and other writings delivered to the successor
Liquidating Trustees and the cost of making such copies shall be a Liquidating Trust Expense to
be paid by the Liquidating Trust; and (iii) otherwise assist and cooperate in effecting the
assumption of the exiting Liquidating Trustees' obligations and functions by his successor,
provided the fees and expenses of such assistance and cooperation shall be paid to the exiting
Liquidating Trustees by the Liquidating Trust. The exiting Liquidating Trustees shall irrevocably
appoint the successor Liquidating Trustees as their attorney-in-fact and agent with full power of
substitution for it and its name, place and stead to do any and all acts that such exiting Liquidating
Trustees are obligated to perform under this Section 3.10.

11. Liquidating Trustee as an "Estate Representative". The Liquidating Trustee will be
a trustee of the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. §
6012(b)(3). The Liquidating Trustee shall be a representative of the Estate appointed pursuant to
section 1123(b)(3)(B) of the Bankruptcy Code, with all rights and powers attendant thereto, in
addition to all rights and powers granted in the Plan and in this Agreement. The Liquidating
Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the

1 Liquidating Trust Assets, which was or could have been commenced by the Debtor prior to the
2 Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions,
3 claims, rights, or interest constituting Liquidating Trust Assets are preserved and retained and may
4 be enforced by the Liquidating Trustee.

4 12. Liquidating Trust Expense Reserve. Each of the Liquidating Trustee and the Co-
5 Liquidating Trustee may maintain the Liquidating Trust Expense Reserve in an amount and for the
6 duration as determined by each of the Liquidating Trustee and the Co-Liquidating Trustee as
7 applicable for its respective Liquidating Trust Expense Reserve.

7 13. Books and Records.

8 1. The Liquidating Trustee shall maintain in respect of the Liquidating Trust
9 and the Liquidating Trust Beneficiaries books and records reflecting Liquidating Trust Assets in
10 its possession and the income of the Liquidating Trust and payment of expenses, liabilities, and
11 claims against or assumed by the Liquidating Trust in such detail and for such period of time as
12 may be necessary to enable it to make full and proper accounting in respect thereof. Such books
13 and records shall be maintained as reasonably necessary to facilitate compliance with the tax
14 reporting requirements of the Liquidating Trust and the requirements of Article VI herein. Except
15 as otherwise provided herein, nothing in this Agreement requires the Liquidating Trustees to file
16 any accounting or seek approval of any court with respect to the administration of the Liquidating
17 Trust, or as a condition for managing any payment or distribution out of the Liquidating Trust
18 Assets.

15 2. The Liquidating Trustee may dispose some or all of the books and records
16 maintained by the Liquidating Trustee at the later of (i) such time as the Liquidating Trustee
17 determines that the continued possession or maintenance of such books and records is no longer
18 necessary for the benefit of the Liquidating Trust, or (ii) upon the termination and winding up of
19 the Liquidating Trust under Article VIII of this Agreement. Notwithstanding the foregoing, the
20 Liquidating Trustee shall cause the Post-Effective Date Debtor to retain such books and records,
21 and for such periods, as are required to be retained pursuant to any applicable laws, rules, or
22 regulations.

20 14. Compensation and Reimbursement; Engagement of Professionals.

21 1. Compensation and Expenses.

22 a) Compensation. As compensation for any services rendered by the
23 Liquidating Trustees in connection with this Agreement, the Liquidating Trustees shall receive
24 compensation as set forth in the Plan Supplement.

24 b) Expense Reimbursements. All reasonable out-of-pocket expenses of
25 the Liquidating Trustees in the performance of their duties hereunder shall be reimbursed as
26 Liquidating Trust Expenses paid by the Liquidating Trust.

26 2. Professionals.

27 a) Engagement of Professionals. The Liquidating Trustees shall
28 engage professionals from time to time in conjunction with the services provided hereunder.

1 2. Interests Beneficial Only. The ownership of the beneficial interests in the
2 Liquidating Trust shall not entitle the Liquidating Trust Beneficiaries to any title in or to the
3 Liquidating Trust Assets (which title shall be vested in the Liquidating Trust) or to any right to
4 call for a partition or division of the Liquidating Trust Assets or to require an accounting. No
Liquidating Trust Beneficiary shall have any governance right or other right to direct Liquidating
Trust activities.

5 3. Transferability of Trust Beneficial Interests. Trust Beneficial Interests are not
6 transferable.

7 4. Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of
8 any Liquidating Trust Beneficiary during the term of the Liquidating Trust shall not (i) entitle the
9 representatives or creditors of the deceased Liquidating Trust Beneficiary to any additional rights
under this Agreement, or (ii) otherwise affect the rights and obligations of any of other
Liquidating Trust Beneficiary under this Agreement.

10 5. Change of Address. Any Liquidating Trust Beneficiary may, after the Effective
11 Date, select an alternative distribution address by providing notice to the Liquidating Trustees
12 identifying such alternative distribution address. Such notification shall be effective only upon
13 receipt by the Liquidating Trustees. Absent actual receipt of such notice by the Liquidating
Trustees, the Liquidating Trustees shall not recognize any such change of distribution address.

14 6. Standing. No Liquidating Trust Beneficiary shall have standing to direct the
15 Liquidating Trustees to do or not to do any act or to institute any action or proceeding at law or in
16 equity against any party upon or with respect to the Liquidating Trust Assets. No Liquidating
Trust Beneficiary shall have any direct interest in or to any of the Liquidating Trust Assets.

17 7. Limitations on Rights of Liquidating Trust Beneficiaries.

18 1. The Liquidating Trust Beneficiaries shall have no rights other than those set
19 forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement
20 documents incorporated therein).

21 2. In any action taken by a Liquidating Trust Beneficiary against the
22 Liquidating Trust or a current or former Liquidating Trustee or Co-Liquidating Trustee, the
23 prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided,
however, that any fees and costs shall be borne by the Liquidating Trust on behalf of any such
Liquidating Trustee or Co-Liquidating Trustee, as set forth herein.

24 3. Any action brought by a Liquidating Trust Beneficiary must be brought in
25 the United States Bankruptcy Court for the Southern District of California. Liquidating Trust
Beneficiaries are deemed to have waived any right to a trial by jury.

26 4. The rights of Liquidating Trust Beneficiaries to bring any action against the
27 Liquidating Trust, a current or former Liquidating Trustee or Co-Liquidating Trustee shall not
28 survive the final Distribution by the Liquidating Trust.

V.
DISTRIBUTIONS

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3 1. Distributions.

4 All Distributions to be made by the Liquidating Trustees to any Person or Entity shall
5 be made only in accordance with the Plan, the Confirmation Order, and this Liquidating Trust
6 Agreement, and from the Cash or Cash proceeds of Liquidating Trust Assets, and only to the extent
7 that the Liquidating Trust has sufficient Cash to make such payments in accordance with and to the
8 extent provided for in the Plan, the Confirmation Order, and this Liquidating Trust Agreement. The
9 Liquidating Trustees shall distribute to the Liquidating Trust Beneficiaries the net income of the
10 Liquidating Trust plus all net proceeds from the monetization of Liquidating Trust Assets at least
11 annually; *provided* that (i) the Liquidating Trust may retain an amount of net proceeds or net income
12 reasonably necessary to maintain the value of its assets, pay Allowed Claims, and fund the Disputed
13 Claim Reserve and such other reserves provided for in, or otherwise not inconsistent with, the terms
14 of the Plan, the Confirmation Order, or this Liquidating Trust Agreement, including a reserve for
15 the payment of Liquidating Trust Expenses, and (ii) such Distribution is not otherwise inconsistent
16 with the terms of the Plan and Confirmation Order. Any distribution made by the Liquidating
17 Trustees in good faith shall be binding and conclusive on all interested parties, absent manifest error.

18 2. Delivery of Distributions. All distributions under this Agreement to any
19 Liquidating Trust Beneficiary shall be made, as applicable, at the address of such Liquidating
20 Trust Beneficiary (a) as set forth on the proof of claim (where applicable) or Schedules filed with
21 the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable,
22 unless the Liquidating Trustees have been notified in writing of a change of address pursuant to
23 Section 4.5 hereof.

24 3. Disputed Claim Reserves. There will be no Distributions under this Agreement or
25 the Plan on account of Disputed Claims pending Allowance. The Liquidating Trustees will
26 maintain a Disputed Claim Reserve, as set forth in the Plan and will make Distributions from the
27 Disputed Claim Reserve as set forth in the Plan.

28 4. Undeliverable Distributions and Unclaimed Property. All undeliverable
distributions and unclaimed property shall be treated in the manner set forth in the Plan.

5. De Minimis Distributions. Distributions with a value of less than \$100 will be
treated in accordance with the Plan.

6. United States Trustee Fees and Reports. After the Effective Date, the Liquidating
Trust shall pay as a Liquidating Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by
reason of the Liquidating Trust's disbursements until the Chapter 11 Case is closed. After the
Effective Date, the Liquidating Trust shall prepare and serve on the Office of the United States
Trustee such quarterly disbursement reports for the Liquidating Trust as required by the Office of
the United States Trustee Office for as long as the Chapter 11 Case remains open, with the
assistance of the Co-Liquidating Trustee, who shall timely provide the Liquidating Trustee with
all information concerning the Class A Liquidating Trust Assets and professionals retained by the
Co-Liquidating Trustee necessary for the Liquidating Trustee to complete and timely file and
serve such disbursement reports.

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VI.
TAX MATTERS

1. Income Tax Status.

1. 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 IRS Revenue Procedure 94-45, 1994-2 C.B. 684 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 the Liquidating Trust Beneficiaries. Accordingly, the parties hereto intend that the Liquidating Trust Beneficiaries 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 Liquidating Trust Beneficiaries followed by a deemed transfer by the Liquidating Trust Beneficiaries to the Liquidating Trust. The Liquidating Trust Beneficiaries will be treated as grantors and deemed owners of the Liquidating Trust.

2. All parties, including the Debtor, the Liquidating Trustees, and all Liquidating Trust Beneficiaries, must value all assets transferred to the Liquidating Trust consistently, and those valuations must be used for all federal, state, and local income tax purposes. The Liquidating Trustee must file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The assets shall be valued based upon the Liquidating Trustee’s good faith determination of their fair market value.

3. Anything set forth herein to the contrary notwithstanding, the Liquidating Trustee 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 Class B Liquidating Trust Assets during liquidation. Further, anything set forth herein to the contrary notwithstanding, the Co-Liquidating Trustee 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 Class A 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 Liquidating Trust 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.

4. The Liquidating Trust shall be classified as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 684, and in the event of any inconsistency between any term or provision herein, in the Plan, or in the Confirmation Order necessary for the Liquidating Trust to be deemed at all times a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 684 and any other term or provision herein, in the Plan, or in the Confirmation Order, 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) and IRS Revenue Procedure 94-45, 1994-2 C.B. 684 shall govern. Similarly, anything to the contrary set forth herein, in the Plan, or in the Confirmation Order notwithstanding, to the extent any term or provision herein, in the Plan, in the Confirmation Order would result in the Liquidating Trust not being classified as a liquidating trust

1 at all times pursuant to Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure
2 94-45, 1994-2 C.B. 684, such term or provision shall be ineffective and reformed to the extent
3 necessary for the Liquidating Trust to be classified at all times as a liquidating trust pursuant to
4 Treasury Regulations Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 684.

4 2. Tax Returns. The Liquidating Trustee shall prepare and provide to, or file with, the
5 appropriate parties such notices, tax returns, information returns, and other filings as may be
6 required by the Tax Code and may be required by applicable law of other jurisdictions. The
7 Liquidating Trustee shall be responsible for filing all required federal, state, and local tax returns
8 and information returns of the Liquidating Trust and the Post-Effective Date Debtor, which shall
9 be prepared with the assistance of the Co-Liquidating Trustee who shall provide the Liquidating
10 Trustee with any information necessary to complete such returns. The Liquidating Trustees shall,
11 when specifically requested by a Liquidating Trust Beneficiary in writing, make such tax
12 information available to the Liquidating Trust Beneficiary for inspection and copying at the
13 Liquidating Trust Beneficiary's expense, as is necessary for the preparation by such Liquidating
14 Trust Beneficiary of its income tax return.

11 VII. 12 STANDARD OF CARE AND INDEMNIFICATION

13 1.1 Trustee Standard of Care; Exculpation; Limitation on Liability; Indemnification.

13 The Liquidating Trustees shall not be liable for any act the Liquidating Trustees may do or omit to
14 do as Liquidating Trustees under the Plan and this Liquidating Trust Agreement while acting in
15 good faith and in the exercise of the Liquidating Trustees' business judgment; nor will the
16 Liquidating Trustees be liable in any event except for an act or omission that is determined by
17 Final Order of a court of competent jurisdiction to have constituted gross negligence, willful
18 misconduct, or fraud. The foregoing limitation on liability also will apply to any Person or Entity
19 employed by the Liquidating Trustees and acting on behalf of the Liquidating Trustees in the
20 fulfillment of the Liquidating Trustees' duties hereunder or under the Plan. In addition, the
21 Liquidating Trustees and any Person or Entity employed by the Liquidating Trustees and acting on
22 behalf of the Liquidating Trustees shall be entitled to indemnification and defense out of the assets
23 of the Liquidating Trust against any losses, liabilities, expenses (including attorneys' fees and
24 disbursements), damages, taxes, suits, or claims that they may incur or sustain by reason of being
25 or having been employed by the Liquidating Trust or the Liquidating Trustees or for performing
26 any functions incidental to such service; *provided, however*, that the foregoing shall not relieve the
27 Liquidating Trustees or any Person employed by the Liquidating Trustees from liability, nor
28 entitle any of the foregoing entities to indemnification pursuant to the Plan or this Liquidating
Trust Agreement, for an act or omission that is determined by Final Order to have constituted
gross negligence, willful misconduct, or fraud. Persons or Entities dealing with the Liquidating
Trustees or any of the foregoing parties in their respective capacities as such, or seeking to assert
claims against the Liquidating Trustees or any of the foregoing parties in their capacities as such,
shall have recourse only to the Trust Assets (excluding any fund or reserve to pay Liquidating
Trust Expenses) to satisfy any liability incurred by the Liquidating Trustees or any of the
foregoing parties in their respective capacities as such to such Persons or Entities in carrying out
the terms of the Plan and this Liquidating Trust Agreement. Satisfaction of any obligation of the
Liquidating Trust arising pursuant to the terms of this section shall be payable only from the Trust
Assets, and such right to payment shall be prior and superior to any other rights to receive on
behalf of any Liquidating Trust Beneficiary any distribution of Trust Assets or proceeds thereof.

1 The Liquidating Trust shall have the right to control the defense and settlement of claims as to
2 which it is obligated to indemnify.

3 1. Bond. The Liquidating Trustees shall not be obligated to give any bond or surety
4 for the performance of any of the Liquidating Trustees' duties unless otherwise ordered by the
5 Bankruptcy Court. If so ordered, all costs and expenses of procuring a bond or surety shall be
6 deemed a Liquidating Trust Expense and payable from the Liquidating Trust Assets.

7 2. No Personal Liability. Except as otherwise provided herein, the Liquidating
8 Trustees shall not be subject to any personal liability whatsoever, whether in tort, contract, or
9 otherwise, to any Person in connection with the affairs of the Liquidating Trust to the fullest extent
10 provided under applicable law, and all Persons asserting claims against the Liquidating Trustees or
11 otherwise asserting claims of any nature in connection with the affairs of the Liquidating Trust,
12 shall look solely to the Liquidating Trust Assets for satisfaction of any such claims.

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

17 VIII. 18 TERMINATION

19 1. Duration. The Liquidating Trustees and the Liquidating Trust shall be discharged
20 or dissolved, as the case may be, at such time as: (a) the Liquidating Trustee determines that the
21 pursuit of Causes of Action are not likely to yield sufficient additional proceeds to justify further
22 pursuit of such Causes of Action; (b) the Liquidating Trustee determines that the pursuit of
23 monetization of other Class B Liquidating Trust Assets is not likely to yield sufficient additional
24 proceeds to justify further pursuit of such monetization of other Class B Liquidating Trust Assets;
25 (c) the Co-Liquidating Trustee determines that the pursuit of monetization of other Class A
26 Liquidating Trust Assets is not likely to yield sufficient additional proceeds to justify further
27 pursuit of such monetization of other Class A Liquidating Trust Assets; (d) all objections to
28 Disputed Claims are fully resolved; (e) the Post-Effective Date Debtor is dissolved; (f) all
Liquidating Trust Expenses are paid and any claims for which the Liquidating Trustee or the Co-
Liquidating Trustee would need to seek indemnification are resolved; and (g) all Distributions
required to be made by the Liquidating Trustees to the Liquidating Trust Beneficiaries under the
Plan have been made, but in no event shall the Liquidating Trust be dissolved later than three
years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-
month period before such third anniversary (and, in the event of further extension, by order of the
Bankruptcy Court, upon motion made at least six months before the end of the preceding
extension), determines that a fixed period extension (not to exceed two years, together with any
prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the
Liquidating Trust Assets.

2. Termination of Duties. Except as otherwise specifically provided herein, upon the
termination of the Liquidating Trust, the Liquidating Trustees shall have no further duties or
obligations hereunder.

IX.
AMENDMENTS AND WAIVER

The Liquidating Trustees may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Liquidating Trustees and the approval of the Bankruptcy Court, after notice and a hearing.

X.
MISCELLANEOUS

1. Trust Irrevocable. Except as set forth in this Agreement, establishment of the Liquidating Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Liquidating Trust Beneficiaries.

2. Bankruptcy of Liquidating Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Liquidating Trust Beneficiary shall not permit any creditor, trustee, or any other Liquidating Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Liquidating Trust Assets.

3. Liquidating Trust Beneficiaries have No Legal Title to Liquidating Trust Assets. No Liquidating Trust Beneficiary shall have legal title to any part of the Liquidating Trust Assets.

4. Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Liquidating Trustees and the Liquidating Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Liquidating Trust Assets shall be held for the sole and exclusive benefit of the Liquidating Trust Beneficiaries.

5. Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail, electronic mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

1. If to the Liquidating Trustees:

[•]

With a copy to:

[•]

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 10.5 to the entity to be charged with knowledge of such change.

6. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

1 unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in
2 another jurisdiction.

3 7. Counterparts. This Agreement may be executed by the parties hereto in separate
4 counterparts, each of which when so executed and delivered shall be an original, but all such
5 counterparts shall together constitute but one and the same instrument.

6 8. Binding Effect, etc. All covenants and agreements contained herein shall be
7 binding upon, and inure to the benefit of, the Liquidating Trust, the Liquidating Trustees, and the
8 Liquidating Trust Beneficiaries, and their respective successors and assigns. Any notice,
9 direction, consent, waiver or other instrument or action by any Liquidating Trust Beneficiary shall
10 bind its successors and assigns.

11 9. Headings; References. The headings of the various Sections herein are for
12 convenience of reference only and shall not define or limit any of the terms or provisions hereof.

13 10. Governing Law. This Agreement shall in all respects be governed by, and
14 construed in accordance with the laws of the State of California, including all matters of
15 constructions, validity and performance.

16 11. Consent to Jurisdiction. Each of the parties hereto consents and submits to the
17 exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the
18 enforcement and construction of any right, remedy, obligation, or liability arising under or by
19 reason of this Agreement, the Plan or any act or omission of the Liquidating Trustees (acting in
20 their capacity as the Liquidating Trustees or in any other capacity contemplated by this Agreement
21 or the Plan); *provided, however*, that if the Bankruptcy Court either declines to exercise
22 jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be
23 brought in the state or federal courts located in the Southern District of California.

24 12. Transferee Liabilities. The Liquidating Trust shall have no liability for, and the
25 Liquidating Trust Assets shall not be subject to, any claim arising by, through or under the Debtor
26 except as expressly set forth in the Plan or in this Agreement. In no event shall the Liquidating
27 Trustees or the Liquidating Trust Beneficiaries have any personal liability for such claims. If any
28 liability shall be asserted against the Liquidating Trust or the Liquidating Trustees as the transferee
of the Liquidating Trust Assets on account of any claimed liability of, through or under the Debtor
or Post-Effective Date Debtor, the Liquidating Trustees may use such part of the Liquidating Trust
Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or
discharge same on terms reasonably satisfactory to the Liquidating Trustees as a Liquidating Trust
Expense.

[Remainder of Page Intentionally Blank]

1 IN WITNESS HEREOF, the parties hereto have caused this Liquidating Trust Agreement
2 to be duly executed by their respective officers thereunto duly authorized on the day and year first
written above.

3 Borrego Community Health Foundation

4
5 By: _____
6 [●]
7 [●]

8 Liquidating Trustees

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10 By: _____
11 [●], not individually but solely in his capacity
12 as the Liquidating Trustee

13
14 By: _____
15 [●], not individually but solely in his capacity
16 as the Co-Liquidating Trustee

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

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EXHIBIT H
Schedule of Administration Costs

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

Borrego Community Health Foundation: Case No. 22-082384-11

Schedule 3.107(k) - Local Rule 3020-1: Estimated Costs of Administration at Effective Date

\$ in USD 000's

	Estimated Costs	FN
Distributable Cash at Effective Date	\$ 67,705	[A]
Distributions at Effective Date		
Secured Claims	3	
DHCS Sales Proceeds Recovery	13,600	[B]
503(b)(9) Claims	1,644	
Estimated Priority Tax Claims	16	
Allowed Claims	2,423	
Administrative Claims Reserve	1,729	[C]
Disputed Claim Reserve	26,470	[D]
Effective Date Professional Claim Reserves	2,015	[E]
Wind-Down Budget	7,363	[F]
Funding of Liquidating Trust Operating Account	12,441	[G]
Total Distributions at Effective Date	\$ 67,705	

Footnotes

[A] - Projected cash on hand as of Effective Date.

[B] - Pursuant to DHCS Settlement, the first 40% of asset sale proceeds will be paid to DHCS. The remaining cash available after disbursements to General Unsecured Creditors will be distributed to DHCS.

[C] - Refers to cash to be set aside by the Debtor on the Effective Date in an aggregate amount estimated to fund the required amounts for payment of all unpaid Allowed Administrative Claims that will be paid after the Effective Date and all Administrative Claims that are not yet Allowed as of the Effective Date.

[D] - Refers to cash to be set aside by the Liquidating Trustee on the Effective Date sufficient in the aggregate to fund a reserve on account of Disputed Claims as if such Claims were Allowed as filed.

[E] - Refers to cash to be set aside by the Liquidating Trustee on the Effective Date sufficient in the aggregate to fund a reserve on account of accrued and unpaid Professional Claims not yet fixed and allowed by the Bankruptcy Court prior to or on the Effective Date.

[F] - The budget setting forth the projected costs and expenses associated with winding down the Debtor and the Estate and for the Liquidating Trustee and Co-Liquidating Trustee to discharge their duties under the Plan and the Liquidating Trust Agreement.

[G] - The remaining cash after claims paid at the Effective Date and reserves set aside by the Liquidating Trustee which will fund the Liquidating Trust's operating bank account.

EXHIBIT I
Identities of Parties

- The Liquidating Trustee shall be a representative from Ankura Consulting Group, LLC.
- The Co-Liquidating Trustee shall be a representative from FTI Consulting, Inc.
- The initial members of the Post-Effective Date Board of Directors shall be: (i) Jenna LeComte-Hinley, PhD; (ii) Frank Figueroa; and (iii) Martha Deichler.

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

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