

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

**ST. JOSEPH HEALTH SERVICES
OF RHODE ISLAND**

v.

**ST. JOSEPH HEALTH SERVICES
OF RHODE ISLAND RETIREMENT
PLAN, as amended.**

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C.A. No. PC-2017-3856

**RESPONSE OF THE RHODE ISLAND ATTORNEY GENERAL TO THE RECEIVER'S
PETITION FOR INSTRUCTIONS**

Now comes Attorney General Peter F. Kilmartin (“Attorney General”) and hereby files this Response to the Receiver’s Petition for Settlement Instructions (“Petition”).

As set forth more fully below, after reviewing relevant documents and applicable law, the Attorney General has concluded that while the Proposed Settlement Agreement terms may conflict with the conditions the Attorney General imposed as part of his 2014 approval of the Prospect/CharterCARE transaction, the more immediate issue—and the one the Attorney General believes requires the Court’s attention at this juncture—is the status of approximately \$8.2 million in charitable assets that were the subject of this Court’s 2015 *Cy Pres* order.¹

¹ See Objection of CharterCARE Foundation to Receiver’s Petition for Settlement Instructions and Emergency Cross-Motion to Postpone September 13, 2018 Hearing as it Related to Proposed Settlement Terms Regarding CharterCARE Community Board’s Alleged Membership Interest in CharterCARE Foundation, p.2, filed September 5, 2018 in the instant matter.

I. The Rhode Island Hospital Conversions Act.

a. The Attorney General's Authority under the Hospital Conversions Act.

By enacting the Hospital Conversions Act (“HCA”), R.I. Gen. Laws § 23-17.14-1 *et seq.*, the General Assembly sought in part to “protect . . . public and charitable assets” by “establish[ing] standards and procedures” for a non-profit hospital’s acquisition by a for-profit hospital network. R.I. Gen. Laws § 23-17.14-2(9). *See also id.* § 23-17.14-3(4). A non-profit hospital cannot be converted to a for-profit entity without the Attorney General’s approval, *id.* §§ 23-17.14-5(a), 23-17.14-6(a), which the Department of Attorney General (“Department”) bestows only after engaging in an exhaustive factual investigation. *See* R.I. Gen. Laws §§ 23-17.14-6, 23-17.14-7, 23-17.14-13, 23-17.14-14.

One of the explicit mechanisms the General Assembly employs to achieve its stated goals in this area is the creation of an independent non-profit foundation “to hold and distribute” the proceeds of the hospital conversion “consistent with the acquirer’s original purpose[,] or for the support and promotion of health care and social needs in the affected community.” *Id.* § 23-17.14-3(5); *see also id.* § 23-17.14-22, 23-17.14-25, 23-17.14-27. The HCA also authorizes the Attorney General to condition a for-profit conversion on “the acquiror’s adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit.” *Id.* § 23-17.14-28(c).

The HCA mandates continued regulatory oversight of the newly established for-profit hospital network after the conversion occurs. For example, the Attorney General retains continuing jurisdiction under its charitable trust powers to monitor compliance with the conditions the Department imposed as part of the conversion. *Id.* §§ 23-17.14-5(a), 23-17.14-21, 23-17.14-28(c)-(d). The General Assembly has authorized the Attorney General to take corrective action,

both civilly and criminally, should information come to light suggesting that the parties which engaged in the original hospital conversion transaction have failed to adhere in whole or in part to the Department's conditions. *Id.* §§ 23-17.14-17, 23-17.14-30. Additionally, the non-profit foundation established in the wake of a for-profit conversion must comply on an ongoing basis with applicable federal tax laws and keep the General Assembly as well as the Court, Governor, and the Attorney General apprised of such compliance. *See id.* § 23-17.14-26. This Court may engage in limited judicial review of the conditions imposed by the Attorney General if an appropriate action is brought by an aggrieved "transacting party." *Id.* § 23-17.14-34.

b. The Attorney General's 2014 HCA Decision.

Pursuant to its authority under the HCA as outlined above, in 2014 the Attorney General approved of the Prospect/CharterCARE acquisition and conversion from a non-profit to for-profit hospital network subject to a number of explicit conditions. *See Exhibit A*, HCA Decision, pp. 51-54. Some of these conditions were designed to ensure the structural and ethical integrity of the transaction's outcome, and therefore held the resulting entities to certain conflict-of-interest and corporate governance standards. *See HCA Decision, e.g., Conditions #1-#3.* Other conditions sought to protect the public's interest in the appropriate use of the original non-profit's charitable assets through a carefully vetted *cy pres* petition and the creation and maintenance of the requisite non-profit foundation. *See e.g. HCA Decision, Condition #8.* In order to avoid thwarting the entire conversion process, Condition #9 sought to prevent the transacting parties from departing in any way from the transaction they had outlined in their original HCA application: "That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses."

The Attorney General notes that none of the transacting parties ever disputed the factual basis for any of the conditions imposed or sought judicial relief from one or more of them. *See* R.I. Gen. Laws § 23-17.14-34.

c. The Proposed Settlement Agreement in View of the 2014 HCA Decision.

The question has now arisen whether the Proposed Settlement Agreement (sometimes hereinafter “the Agreement”) violates the numerous conditions the Attorney General imposed in its 2014 HCA decision. Generally speaking, there appears to be a complete failure on the part of any of the transacting parties to notify the Attorney General in timely fashion (*i.e.*, between 2014 and 2017) about any of the issues that resulted in the current Proposed Settlement Agreement.

More fundamentally, it seems apparent that the implementation of the Proposed Settlement Agreement as currently drafted would at the very least violate Conditions #1 and #2, concerning the CharterCARE Foundation’s (“the Foundation”) board membership, and Condition #9, which requires the Prospect/CharterCARE acquisition to “be implemented as outlined in the Initial Application.” To illustrate the point, note that § 2.01 of the Foundation’s by-laws preclude the board’s membership from being “assigned or transferred or encumbered in any manner whatsoever, either voluntarily or by operation of law,” and declares void any such “proposed or attempted assignment, transfer or termination of membership.” The substitution of the Receiver as the Foundation’s sole member is impermissible under the current terms of § 2.01 of the by-laws. Further, the Proposed Settlement Agreement tries to bind the current board of the Foundation in order to alter § 2.01 of the by-laws even though the current board is not a party to the Proposed Settlement Agreement. In addition, the Agreement’s proposed changes to the by-laws, whereby the board is stacked with compliant members in order to redirect the use of the Foundation’s funds, creates conflicts of interest for these board members in terms of their fiduciary duty to the

Foundation itself. These proposed changes therefore appear to violate the overarching Condition #9, as well as the more specific Conditions # 1 and #2.

The Proposed Settlement Agreement seeks to alter the corporate structure and governance of the Foundation—an entity the creation of which is statutorily required under the HCA—and then to divert charitable assets from the Foundation for the plaintiffs’ benefit without regard to the restrictions donors had previously imposed on the intended use of those assets.² The Proposed Settlement Agreement’s terms thus set entirely at naught the extensive HCA application and investigation process undertaken by the Attorney General before he approved the Prospect/CharterCARE acquisition in 2014.

The Attorney General is aware that the requirements and perhaps the application of Conditions #1, #2, and #9, as well as other conditions, are necessarily intertwined with the allegations of fraudulent misrepresentation plaintiffs have made in their pending state and federal lawsuits. Absent the presentation of evidence establishing plaintiffs’ allegations as fact, however, the Attorney General believes that there is, at the very least, a potentially irremediable conflict between the terms of the Proposed Settlement Agreement and Conditions #1, #2, and #9 of the 2014 HCA decision.

The Attorney General has serious concerns that judicial review of the May 16, 2014 HCA Decision and Conditions is time-barred some *four years* after their imposition. *Compare* R.I. Gen. Laws § 23-17.14-34 *with id.* § 42-35-15(b). The Attorney General also doubts the plaintiffs’ standing to seek such review, since they were not “transacting parties” in the 2014 conversion.³

² The Attorney General deals specifically with the attempted diversion of the \$8.2 million in charitable assets from the Foundation in the *cy pres* section of this memorandum, *infra* pp. 6-10.

³ The Attorney General recognizes that plaintiffs have asserted a private cause of action under the HCA and R.I. Gen. Laws § 9-1-2, *see Complaint* in PC-2018-4386, Count 12, but believes any

In any event, this Court’s authority to modify the 2014 HCA conditions under the judicial review provision of the HCA must be predicated on a finding that the Attorney General’s conditions were “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” R.I. Gen. Laws § 23-17.14-34(d)(7). This Court has not yet had the opportunity to make such a finding, and neither the Court nor the Attorney General has been presented with the factual record to support it.

Because of the concerns just outlined, the Attorney General believes that it would be premature for him to determine as a factual matter whether the PSA violates Conditions #1, #2, or #9 of the 2014 HCA decision. Instead, the Attorney General requests that the Court focus more pragmatically on what is currently quite clear in the record: whether and to what extent over \$8 million in Foundation assets can be diverted for the plaintiffs’ benefit.

II. Cy Pres.

a. *The Attorney General: Protector of the Trust and Charitable Assets*

The Attorney General has entered as an interested party in this Rhode Island state court proceeding, in part because the proceedings impact the proposed alternative use of charitable assets. As an interested party in these matters, the role of the Attorney General is to protect restricted charitable assets and the public’s interest as charitable beneficiary. This duty stems from the Attorney General’s enduring, common law *parens patriae* power to protect those who cannot protect themselves, which in this case is the public as an unascertainable and unquantifiable group of potential charitable beneficiaries. Although this authority derives from common law, its principles have been partially codified by the Rhode Island legislature. Most notably, the

such claim is separate and apart from the plaintiffs’ standing to seek judicial review under § 23-17.14-34, review under which is quite explicitly limited to “any transacting party.”

Charitable Trusts Act, R.I. Gen. Laws § 18-9-1 *et seq.*, entrusts the Attorney General with the power to represent the interests of the public related to any proposed modifications of charitable trusts. The Attorney General is thus deemed an interested party in all cases affecting charitable trusts. *See generally, e.g., Israel v. Nat'l Bd. of Young Men's Christian Ass'n*, 117 R.I. 614, 617-18, 369 A.2d 646, 649 (1977).

The General Assembly further cemented and codified the Attorney General's common law role as protector of the public through the establishment of the Office of Health Care Advocate, R.I. Gen. Laws § 42-9.1-1 *et seq.*, and the HCA, R.I. Gen. Laws § 23-17.14-1 *et seq.* These statutes highlight the role of the Attorney General in protecting charitable assets, especially when the assets relate to health care. Specifically, the General Assembly describes the Attorney General as "the state's legal advisor, advocate *parens patriae*, and protector of the public trust and charitable assets ***." R.I. Gen. Laws § 42-9.1-1. The HCA further provides:

(a) No provision of this chapter shall derogate from the common law or statutory authority of the attorney general nor shall any provision be construed as a limitation on the common law or statutory authority of the attorney general, including the authority to investigate at any time charitable trusts for the purpose of determining and ascertaining whether they are being administered in accordance with law and with the terms and purposes thereof.

R.I. Gen. Laws § 23-17.14-21(a). The Attorney General thus has a well-established obligation to ensure that restricted charitable assets are properly protected in accordance with the application of law and the intent of the original donors.

b. 2015 Cy Pres Petition and Order.

The purpose of a *cy pres* petition is to find a way to carry out a donor's charitable intent as closely as possible in circumstances where it is either illegal, impossible or no longer practicable to comply with the donor's wishes exactly as originally stated. *See* David T. Riedel, *Wills, Trusts*

& *Gifts* § 734, at 390 (1991) [hereinafter cited as “Riedel, at ___”]. Condition # 8 of the Attorney General’s HCA Decision required certain charitable assets be subject to *cy pres*. An Order on Petition for Approval of Disposition of Charitable Assets (“*Cy Pres* Order”) was approved and entered by this Honorable Court on April 6, 2015 after input from the Attorney General as well as the Bank of America in its capacity as trustee of a number of trusts affected by the *cy pres* petition. See *Exhibit B*, *Cy Pres* Order; see also *Exhibit C*, Attorney General’s Response to the *Cy Pres* Petition; *Exhibit D*, Bank of America Response to *Cy Pres* Petition. According to the *Cy Pres* Order, certain permanently restricted funds and temporarily restricted funds are “to be used as close to the original donors’ intent as possible, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission.” *Cy Pres* Order, ¶ 2. The Foundation mission states that the purpose of the Foundation “shall include serving as a community resource to provide accessible, affordable, and responsive health care and health care related services, including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities previously served by St. Joseph Health Services of Rhode Island and Roger Williams Hospital in order to facilitate positive changes in the health care system.” See *Exhibit E*, 2015 Petition for Approval of Disposition of Charitable Assets Including Application of Doctrine of *Cy Pres* (“2015 Petition”), Exhibit A.

c. Cy Pres and the Proposed Settlement Agreement

Under *cy pres*, if a change in factual circumstances is sufficiently established by the record, the Court has discretion to apply the doctrine to the current state of the charitable assets before it as long as the court can determine that it is either illegal, impossible, or at the very least, impracticable, for the donors’ intent to be complied with under current circumstances. See Riedel, § 734, at 390; R.I. Gen. Laws § 18-4-1.

In deciding whether to apply *cy pres*, the Court should keep several conditions in mind. First, it is imperative that the Court initially determine that the circumstances have sufficiently changed from what was established when the 2015 *cy pres* petition was granted such that it is either impossible or impracticable for the intent of one or more of the donors to be complied with under the terms of the existing 2015 *cy pres* order. *See, e.g., In re Estate of Othmer*, 815 N.Y.S.2d 444, 448-50 (N.Y. Sur. Ct. 2006) (applying doctrine of *cy pres* based on changed circumstances to terms of trust that were previously modified under same doctrine).

Second, consistent with the approach of the 2015 *Cy Pres* order, the Court must recognize that some of the Foundation's assets are under restrictions so clear and explicit that neither their income nor their principal can be diverted from the stated purpose without frustrating donor intent. Just as these assets could not be used to pay down hospital pension liabilities in 2015, they cannot be used to fund the pension fund today.

Finally, the Court must determine whether using the income for such a purpose – funding a pension liability - is necessary to avoid the hospitals' collapse. *Cy pres* permits diverting of resources from stated intent only if the facts establish that the donors' overall goal will still be achieved. If diverting this income will not have any impact on the provision of health care by the existing providers, then, in the State's view, application of *cy pres* is not justified. *See In re Edward John Noble Hosp. of Gouverneur*, 959 N.Y.S.2d 623, 627 (N.Y. Sup. Ct. 2013) (“[T]he courts have uniformly held that the intention of a testator in making a general gift to a charitable corporation was the furtherance of the [organization's] charitable purpose. . . . In the case of hospital corporations, such purpose is deemed to be the actual and continued provision of acute patient care services, rather than the satisfaction of creditors' claims.”) (emphasis and citation omitted). Based upon the Attorney General's review of the Proposed Settlement Agreement in

view of the above *cy pres* principles, it appears that the Proposed Settlement Agreement purports to divert millions of dollars in restricted charitable assets in contravention of the *Cy Pres* Order, specifically Paragraphs 2 and 5, and in contravention of the donors' original intent.⁴

Descriptions of the restricted assets are found in Exhibits F, G, and H to the 2015 *Cy Pres* Petition. *See Exhibit E.* Many of the affected funds are earmarked for very specific uses, none of which appears to comport with funding pension liability. For example, several of the funds in Exhibit G are earmarked for free medical care. Certain funds in Exhibits F, G, and H to the 2015 *Cy Pres* Petition are earmarked for, *inter alia*, cancer research, neurology, breast cancer programs, and purchase of emergency medications for certain medical conditions.

The Attorney General, as *parens patriae* and protector of trusts and charitable assets, must ensure that the donors' original intent is honored. This Honorable Court must not set precedent allowing charitable assets to be used as a financial fail-safe when to do so directly contravenes donors' original intent. If this Court approves the Proposed Settlement Agreement allowing the Receiver access to those assets, the Attorney General requests that this Court limit transfer of restricted charitable assets for pension purposes to those assets listed under "General Use" in the *Cy Pres* Petition.⁵

⁴ Counsel for CharterCARE Foundation confirmed to counsel for the Attorney General that the assets at issue were those delineated in Paragraphs 2 and 5 of the 2015 *Cy Pres* Order.

⁵ Exhibit G to the 2015 *Cy Pres* Petition sets forth approximately \$3,714,310 in charitable assets for "General Use." As the Attorney General has demonstrated in this Response, should this Court determine that the conditions for the application of the *cy pres* doctrine have been met in the pending proceeding, it would need to enter a new *cy pres* order. Until that time, the 2015 *Cy Pres* Order, which was entered in furtherance of Condition #8 of the HCA Decision, remains in effect.

Respectfully submitted,

STATE OF RHODE ISLAND

By Its Attorneys,

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Dated: September 27, 2018

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 27th day of September 2018, I electronically filed and served this document through the electronic filing system to all on record. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Diane B. Milia

EXHIBIT A

**STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL**

May 16, 2014

DECISION

Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

I. BACKGROUND

The first step in traversing the Hospital Conversions Act is the filing of an initial application with the Department of Attorney General (the “Attorney General”) and Rhode Island Department of Health (“DOH”). The parties filed their initial application (“Initial Application”) on October 18, 2013. The parties (collectively, “Transacting Parties”) to the Initial Application are identified below:

- **Roger Williams Medical Center (“RWMC”)**, a 220-bed acute care, community hospital located in Providence, Rhode Island. RWMC is a wholly-owned subsidiary of CharterCARE Health Partners (“CCHP”).¹
- **St. Joseph Health Services of Rhode Island (“SJHSRI”)**², a 278-bed acute care, community hospital located in North Providence, Rhode Island. SJHSRI’s ownership structure is such that CCHP is the sole Class A Member and the Bishop of Providence is the sole Class B Member.

¹ RWMC and SJHSRI will at times be referred to as the “Existing Hospitals” or “Heritage Hospitals.”

² Commonly known as Our Lady of Fatima Hospital

- **CharterCARE Health Partners**, The Existing Hospitals were converted to the current CCHP structure pursuant to a decision issued by DOH and the Attorney General in July 2009.
- **Prospect Medical Holdings, Inc.** (“PMH”) The Acquiror, pre-conversion, is an organizational structure existing under a parent entity, Prospect Medical Holdings, Inc. PMH is a Delaware corporation with its principal place of business located in Los Angeles, California. PMH is a health care services company that owns and operates hospitals and manages the provision of health care service for managed care enrollees through its network of specialists and primary care physicians.
- **Prospect East Holdings, Inc.** (“Prospect East”) a Delaware corporation which is a wholly-owned subsidiary of PMH. Prospect East will hold PMH’s interest in Prospect CharterCARE, LLC and the Newco Hospitals post-conversion.
- **Prospect East Hospital Advisory Services, LLC** (“Prospect Advisory”), a Delaware limited liability company, which is a wholly-owned subsidiary of PMH. Prospect Advisory will oversee and assist in the management of the day-to-day operations of Prospect CharterCARE, LLC post-conversion.
- **Prospect CharterCARE, LLC**, a Rhode Island limited liability company, which will own the entities that own and operate and hold licensure for the hospitals, post-conversion, the Newco RWMC and Newco Fatima³ (defined below). Prospect CharterCARE, LLC will be owned 85% by Prospect East and 15% by CCHP. However, the governing board of Prospect CharterCARE, LLC will be a 50/50 board as explained herein.
- **Prospect CharterCARE RWMC, LLC** (“Newco RWMC”), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC.
- **Prospect CharterCARE SJHSRI, LLC** (“Newco Fatima”) is a Rhode Island limited liability company, which will own and hold the licensure for Our Lady of Fatima Hospital post-conversion. Newco Fatima will be wholly-owned by Prospect CharterCARE, LLC.

See Response to Initial Application Question 1 and Exhibits C10A-1 through A-6; C10A-12 through 14; 10A-7 through 11 and 10 B, C and D⁴.

³ Newco RWMC together with Newco Fatima shall collectively hereinafter be referred to as “Newco Hospitals”.

⁴ For the purposes of this Decision, Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, and its “Subsidiaries”, Prospect CharterCARE RWMC, LLC, and Prospect CharterCARE SJHSRI, LLC, will be called collectively “Prospect”; Roger Williams Medical Center, St. Joseph

In its simplest form, the structure of the transaction outlined in the Initial Application (the “Proposed Transaction”) is a sale of the assets of CCHP to PMH.

PMH is proposing to form Prospect CharterCARE, LLC. PMH will retain an 85% ownership interest in Prospect CharterCARE, LLC. CCHP will be provided a 15% ownership interest in Prospect CharterCARE, LLC. The governing structure, however, will be such that PMH’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board, and CCHP’s ownership interest will appoint 50% of the membership of the Prospect CharterCARE, LLC board. The Transacting Parties refer to this concept as a “50/50 board.”

II. REVIEW CRITERIA

The review criteria utilized by the Attorney General for a hospital conversion involving a conversion of a non-profit hospital to a for-profit hospital⁵ is as follows:

- (1) Whether the proposed conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the proposed conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board formulated and issued appropriate requests for proposals in pursuing a conversion;
- (5) Whether the board considered the proposed conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (6) Whether any conflict of interest exists concerning the proposed conversion relative to members of the board, officers, directors, senior management, experts or consultants

Health Service of Rhode Island and CharterCARE Health Partners will be called collectively “CharterCARE” or “CCHP”.

⁵ R.I. Gen. Laws § 23-17.14-7(c). The Attorney General’s responsibility under the Hospital Conversions Act is to review the transaction selected by the Board(s) of Directors.

engaged in connection with the proposed conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;

(7) Whether individuals described in subdivision (c)(6) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion;

(10) Whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion;

(11) Whether the board exposed an inappropriate amount of assets by accepting in exchange for the proposed conversion future or contingent value based upon success of the new hospital;

(12) Whether officers, directors, board members or senior management will receive future contracts in existing, new, or affiliated hospital or foundations;

(13) Whether any members of the board will retain any authority in the new hospital;

(14) Whether the board accepted fair consideration and value for any management contracts made part of the proposed conversion;

(15) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the proposed conversion;

(16) Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion;

(19) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(20) Whether the conversion is proper under applicable state tax code provisions;

(21) Whether the proposed conversion jeopardizes the tax status of the existing hospital;

(22) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(23) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price;

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital;

(25) Whether the proposed conversion appropriately provides for the disposition of proceeds of the conversion that may include, but not be limited to:

(i) Whether an existing entity or a new entity will receive the proceeds;

(ii) Whether appropriate tax status implications of the entity receiving the proceeds have been considered;

(iii) Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital;

(iv) Whether any conflicts of interest arise in the proposed handling of the conversion's proceeds;

(v) Whether the bylaws and articles of incorporation have been prepared for the new entity;

(vi) Whether the board of any new or continuing entity will be independent from the new hospital;

(vii) Whether the method for selecting board members, staff, and consultants is appropriate;

(viii) Whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community;

(ix) Whether the size of the board and proposed length of board terms are sufficient;

(26) Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18;

(27) Whether a right of first refusal to repurchase the assets has been retained;

(28) Whether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory;

(29) Whether a control premium is an appropriate component of the proposed conversion; and

(30) Whether the value of assets factored in the conversion is based on past performance or future potential performance.

In addition to reviewing the Initial Application submitted by the Transacting Parties and other publically available information, the Attorney General and DOH (the "Departments") jointly interviewed the following individuals:

CharterCARE

1. Kenneth H. Belcher, President/CEO of CharterCARE Health Partners
2. Michael E. Conklin, Jr., Chief Financial Officer, CharterCARE Health Partners
3. Joan M. Dooley, R.N., Chief Nursing Officer, CharterCARE Health Partners, RWMC
4. Patricia A. Nadle, R.N., Chief Nursing Officer, CharterCARE Health Partners, SJHSRI
5. Edwin J. Santos, Chairman of the CharterCARE Health Partners Board
6. Kathy Moore, Director of Finance, CharterCARE Health Partners
7. Addy Kane, Chief Financial Officer, Roger Williams Medical Center

Prospect

8. Thomas Reardon, President of Prospect Medical Holdings, Inc.
9. Samuel S. Lee, CEO, Prospect Medical Holdings, Inc.
10. Steve Aleman, Chief Financial Officer, Prospect Medical Holdings, Inc.
11. Barbara Giroux, Senior Vice President of Finance and Operations

The Hospital Conversions Act requires a public informational meeting. *See* R.I. Gen. Laws § 23-17.14-7(b)(3)(iv). A public notice was published regarding an informational meeting as well as soliciting written comments regarding the Proposed Transaction. The Attorney General and DOH jointly held this meeting in Providence at Gaige Hall Auditorium on the

campus of Rhode Island College.⁶ It was held on April 28, 2014, from 4 p.m. to 7 p.m. At the beginning of the session, the Transacting Parties were provided an opportunity to give a presentation regarding the Proposed Transaction; afterwards, public comment was taken. Over the course of the meeting, twenty-eight (28) speakers provided public comment. The comments were overwhelmingly in favor of the Proposed Transaction, with one in opposition and another raising concern as to whether Fatima Hospital would retain its Catholic identity. Several written comments were also received, the overwhelming majority of which supported the Proposed Transaction.

The Initial Application, along with the supplemental information provided, information gathered from the investigation, including publically available information and information resulting from interviews and public comment, were all considered in rendering this Decision.

III. PROCEDURAL HISTORY

In 2008 and 2009, the RWMC and SJHSRI systems were losing in excess of \$8 million dollars a year from operations alone.⁷ In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CCHP. The purpose of the affiliation was to realize approximately \$15 million dollars in savings over 5 years, utilizing efficiencies created by the combined hospital systems as well as to preserve and expand health care services to the Existing Hospitals' communities.⁸ In 2009, the affiliation was approved by DOH and the

⁶ The Attorney General would like to thank the staff of Rhode Island College for their hospitality and for assisting us with use of the auditorium.

⁷ Initial Application, Response to Question 1

⁸ Id.

Attorney General.⁹ If the CCHP affiliation had not been approved, the RWMC and SJHSRI systems would have had difficulty in continuing to operate independently.¹⁰

CCHP operates a health care system in the City of Providence and the Town of North Providence which includes Roger Williams Medical Center and St. Joseph's Health System of Rhode Island.¹¹

Roger Williams Medical Center, defined above as RWMC, is a 220-bed acute care, community hospital located in Providence, Rhode Island. St. Joseph Health Services of Rhode Island, defined above as SJHSRI, operates Our Lady of Fatima Hospital, which is a 278-bed acute care, community hospital located in North Providence, Rhode Island.¹²

CCHP also operates a number of non-hospital facilities that will be included in the Proposed Transaction: Elmhurst Extended Care Facilities, Inc., Roger Williams Realty Corporation, RWGH Physician's Office Building, Inc., Roger Williams Medical Associates, Inc., Roger Williams PHO, Inc., Elmhurst Health Associates, Inc., Our Lady of Fatima Ancillary Services, Inc., The Center for Health and Human Services, SJH Energy, LLC, Rosebank Corporation and CharterCARE Health Partners Foundation ("CCHP Foundation").¹³

Significant operating efficiencies have been achieved as a result of the 2009 CCHP affiliation.¹⁴ Based on operating revenue alone, the combined CCHP hospital system reduced operating losses not including pension losses to approximately \$3 million dollars per year.¹⁵ Although a significant improvement, CCHP realized that the losses it was continuing to experience cannot be sustained and still ensure its continued viability. Furthermore, although

⁹ Id.

¹⁰ Id.

¹¹ Initial Application, Response to Question 1

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

capital expenditures have been made, the physical plants at the Existing Hospitals are aging and need upgrading.¹⁶

Of additional concern to CCHP is its pension funding (an issue that is impacting many hospitals throughout the country). If pension losses are taken into consideration, in fiscal year 2012, the CCHP system sustained losses of over \$8 million dollars which are increasing without additional contributions.¹⁷ Such losses cannot be sustained by CCHP. Facing these significant financial concerns, CCHP realized it needed additional capital to ensure its continued viability to fulfill its responsibilities to the citizens of Rhode Island which it serves.

In an effort to ensure the continued viability of the Existing Hospitals, in December of 2011, CCHP issued 22 Requests for Proposals (the "RFP") seeking a partner.¹⁸ In response to its RFP, CCHP received six (6) responses, which it reviewed and considered carefully.¹⁹ Among the responses it received was one from PMH in August of 2012.²⁰ CCHP conducted a vigorous and detailed review of all of the proposals it received.²¹ However, after receiving the response of PMH, CCHP then undertook extensive review of PMH's proposal and engaged in negotiations with PMH. In March of 2013, after a joint meeting of the boards of CCHP and the Existing Hospitals, and an analysis of a number of the different options before CCHP, CCHP chose PMH's proposal.²² In March of 2013, a Letter of Intent was executed by and between PMH and CCHP.²³ During the interval between March 2013 and the execution of the Asset Purchase Agreement on September 24, 2013, the Transacting Parties conducted extensive due diligence of each other. The Transacting Parties subsequently executed a First Amendment to the Asset

¹⁶ Id.

¹⁷ Id.; Report of James P. Carris, CPA.

¹⁸ 4/28/14 Testimony of Kenneth Belcher

¹⁹ Id. Response to Question 55

²⁰ Id.

²¹ Id.

²² Initial Application response to Question 14

²³ Id.

Purchase Agreement on February 27, 2014, to add Prospect CharterCARE Ancillary Services, LLC (“Ancillary”) to hold the licenses for the Prospect CharterCARE laboratories, among other things.²⁴

An Initial Application was submitted by the Transacting Parties on October 18, 2013. On November 18, 2013, the Departments informed the Transacting Parties that there were deficiencies to the Initial Application and requested additional information. On January 2, 2014 the Departments received a letter addressing the deficiencies within the Initial Application. On January 16, 2014, the Departments issued the Transacting Parties a notice of completeness letter.

On January 17, 2014, the Initial Application was deemed complete with the condition that new copies of the Initial Application be filed, incorporating the confidentiality decision made by the Attorney General wherein some documents that were originally requested to be deemed confidential were deemed public.

During the review, six (6) sets of Supplemental Questions consisting of two hundred and thirteen (213) questions were sent to and responded to by the Transacting Parties.

IV. DISCUSSION

As outlined above, the review criteria contained in the Hospital Conversions Act applicable to the Proposed Transaction consist of thirty (30) requirements. For organizational purposes we have addressed them grouped by topic below.

A. BOARD OF DIRECTORS

Numerous provisions of the Hospital Conversions Act involve a review of the actions of the board of directors of the existing hospital.²⁵ In the instant review, the Attorney General provided a review of the action of the board of directors leading to the Proposed Transaction.

²⁴ Response to Supplemental Question 3-15

1. Duties of the Board of Directors

The Hospital Conversion Act requires review of the decisions leading up to a conversion to ascertain whether the directors fulfilled their fiduciary duties to the hospital. The first criteria of the Hospital Conversions Act guiding the review of the actions of the board of directors in pursuing a conversion is governed by R.I. Gen. Laws § 23-17.14-7(c)(3). This section requires review of whether there was “appropriate criteria [used] in deciding to pursue a conversion in relation to carrying out [the hospital’s] mission and purposes.” With regard to this particular provision, the Board of Directors of CCHP (the “CCHP Board”) faced a situation where it was sustaining continued losses, despite its efforts to find and implement efficiencies throughout CCHP and its affiliates.²⁶ CCHP was also faced with aging infrastructure issues that needed to be addressed.²⁷ The need for capital to sustain its continued viability was a driving impetus in locating a partner as CCHP realized it could not address these issues on its own going forward.²⁸ The Attorney General finds that this condition of the Hospital Conversions Act has been satisfied.

The next section, R.I. Gen. Laws § 23-17.14-7(c)(4) requires a review of “[w]hether the board formulated and issued appropriate requests for proposals in pursuing a conversion.” In order to pursue an appropriate partner, CCHP issued twenty-two (22)²⁹ Requests for Proposals to a number of entities, listing a number of criteria.³⁰ These criteria included:

- (a) A commitment to the continued provision of quality health care services for the residents of Greater Providence, Rhode Island and the surrounding communities;

²⁵ See e.g., Hospital Conversions Act, R. I. Gen. Laws §§ 23-17.14-7(c) (3), (4), (5), (8), (9), (10), (11), (13), (14), (15), and (23).

²⁶ Initial Application, Response to Question 1

²⁷ Id.

²⁸ Initial Application, Responses to Questions 1, 13 and 14.

²⁹ 4/28/14 Public Hearing Testimony of Kenneth Belcher

³⁰ Initial Application Response to Question 14 and Exhibit 14A

- (b) A long-term commitment to CCHP, its medical staff and employees;
- (c) A demonstrated cultural fit with CCHP's mission and a shared strategic vision for the future of CCHP;
- (d) An established record of success in the use of various strategies for physician recruiting and assistance developing other ways to expand and enhance CCHP's range of services;
- (e) Access to sufficient capital to allow CCHP to maintain high quality care for its patients and improve its physical facilities;
- (f) Continued commitment to community benefit programs;
- (g) A structure of governance that allows for continued participation of the CCHP Board in the governance of CCHP, preferably a joint venture structure;
- (h) Commitment to maintaining existing services for a period of at least three years;
- (i) Quality and safety expertise to assure that CCHP exceeds quality and safety standards;
- (j) Proven ability to improve clinical outcomes/services as well as provide clinical and administrative support to assure a standard of excellence; and
- (k) Preservation and enhancement of academics.

The condition in the RFP reflecting the CCHP Board's desire for a long-term commitment to CCHP, its medical staff and employees, referenced at (b) above, fit with the Board's desire to engage in a joint venture model of governance that would permit continued CCHP input into the decision making and operations of the Existing Hospitals rather than to be simply acquired.³¹ This intended model of governance was shared by Prospect, as evidenced by the provisions of the Amended and Restated Limited Liability Company Agreement of Prospect CharterCARE, LLC (the "Prospect CharterCARE Operating Agreement"), which contains specific conditions for a 50/50 board representation by CCHP and Prospect, as well as

³¹ See Initial Application Response to Question 55.

establishment of local boards for the Existing Hospitals to provide continued local input into the operations of these facilities.³²

In its RFP, CCHP sought a substantial amount of information from its potential partners,³³ including:

- (a) Mission, Vision, Values;
- (b) Financial Strength;
- (c) Corporate Structure;
- (d) Ability to Pay or Finance Proposal;
- (e) Ability to Fund Capital Needs;
- (f) Desire to Sustain CCHP as a Full Service Acute Care System;
- (g) Commitment to Build CCHP Care Capabilities;
- (h) Desire to Support, Improve and Grow Medical Staff and Physician Alignment;
- (i) Approach to Physician Recruitment and Retention;
- (j) Community Benefit;
- (k) Future Governance Proposal for CCHP;
- (l) Continuing Roles for CCHP Management Team;
- (m) Growth Strategies;
- (n) Existing Affiliations;
- (o) Quality and Safety; and
- (p) Regulatory Impediments to Successful Venture.

The Attorney General finds that the CCHP Board's actions in connection with its issuance of the RFP and criteria employed satisfy the requirements of the Hospital Conversion Act. *See* R.I. Gen. Laws § 23-17.14-7(c)(3)(4).

An additional section requires review of "whether the board exercised due care in assigning a value to the existing hospital and its charitable assets in proceeding to negotiate the proposed conversion." *See* R.I. Gen. Laws § 23-17.14-7(c)(10).

³² *See* Initial Application Response to Question 7, Exhibit 18, Prospect CharterCARE Operating Agreement.

³³ *Id.*

2. Board Use of Consultants

Two criteria in the Hospital Conversions Act deal with a board's use of consultants. *See* R.I. Gen. Laws §§ 23-17.14-7(c)(8) and (9):

(8) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions; and

(9) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the proposed conversion.

As outlined in the Initial Application, the CCHP Board engaged a number of consultants, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.³⁴ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zubel, LLC to assist it with the process of review of the RFP proposals submitted and negotiation of the Proposed Transaction.³⁵ *See* R.I. Gen. Laws § 23-17.14-7(c)(8)(15).

Prospect also retained a number of consultants, including BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.³⁶

With regard to the care given “in accepting assumptions and conclusions provided by consultants,” the Attorney General is not privy to the advice provided by these consultants other than any documents submitted with the Initial Application process. It is unclear if more than advice regarding the regulatory process was provided by consultants in this portion of the transaction process. Accordingly, the Attorney General has found nothing to refute that the

³⁴ Initial Application, Response to Question 14.

³⁵ Initial Application, Response to Question 60, Exhibit 60B.

³⁶ Initial Application, Response to Question 60, Exhibit 60A.

CCHP Board's decision to accept the assumptions and conclusions provided by the consultants, to the extent there were any, was with due care and that criteria (6), (8), (9) and (15) of the Hospital Conversions Act have been satisfied. *See* R.I. Gen. Laws §23-17.14-7(c).

3. Remaining Board Criteria

Regarding the remaining criteria of this type, the Transacting Parties have disclosed management and operating agreements pertaining to the operations of Prospect CharterCARE, LLC, which entity shall own the Newco Hospitals post transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14). The Transacting Parties have provided the Prospect CharterCARE Operating Agreement, which includes provisions for the formation of local boards for each Newco Hospital thereafter.³⁷ This operating agreement also provides for the local boards to consist of at least six individuals, with 50% being physicians and the other 50% being community representatives and the Hospital's CEO, with no board member serving more than a three-year term.³⁸

In addition, the Transacting Parties provided a Management Services Agreement, which will operate between Prospect CharterCARE, LLC and Prospect Advisory.³⁹ Prospect East, as the managing member of Prospect CharterCARE, LLC, has delegated its day-to-day management of the Newco Hospitals to Prospect Advisory under the Management Services Agreement (the "Management Agreement"), which provides for a number of services, including assistance with operational activities, once the Proposed Transaction has closed.⁴⁰ Prospect Advisory will work with senior leadership team members (the "Executive Team") of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the

³⁷ Initial Application, Response to Questions 1, 18 and Exhibit 18 Article XII.

³⁸ Initial Application Exhibit 18, Article XII, Response to Question 7.

³⁹ Initial Application Exhibit 18.

⁴⁰ Id. Response to Question S3-20.

Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's board (the "Board") and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions. Since the filing of the Initial Application, the Management Agreement has been subsequently revised to clarify that should any conflicts arise between the Prospect CharterCARE Operating Agreement and the Management Agreement, such conflicts will be resolved in favor of the Prospect CharterCARE Operating Agreement. The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(14) of the Hospital Conversions Act has been satisfied.

As part of the Initial Application process, the applicants also indicated that the only agreements they have made regarding future employment or compensated relationships relating to any officer, director, board member or senior manager of CCHP is the assumption by Prospect of the existing employment relationships of the current CCHP CEO, Kenneth Belcher and the other senior leadership team members.⁴¹ In addition, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴² As to any agreements between affiliates, DOH has mandatory conditions pursuant to the Hospital Conversions Act addressing this aspect of review. *See* R.I. Gen. Laws § 23-17.14-28.

The Asset Purchase Agreement does not include consideration that is based upon future or contingent value based upon success of the Newco Hospitals. *See* R.I. Gen. Laws § 23-17.14-7(c)(11). In fact, Prospect has confirmed that if the Newco Hospitals do not meet financial expectations, it will provide additional funding to them.⁴³ The terms of the Management Agreement were determined jointly by Prospect and CCHP, both of which were represented by,

⁴¹ Initial Application, Responses to Questions 35 and 36; Asset Purchase Agreement, Article VIII.

⁴² Response to Supplemental Question 3-38.

⁴³ Response to Supplemental Question S4-25.

and consulted with, legal counsel relating to the Proposed Transaction. *See* R.I. Gen. Laws § 23-17.14-7(c)(14),(15). The Attorney General finds that the statutory requirement of R.I. Gen. Laws § 23-17.14-7(c)(23) has been met.

Therefore, the additional miscellaneous Hospital Conversions Act criteria that must be reviewed regarding board actions have been satisfied.

B. CONFLICTS OF INTEREST

Numerous provisions of the Hospital Conversions Act deal with conflicts of interest.⁴⁴ The Attorney General has reviewed the criteria in the Act to determine whether the Transacting Parties and their consultants have avoided conflicts of interest.

1. Conflict of Interest Forms

As part of the Initial Application, certain individuals associated with the Transacting Parties were required to execute conflict of interest forms. These included officers, directors and senior management for Prospect and CCHP. Individuals completing the conflict of interest forms were asked to provide information to determine conflicts of interest such as their affiliation with the Transacting Parties, their relationships with vendors and their future involvement with the Transacting Parties. The Proposed Transaction also provides that the employment contracts of the Executive Team will be assumed by Prospect, without any additional compensation or benefit.⁴⁵ The Attorney General finds no conflict of interest occurred with respect to these agreements that are to be assumed by Prospect.⁴⁶ Further, the applicants have stated that board members of the Prospect CharterCARE, LLC and the Newco Hospitals will not be compensated.⁴⁷ After reviewing the conflict of interest forms, the Attorney

⁴⁴ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22) and (25) (iv).

⁴⁵ *See* R.I. Gen. Laws §§ 23-17.14-7(c) (6), (7), (12), (22).

⁴⁶ *See* Initial Application, Responses to Questions 1, 15, 35, 36, Exhibit 18 Asset Purchase Agreement Article VIII.

⁴⁷ Response to Supplemental Question 3-38.

General determines that none of the submitted information revealed any conflict of interest.⁴⁸

See R.I. Gen. Laws §23-17.14-7(c)(6).

2. Consultants

The Hospital Conversions Act requires a review of the possibility of conflicts of interests with regard to consultants engaged in connection with the Proposed Transaction. R.I. Gen. Laws §§ 23-17.14-7(c)(6) and (7). The Attorney General notes that CCHP engaged several entities in its pursuit of a potential suitor, including Cain Brothers & Company, an investment banking firm, to assist it with evaluation of the proposals made by prospective suitors, as well as in negotiations once a prospective suitor was located.⁴⁹ It also retained a number of other consultants, including Cambridge Research Institute, The Camden Group, Drinker Biddle & Reath, LLP, Canon Design, Angell Pension Group and Schulte Roth Zobel, LLC to assist it with the process of review of the RFPs submitted and negotiation of the Proposed Transaction.⁵⁰ The Attorney General has determined that the criteria contained in R.I. Gen. Laws §23-17.14-7(c)(6) and (7) of the Hospital Conversions Act have been satisfied as to some, but not all of the consultants engaged because conflict of interest forms were not provided for Cambridge Research Institute, The Camden Group, Dr. Vincent Falanga (who is no longer affiliated with RWMC) and Schulte Roth Zobel, LLC, despite CCHP's efforts to obtain them. One should not be able to avoid providing a conflict form because of change in employment or affiliation. Clearly the forms from these individuals are relevant. These individuals have failed to cooperate with the Attorney General's review. Because no forms have been provided, the Attorney General has made an inference that a conflict of interest exists with regard to these individuals,

⁴⁸ *See* Initial Application, Response to Question 15

⁴⁹ Initial Application, Response to Question 14

⁵⁰ Initial Application, Response to Question 60, Exhibit 60B.

that any future dealings between Prospect and these individuals will be considered suspect, and in the event the Attorney General obtains additional information, further action may be taken.

3. Negotiations And Conflicts

After review of relevant documents obtained during the Attorney General's review, it has been determined that the individuals who represented the Existing Hospitals in negotiations of the Proposed Transaction had no impermissible conflicts of interest.⁵¹

4. Sale Proceeds And Conflicts

As contemplated by the structure of the purchase price outlined in the Asset Purchase Agreement, there will be no proceeds from the Proposed Conversion after the disposition of the liabilities of the Existing Hospitals not assumed by Prospect CharterCARE, LLC. Therefore, there is no need to address whether the Transacting Parties have appropriately provided for the disposition of proceeds.⁵²

5. Prospect Conflicts Of Interest

On behalf of Prospect, several consultants were also engaged including: BDO, Cardno ATC, Lathan & Watkins LLP, Nixon Peabody, LLP, Rutan & Tucker, LLP, Groom Law Group, Chartered, Sills Cummis & Gross P.C. and Ferrucci Russo PC.⁵³ After reviewing the conflict of interest forms submitted by Prospect, the Attorney General finds none of the forms submitted by Prospect revealed any conflict of interest.

In response to various questions, Prospect has indicated that it has identified certain leadership positions within its organization, post transaction.⁵⁴ Under the terms of the Asset Purchase Agreement, Management Agreement and Prospect CharterCARE Operating

⁵¹ R.I. Gen. Laws § 23-17.14-7(c)(22).

⁵² See R.I. Gen. Laws § 23-17.14-7(c)(25)(iv).

⁵³ Initial Application, Response to Question 60, Exhibit 60A.

⁵⁴ See Initial Application, Response to Question 35.

Agreement, Prospect will hold an 85% ownership interest and thus will appoint certain individuals as its representatives, all of whom have provided Conflict of Interest Statements. A review of these documents and the interviews conducted with representatives of Prospect does not indicate that any conflict of interest exists with respect to the Proposed Transaction.⁵⁵ See R.I. Gen. Laws §§ 23-17.14-7 (c)(6),(7).

C. VALUE OF TRANSACTION

The following Hospital Conversions Act criteria deal with valuation of the Proposed Transaction. See R.I Gen. Laws §§ 23-17.14-7 (c)(17), (18) and (24):

(17) Whether the proposed conversion contemplates the appropriate and reasonable fair market value;

(18) Whether the proposed conversion was based upon appropriate valuation methods including, but not limited to, market approach, third party report or fairness opinion; and

(24) Whether the formula used in determining the value of the existing hospital was appropriate and reasonable which may include, but not be limited to factors such as: the multiple factor applied to the "EBITDA" – earnings before interest, taxes, depreciation, and amortization; the time period of the evaluation; price/earnings multiples; the projected efficiency differences between the existing hospital and the new hospital; and the historic value of any tax exemptions granted to the existing hospital.

Given their relevant expertise in this area, the Attorney General consulted with its expert, James P. Carris, CPA, ("Carris"), in making a determination regarding valuation. According to the analysis of Carris:

Is the Purchase Commitment from Prospect Medical Holdings, Inc. Fair and Reasonable?

As described in the Asset Purchase Agreement (APA), Prospect Medical Holdings (Prospect), through a series of subsidiaries, is acquiring substantially all the assets of CharterCARE Health Partners, Inc. (CCHP). The acquisition includes Roger Williams Medical Center (RWMC), a 220-bed acute care teaching hospital and Saint Joseph's Health System of Rhode Island (SJHSRI), which operates Fatima Hospital, a 278-bed acute care community hospital located in North Providence, RI.

⁵⁵ *Id.*, and Exhibit 18 (Asset Purchase Agreement, Prospect CharterCARE Operating Agreement and Management Agreement).

Additionally, there are a number of non-hospital health entities in CCHP, which are also included in the transaction.

At closing, CCHP will receive \$45 million in cash plus a 15% interest in the joint venture (Prospect CharterCARE) that will hold the acquired assets.

The APA requires that the \$45 million in cash proceeds be dispersed at closing as follows:

- \$16,550,000 to be used to fully redeem SJHSRI revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$11,062,500 to be used to redeem RWMC revenue bonds issued in 1998 by Rhode Island Health and Educational Building Corporation.

- \$3,387,500 to be used to redeem Roger Williams Realty Corporation revenue bonds issued in 1999 by Rhode Island Health and Educational Building Corporation.

- \$14,000,000 to be applied to the St. Joseph Pension Plan.

A detailed sources and uses schedule for the transaction has been provided by the parties.

Prospect has also committed \$50 million over a four year period (in addition to CCHP's routine capital commitment of at least \$10 million per year) to fund expansion and physical plant improvements to the existing entities. During the process, Prospect has agreed to guarantee the \$50 million long-term capital commitment of its subsidiary, Prospect East. This \$50 million may be subject to certain limitations and offsets but for the purposes of this analysis, is included at the full \$50 million.

CCHP's 15% interest in the joint venture is also subject to potential limitations, including a possible capital call. All parties to the transaction have given assurances that no capital call is anticipated in the foreseeable future.

Representatives of management and the Board of CCHP stipulated that if this transaction does not close, they would immediately begin the strategic partnering process again. The system does not have the ability to survive long-term with a "go it alone" strategy. This is borne out by the internal March 2014 consolidated financial statements, which shows a six-month, consolidated operating loss of approximately \$9 million.

A third party valuation analysis or fairness opinion was not completed with regard to the entire transaction. CCHP stated that its board did not undertake an appraisal since any potential valuation would have to be measured against the board's requirement for a joint venture model that included the retention of local ownership and local governance. Prospect stated that it looked at two methods of determining potential value. The first method was a multiple of twelve months trailing EBITDA and the second method was a multiple of enterprise value. Neither of these methods were deemed by the parties to be applicable in this situation. Accordingly, the parties

looked at the existing long-term debt, other outstanding obligations and future capital needs. CCHP in pursuing its joint venture model, as directed by its Board, was looking to resolve approximately \$31 million in long-term debt, to bring the St. Joseph's Pension Plan to a ninety (90%) percent funding level and fund future capital needs of approximately \$50 million. The parties therefore estimate the total consideration to be approximately \$95 million.

The purchase commitment from Prospect is fair and reasonable for the acquisition of CCHP and its affiliates. This is based on the criteria established by the CCHP Board, a review of available documentation, analysis of CCHP's current and historical operating performance as well as interviews and discussions with numerous individuals who participated in the processes and discussions which culminated in this transaction.

Moreover, given the considered and extensive review process employed by the CCHP Board and its finding that the terms of its deal with Prospect "were the best available from the remaining, interested parties," the information provided by Carris, as well as the offers of other bidders, the criteria under the Hospital Conversions Act regarding valuation of the Proposed Transaction has been met.

D. CHARITABLE ASSETS

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.⁵⁶ In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.⁵⁷ With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.⁵⁸

⁵⁶ See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

⁵⁷ See, R.I. Gen. Laws § 23-17.14-7(c).

⁵⁸ Initial Application, Response to Questions 28 and 29.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.⁵⁹ Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.⁶⁰

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.⁶¹ With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.⁶² In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,⁶³ which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

⁵⁹ Id.

⁶⁰ Response to Supplemental Question S-42

⁶¹ Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).

⁶² R.I. Gen. Laws § 23-17.14-22(a).

⁶³ See Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system.⁶⁴ The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

⁶⁴ Initial Application Response to Question 28.

sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately \$7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately \$6.9 million dollars from RWMC and \$318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately \$4.2 million dollars. The *Cy Pres* petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately \$210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately \$12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately \$15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately \$2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately \$118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period.⁶⁵

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately \$285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately \$108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately \$209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

Heritage Hospitals

CCHP proposes to retain approximately \$24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately \$12.4 million dollars in restricted

⁶⁵ Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately \$1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately \$10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately \$421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.⁶⁶

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. *See* R.I. Gen. Laws §23-17.14-7(c)(26).

2. Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

⁶⁶ R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, “as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves.”⁶⁷ CCHP “is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc.”⁶⁸ CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 “to hold and administer charitable donations on behalf of SHHSRI.”⁶⁹ In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822*, was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI.”⁷⁰ “Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.”⁷¹ “On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC.”⁷²

While implied in Prospect’s for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC “will adopt, maintain and adhere to

⁶⁷ Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.

⁶⁸ Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.

⁶⁹ Initial Application, Response to Question 29.

⁷⁰ Initial Application, Response to Question 28.

⁷¹ Id.

⁷² Id.

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."⁷³ It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.⁷⁴ The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals⁷⁵, and has stated that it has never closed or sold any of its hospitals.⁷⁶ Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.⁷⁷ Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so.⁷⁸

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

⁷³ Initial Application Response to Question 59(c).

⁷⁴ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

⁷⁵ Interview of Thomas Reardon.

⁷⁶ Response to Supplemental Question 4-25.

⁷⁷ R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

⁷⁸ *See* Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date.”⁷⁹ In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.⁸⁰ These include health care and non-healthcare community benefits.⁸¹ As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.⁸² Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.⁸³ Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

3. Foundation for Proceeds

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.⁸⁴ With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

⁷⁹ See Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.

⁸⁰ Response to Supplemental Question S3-53.

⁸¹ See e.g. Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.

⁸² Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.

⁸³ Initial Application, Response to Question 1.

⁸⁴ R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁸⁵ Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.⁸⁶ This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.⁸⁷ Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

⁸⁵ See R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

⁸⁶ The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

⁸⁷ See Initial Application, Response to Request 55.

North Providence.⁸⁸ The Transacting Parties have indicated that these negotiations are ongoing with the communities to be affected and are anticipated to be resolved with a potential need for further procedural hearings to occur after May 16, 2014.⁸⁹ The Attorney General is advised by Prospect that they are progressing steadily toward a resolution of this issue. The determination as to whether tax stabilization or exemption will be granted to Prospect for the Existing Hospitals is beyond the Attorney General's jurisdiction and is therefore left to the affected communities to determine.

In addition to real estate taxes, typically Prospect would be required to pay Rhode Island sales and use tax in certain situations. *See* R.I. Gen. Laws § 44-18-1 *et seq.*, and 44-19-1, *et. seq.*

As for the remaining review criteria contained in R.I. Gen. Laws §23-17.14-7(c)(20), regarding "whether the conversion is proper under applicable state tax code provisions," the Transacting Parties are required to obtain a certificate from the State of Rhode Island prior to closing that the Proposed Transaction is proper under applicable state tax code provisions. Accordingly, the Attorney General finds that once the required certificate has been obtained from the State of Rhode Island, which is a requirement of closing of the Proposed Transaction, that this particular criterion under the Hospital Conversions Act will be met.

CCHP also sought legal counsel regarding federal tax implications with respect to CCHP serving as the 15% member of for-profit Prospect CharterCARE, LLC. CCHP has stated that the structure of the Proposed Transaction permits it to act exclusively in furtherance of its exempt purposes and only incidentally for the benefit of PMH. However, because this area of tax law may continue to evolve in the future, should CCHP's tax-exempt status ever be jeopardized due to its participation in the Prospect CharterCARE, LLC, CCHP may cause PMH

⁸⁸ See Initial Application, Response to Question 45.

⁸⁹ Response to Supplemental Question S4-12.

to buy out its interest if there is no other satisfactory resolution. This process and the distribution of the additional proceeds would be subject to Attorney General oversight consistent with this decision.⁹⁰ Finally, CCHP has stated that it will take any reasonable steps to ensure that both it and the CCHP Foundation will preserve their current exempt status following the close of the Proposed Transaction⁹¹.

Regarding the tax status of the entity receiving the proceeds, no proceeds are contemplated and the new entities will be for-profit. *See* R.I. Gen. Laws § 23-17.14-7(c)(25)(ii).

F. NEW ENTITY

The Attorney General must review certain criteria pursuant to the Hospital Conversions Act that deals with the corporate governance of the new hospitals after the completion of the Proposed Transaction.⁹² Below is an outline of the review of such requirements.

1. Bylaws and Articles of Incorporation

One issue that must be examined is whether the new entity has bylaws and articles of incorporation. The new corporate entity that will purchase the assets of CCHP is Prospect Medical Holdings, Inc. (“PMH”). PMH is a Delaware corporation incorporated on May 14, 1999 with its principal place of business in Los Angeles, California. *See* Initial Application Exhibit 10(a). The current bylaws for PMH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for PMH.⁹³

PMH is a health care services company that owns and operates hospitals and manages the provision of health care services for managed care enrollees through its network of specialists and primary care physicians. PMH is the parent entity with regard to the eight (8) acute care and

⁹⁰ Response to Question S10

⁹¹ Final Supplemental Responses Miscellaneous p. 6.

⁹² *See e.g.*, Hospital Conversions Act, R.I. Gen. Laws §§ 23-17.14-7(c)(25) (i), (v), (vi), (vii), (viii), and (ix).

⁹³ Initial Application Exhibit 10A-1.

behavioral hospitals located in California and Texas. In total, PMH owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.⁹⁴

PMH is owned by Ivy Intermediate Holdings, Inc. (“IIH”), a Delaware corporation, incorporated on July 23, 2010, with its registered place of business in Wilmington, Delaware.⁹⁵ The current bylaws for IIH were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for IIH.⁹⁶

Ivy Holdings, Inc. (“IH”), a Delaware corporation, incorporated on December 14, 2010, with its registered place of business in Wilmington, Delaware, owns 100% of the stock of IIH.⁹⁷ IH is a holding company for this stock ownership, having no other assets, liabilities or operations.⁹⁸ Bylaws were provided by the Transacting Parties for IH.⁹⁹

Pursuant to the Asset Purchase Agreement,¹⁰⁰ the ownership interest of PMH will be held by a newly formed LLC, Prospect East Holdings, Inc., (“Prospect East”) a Delaware LLC, formed on August 20, 2013, with its principal place of business located in Wilmington, Delaware.¹⁰¹ Prospect East is structured to be the PMH entity that will hold ownership interest in any health care facilities acquired by PMH on the East Coast. The current bylaws for Prospect East were provided by the Transacting Parties. *Id.* Therefore, bylaws and articles of incorporation have been provided for Prospect East.¹⁰²

Prospect CharterCARE, LLC, a Rhode Island limited liability company, is a joint venture between Prospect East and CCHP and will hold 100% of the ownership interests in the entities

⁹⁴ Initial Application p. 1.

⁹⁵ Initial Application, Exhibit 10A-12.

⁹⁶ Id.

⁹⁷ Initial Application, Exhibit 10A-11.

⁹⁸ Initial Application, p. 2.

⁹⁹ Initial Application, Exhibit 10A-11.

¹⁰⁰ Asset Purchase Agreement, p. 2.

¹⁰¹ Initial Application, p. 2, Ex. 10A-6.

¹⁰² Id.

that will hold the licensure for the Existing Hospitals, post conversion.¹⁰³ Prospect CharterCARE, LLC was formed on August 20, 2013, with its principal place of business in Los Angeles, California and will be owned 85% by Prospect East and 15% by CCHP. Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of the Prospect CharterCARE Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory Services, LLC (“Prospect Advisory”), an affiliate of PMH. The governing board of Prospect CharterCARE, LLC will be a 50/50 board¹⁰⁴ (the “Board”) with half of its members selected by and through Prospect East’s ownership and the other half of the members selected by and through CCHP’s ownership. The Board shall be the organized, governing body responsible for the management and control of the operations of the licensed hospitals, their conformity with all federal, state and local laws and regulations regarding fire, safety, sanitation, communicable and reportable diseases and other relevant health and safety requirements.¹⁰⁵ The Board shall define the population and communities to be served and the scope of services to be provided.¹⁰⁶ The Board shall also determine policy with regard to the qualifications of personnel, corporate governance, and the policy for selection and appointment of medical staff and granting of clinical privileges.¹⁰⁷ Bylaws were not provided for Prospect CharterCARE, LLC as typically

¹⁰³ Newco Hospitals.

¹⁰⁴ Initial Application, Revised 7(c).

¹⁰⁵ Id.

¹⁰⁶ Id.

¹⁰⁷ Id.

such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹⁰⁸

Prospect Advisory, a Delaware Limited Liability Company was formed on August 20, 2013, with its principal place of business in Los Angeles, California and is solely owned and controlled by PMH.¹⁰⁹ As described above, Prospect East has delegated the day-to-day management of the Newco Hospitals to Prospect Advisory through the Management Agreement and Prospect Advisory will receive a monthly management fee equal to two percent (2%) of the Net Revenues¹¹⁰ of Prospect CharterCARE, LLC. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will continue to have ultimate power and authority over certain decisions pursuant to Section 8.3 of Prospect CharterCARE Operating Agreement. The Bylaws were not provided for Prospect Advisory, as typically such organizations do not have Bylaws. It does not have a board of directors.¹¹¹ However, an operating agreement was provided by the Transacting Parties.¹¹²

Prospect CharterCARE RWMC, LLC ("Newco RWMC"), is a Rhode Island limited liability company, which will own and hold the licensure for Roger Williams Medical Center

¹⁰⁸ Initial Application, Ex. 18.

¹⁰⁹ Initial Application, p. 35, Ex. 10A-7.

¹¹⁰ Net Revenues means total operating revenues derived, directly or indirectly, by Prospect CharterCARE, LLC with respect to the Newco Hospitals, whether received on a cash or on a credit basis, paid or unpaid, collected or uncollected, as determined in accordance with generally accepted accounting principles net of (A) allowance for third party contractual adjustments and (B) discounts and charity care amounts (not including any bad debt amounts), in each case as determined in accordance with GAAP. Management Agreement, Section 5.2(b).

¹¹¹ Id.

¹¹² Initial Application, Ex. 10A-7.

post-conversion. Newco RWMC will be wholly-owned by Prospect CharterCARE, LLC¹¹³ and its principal business office will be located in Los Angeles, California. Bylaws were not provided for Newco RWMC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁴ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁵

Prospect CharterCARE SJHSRI, LLC (“Newco Fatima”) is a Rhode Island limited liability company, with its principal business office located in Los Angeles, California.¹¹⁶ It will own¹¹⁷ and hold the licensure for Our Lady of Fatima Hospital post-conversion. Bylaws were not provided for Prospect CharterCARE SJHSRI, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties.¹¹⁸ It will be solely operated by Prospect CharterCARE, LLC.¹¹⁹

Prospect CharterCARE Ancillary Services, LLC (“Ancillary Services”) is a Rhode Island limited liability company, with its principal place of business located in Los Angeles, California. It will hold the licensure for Prospect CharterCARE labs.¹²⁰ Bylaws were not provided for Prospect CharterCARE Ancillary Services, LLC, as typically such organizations do not have Bylaws. However, an operating agreement was provided by the Transacting Parties. It will be solely operated by Prospect CharterCARE, LLC.

¹¹³ Initial Application Response to Question 5.

¹¹⁴ Initial Application, Ex. 10A-9.

¹¹⁵ Id.

¹¹⁶ Initial Application Ex. 10-10.

¹¹⁷ Initial Application response to Question 5.

¹¹⁸ Initial Application, Ex. 10A-9.

¹¹⁹ Id.

¹²⁰ First Amendment to Asset Purchase Agreement, Response to Supplemental Question S3-15; Miscellaneous Exhibit 1.

Prospect CharterCARE, LLC, which will hold the ownership of the entities that hold the licensure for the Existing Hospitals, post conversion,¹²¹ will be managed by Prospect East Holdings, Inc, a Delaware corporation, whose registered place of business is Wilmington, Delaware and is wholly-owned by PMH.¹²² Bylaws were provided by the Transacting Parties for Prospect East Holdings.¹²³

Accordingly, R.I. Gen. Laws § 23-17.14-7(c)(25)(v) has been satisfied.

2. Board Composition

In addition to bylaws and articles of incorporation, specific criteria that must be considered regarding the new corporate entities include analysis of the composition of the new boards. Specifically, the Hospital Conversions Act requires review of:

- (vi) whether the board of any new or continuing entity will be independent from the new hospital;
- (vii) whether the method for selecting board members, staff, and consultants is appropriate;
- (viii) whether the board will comprise an appropriate number of individuals with experience in pertinent areas such as foundations, health care, business, labor, community programs, financial management, legal, accounting, grant making and public members representing diverse ethnic populations of the affected community; and
- (ix) whether the size of the board and proposed length of board terms are sufficient.

See R.I. Gen. Laws §§ 22-17.14-7(c)(25)(vi), (vii), (viii) and (ix).

First, it is important to state that in the Asset Purchase Agreement, PMH and CCHP have proposed a post-conversion structure in which those two entities will form a joint venture, Prospect CharterCARE, LLC, to own and operate all of the health care entities associated with CCHP including, without limitation, the two acute-care, community hospitals that currently operate as Roger Williams Medical Center and Our Lady of Fatima Hospital, as well as an

¹²¹ Newco Hospitals.

¹²² Initial Application p. 2, Exhibit 12A-2, 10A-6.

¹²³ Initial Application, Ex. 10A-6.

extended care facility in Providence known as Elmhurst Extended Care. Prospect CharterCARE, LLC would operate under a 50/50 board composition, which will permit CCHP to retain a significant degree of control in the ongoing ownership and governance of Prospect CharterCARE, LLC to ensure the continuance of its local mission, as well as to provide it with access to the capital and other resources held by PMH to address the challenges of today's health care industry and continue to serve the citizens of Rhode Island.¹²⁴ Given the unique structure of the Proposed Transaction, it is necessary to also discuss the powers that will continue to be held by CCHP to advance these objectives.

Pursuant to the Prospect CharterCARE Operating Agreement, the Transacting Parties have agreed to form a board of directors that has the overall oversight and ultimate authority over the affairs of Prospect CharterCARE, LLC and its Subsidiaries.¹²⁵ As stated above, the Prospect CharterCARE Board will be a 50/50 board with half of its members selected by and through Prospect East's ownership and the other half of the members selected by and through CCHP's ownership.¹²⁶

The Board would be comprised of eight (8) members: four (4) directors appointed by CCHP (including at least one (1) physician) and four directors appointed by Prospect East.¹²⁷ Board members would serve for a term of one to three years, at the discretion of the owner that elected or appointed the individual.¹²⁸ Board members could be removed with or without cause by the owner that elected or appointed the director.¹²⁹ However, if CCHP's ownership interest in Prospect CharterCARE, LLC is reduced to 5%, at any time, because it elects not to or is unable

¹²⁴ Initial Application p. 7, Exhibit 18, Prospect CharterCARE Operating Agreement, Section 8.3.

¹²⁵ The Newco Hospitals, Prospect CharterCARE Elmhurst, LLC, and Prospect CharterCARE Physicians, LLC, p. 1 of Prospect CharterCARE Operating Agreement.

¹²⁶ Exhibit 18, Prospect CharterCARE Operating Agreement, Section 12.1.

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id.

to contribute to a capital call then one of the CCHP appointed directors would resign and CCHP would only appoint three (3) directors.¹³⁰ In this case, the Board would be comprised of seven (7) instead of eight (8) directors.¹³¹ Note that Prospect has stated that it does not expect to make any such capital calls within the first three (3) years post-closing.¹³²

As previously described, Prospect East is the managing member of Prospect CharterCARE, LLC and is responsible for the day-to-day management of the Newco Hospitals with certain decisions subject to Board approval pursuant to Section 8.3 of Prospect CharterCARE's Operating Agreement. Prospect East as the managing member of Prospect CharterCARE, LLC has delegated through the Management Agreement the day-to-day management of the Newco Hospitals to Prospect Advisory. Prospect Advisory will work with the Executive Team of Prospect CharterCARE, LLC to run the day-to-day operations of the Newco Hospitals. The Executive Team shall be subject to the day-to-day supervision of Prospect Advisory, and together the Executive Team and Prospect Advisory will report to Prospect CharterCARE, LLC's Board and certain PMH executives. Prospect CharterCARE, LLC's Board will have ultimate power and authority over certain decisions.

Section 8.3 of Prospect CharterCARE's Operating Agreement sets forth the Board's reserved powers including but not limited to: changing the mission or the and purpose of Prospect CharterCARE, LLC or any of its Subsidiaries, decisions involving development and approval of strategic planning, decisions regarding annual operating and capital budgets, changes to the charity policy of Prospect CharterCARE, LLC and its Subsidiaries, approving reduction of essential services at either Newco Hospital, engaging in any merger, consolidation, share exchange or reorganization of Prospect CharterCARE, LLC and its Subsidiaries, and approving a

¹³⁰ Id.

¹³¹ Id.

¹³² Response to Supplemental Question S4-3.

decision to dissolve or liquidate the Prospect CharterCARE, LLC or any of its Subsidiaries.¹³³

Board approval would be exercised by the Board as a body with each owner's directors having a majority vote.¹³⁴ Thus, through this agreement, the leadership of CCHP retains significant decision making input into the continued operations of Prospect CharterCARE, LLC and its Subsidiaries. Meetings of the Board are required to occur at least on a quarterly basis with at least one meeting held in person (face-to-face).¹³⁵ Special meetings of the Board may be called by Prospect Advisory as the manager, the chairman or any three (3) members of the Board.¹³⁶

In addition to the Board, Prospect CharterCARE, LLC will also form a local board for each of the Newco Hospitals.¹³⁷ These local boards would be comprised of at least six (6) individuals.¹³⁸ One half the of the local board members would be physicians from the Newco Hospitals' medical staff, and the other half of the local board members would be the Newco Hospitals' local CEOs and community representatives.¹³⁹ Local board members would be limited to three (3) year terms.¹⁴⁰ The local boards would be responsible for matters such as medical staff credentialing, recommendations regarding strategic and capital plans, providing guidance to the Prospect CharterCARE, LLC board on local market and community concerns, considerations, strategies, issues and politics as well as responding to other requests made by Prospect CharterCARE, LLC's board of directors.¹⁴¹

In Response to Question 7 of the Initial Application, the Transacting Parties state that PMH has yet to determine the identities of the four (4) board members comprising its 50% share

¹³³ Section 8.3 of Prospect CharterCARE's Operating Agreement.

¹³⁴ Id. at Sections 1.6, 11.12, 12.2.

¹³⁵ Id. at Section 12.3.

¹³⁶ Id.

¹³⁷ Id. at Section 12.4.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.

¹⁴¹ Id.

of the Prospect CharterCARE, LLC Board. Meanwhile, CCHP has designated its four (4) board members comprising its share 50% of the Board. The Transacting Parties further state that the members of the Board of Directors of Newco RWMC and Newco Fatima have been determined since the filing of the Initial Application.

Accordingly, the composition of the boards of Prospect CharterCARE, LLC and those of the Newco Hospitals are sufficiently clear to ensure the independence from the hospitals and the diversity of experience required by the Hospital Conversions Act. There is no overlap between and among the boards of the CCHP Foundation, CCHP, the Heritage Hospitals, Prospect CharterCARE, LLC and the Newco Hospitals' boards. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(v)(vi) and (viii).¹⁴² As discussed above, the initial boards have been set and there is a methodology in place for their selection as well as the number and terms of directors. *See* R.I. Gen. Laws §22-17.14-7(c)(25)(vii). Therefore, the Hospital Conversions Act criteria regarding the boards of the new entities has been fully met.

G. CHARACTER, COMMITMENT, COMPETENCE AND STANDING IN THE COMMUNITY

An important and encompassing portion of the Hospital Conversions Act review criteria requires review of “[w]hether the character, commitment, competence and standing in the community, or any other communities served by the transacting parties are satisfactory” *See* R.I. Gen. Laws § 23-17.14-7(c)(28). As stated above, although PMH is the owner/operator of eight (8) other hospitals¹⁴³ through its established chain of command through the various associated limited liability company entities discussed above, PMH will exercise its primary control over CCHP and the Existing Hospitals through its subsidiary Prospect CharterCARE, LLC. As

¹⁴² Response to Supplemental Questions S3-8, S3-12.

¹⁴³ Initial Application, p. 1, Response to Question 4.

described above, Prospect CharterCARE, LLC will be comprised of a 50/50 board, each appointed by PMH and CCHP.¹⁴⁴

1. Character

As stated above, PMH was incorporated on May 14, 1999. *See* Initial Application Exhibit 10A-1. PMH is a health care services company that owns and operates approximately 1,082 licensed beds and a network of specialty and primary care clinics.¹⁴⁵ The central function of operating hospitals is patient care. DOH's review focuses more directly on the topic of character of the acquiring entity and has identical review criteria regarding this topic;¹⁴⁶ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's character in the communities in which it operates. Nonetheless, the Attorney General did not find any types of complaints against the current owners of Prospect, such as from the Department of Justice or the Office of Inspector General.

2. Commitment

Pursuant to the Asset Purchase Agreement, PMH has agreed to a number of financial commitments, including an up to \$50 million dollar capital commitment to CCHP within four (4) years of the closing of the Proposed Transaction, in addition to normal and routine capital expenditures of at least \$10 million dollars per year.¹⁴⁷ These improvements include investing in technology, equipment, quality improvements, expanded services and physician recruitment.¹⁴⁸ Other than financial commitments, Prospect has promised that the Newco Hospitals will continue to provide a full complement of essential clinical services for the term of

¹⁴⁴ Initial Application, Response to Question 1, Exhibit 18, Asset Purchase Agreement, Section 12.1.

¹⁴⁵ Initial Application, Response to Question 1.

¹⁴⁶ *See* R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁴⁷ *See* Asset Purchase Agreement, Section 2.5 and Initial Application Response to Question 1. PMH has since agreed to guarantee Prospect's obligations under the Asset Purchase Agreement regarding this \$50 million dollar commitment.

¹⁴⁸ *See* Responses to Initial Application Questions 1, 57, Asset Purchase Agreement Section 13.17.

five (5) after the closing date.¹⁴⁹ Prospect agrees to maintain the Catholic identity of all legacy SJHSRI locations and ensure that all services at SJHSRI locations are rendered in full compliance with the Ethical and Religious Directives.¹⁵⁰ Prospect has also made a commitment that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.¹⁵¹ A commitment has also been made with respect to limitations on a sale of the interests held by PMH and Prospect East for a period of five (5) years. *See* Asset Purchase Agreement Section 13.18(b).¹⁵² In addition, Prospect has asserted that it is committed to preservation of jobs at the Existing Hospitals, post conversion, which will assist in providing continuity in care and leadership under the 50/50 board of Prospect CharterCARE, LLC post conversion.¹⁵³

3. Competence

As stated above, PMH has a track record of operating eight (8) hospitals in other states over the course of 15 years, some of which were financially distressed when acquired.¹⁵⁴ Moreover, Prospect indicates that it has never abandoned or closed a hospital that it has purchased.¹⁵⁵ In addition, Prospect has indicated that, should the Newco Hospitals fail to meet financial expectations that have been projected, Prospect would provide further funding to support them.¹⁵⁶

¹⁴⁹ Initial Application, Response to Question 57; *See* Asset Purchase Agreement Section 13.15.

¹⁵⁰ Ethical and Religious Directives (“ERDs”) promulgated by the United States Conference of Catholic Bishops and adopted by the Bishop of the Roman Catholic Diocese of Providence, RI.; *See* Asset Purchase Agreement Section 13.16.

¹⁵¹ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; *see also* Response to S3-14.

¹⁵² Additional options exist to the Transacting Parties, which commence on the fifth anniversary of the closing date. *See* Asset Purchase Agreement, Sections 13.18 (b)(c) and (d) and in the Prospect CharterCARE Operating Agreement.

¹⁵³ *See* Initial Application, response to Question 1, Exhibit 18 Asset Purchase Agreement, Article VIII.

¹⁵⁴ Interview of Thomas Reardon.

¹⁵⁵ Response to Supplemental Question S4-25.

¹⁵⁶ Id.

The term competence can have multiple meanings and connotations. The Attorney General reviewed the relevant competence with a focus on the ability to successfully operate the Newco hospitals after the Proposed Transaction. The central function of operating hospitals is patient care. DOH's review focuses more directly on health services and has identical review criteria regarding this topic;¹⁵⁷ therefore, the Attorney General will rely on and defer to DOH's expertise and experience relating to Prospect's track record for quality services in its other hospitals. Prospect has made several representations about patient care and health services. Specifically, it represents that its hospitals are currently accredited by the Joint Commission and in good standing.¹⁵⁸ The other relevant component to competence in this context is the ability to manage the business side of a hospital. In its fifteen (15) year history, Prospect has acquired eight (8) hospitals, many of which were financially-distressed. During interviews conducted pursuant to the Hospital Conversions Act review, the Attorney General found that Prospect's management team has years of experience in operating community hospitals. Further, as outlined hereafter, the Attorney General's expert has found that the finances of Prospect are in line with companies acquiring distressed community hospitals which appears to be a signal of some level of success.

4. Standing in the Community

The issue of standing in the community is interrelated with overlapping inquiries to the question of character. Overall, given the totality of the circumstances, the Attorney General finds that Prospect's character, commitment, competence, and standing in the community meet the threshold and are satisfactory for the purposes of a Hospital Conversions Act review.

¹⁵⁷ See R.I. Gen. Laws § 23-17.14-8 (b)(1).

¹⁵⁸ See Initial Application Response to Question 64.

H. MISCELLANEOUS

In addition to the provisions outlined above, there are also a few additional requirements of the Hospital Conversions Act that do not fit into any of the categories outlined above. They are outlined individually below.

1. Rhode Island Nonprofit Corporations Act

The Hospital Conversions Act requires that a hospital conversion comply with the Rhode Island Nonprofit Corporations Act. R.I. Gen. Laws §§ 7-6-1, *et. seq.* (the "Nonprofit Act").¹⁵⁹ The Nonprofit Act is comprised of 108 sections. Many of these sections discuss the governance requirements of non-profit corporations. First, the Attorney General makes no finding regarding whether the Prospect entities, as they are all for profit entities and the Nonprofit Act does not apply to them. With respect to CCHP, the Proposed Transaction is permissible under the Non-Profit Corporation Act and the Proposed Transaction was approved by the CCHP Board who has been represented by legal counsel throughout these proceedings and during negotiations.¹⁶⁰ Based upon the above, the Attorney General finds that this condition has been satisfied.

2. Right of First Refusal

The Hospital Conversions Act requires review of whether the Proposed Transaction involves a right of first refusal to repurchase the assets. *See* R.I. Gen Laws § 23-17.14-7 (c)(27). The Asset Purchase Agreement contains no such right of first refusal to CCHP to repurchase the assets being acquired by Prospect.

¹⁵⁹ *See* R.I. Gen Laws § 23-17.14-7 (c)(19).

¹⁶⁰ *See* R.I. Gen Laws §§ 7-6-5 and 7-6-49; Initial Application Response to Question 1; Response to Supplemental Question S3-17.

3. Control Premium

With regard to the one remaining review provision of the Hospital Conversions Act, there is no control premium included in the Proposed Transaction. R.I. Gen. Laws § 23-17.14-7(c)(29).

4. Additional Issues

There are four issues that the Attorney General will address in addition to the enumerated review criteria that have come to light during the review process.

a. Prospect's Ability to Fund Transaction

The Attorney General's expert, Carris has reviewed the financial information provided by Prospect and has concluded as follows:

Does Prospect have the Resources to Finance this Transaction as Well as Ongoing Commitments to CCHP?

As reported in Prospect's 2013 audited financial statements, Prospect generated approximately \$80 million in operating income for the year ended September 30, 2013. Operating revenues totaled \$713.6 million and operating expenses totaled \$633.6 million. Earnings before interest, taxes, depreciation and amortization (EBITDA) for 2013 totaled \$98.7 million. Prospect's audited financial statements show consistent growth and profitability from 2010 through 2013.

Prospect's September 2013 balance sheet shows cash & equivalents of \$86.3 million, total current assets of \$241.7 million and total assets of \$578.9 million. For liabilities, the financial statements report current liabilities of \$148.2 million, total liabilities of \$610 million and net equity of (\$32.0) million. The current ratio for 2013 was 1.63.

In 2013, Prospect distributed \$88 million to its primary investor. Prospect's management and representatives have given assurances that this was a one-time event and that there are no plans to make a similar distribution in the foreseeable future.

Prospect will fund this transaction out of existing cash and an available line of credit. Based on the APA, Prospect will fund \$45 million at closing and an additional \$12.5 million in year one (one-fourth of \$50 million), for a total of \$57.5 million in the first 12 months.

During various meetings, representatives of Prospect's senior leadership team made further representations that the financial status of Prospect permits it to fund the closing of the transaction and also meet the ongoing capital commitments. The parties also gave assurances that the \$50 million capital commitment has been disclosed and agreed to by Prospect's board of

directors and lenders. Assurances were also given that the \$50 million is being funded out of available liquidity and will not violate any of Prospect's existing loan covenants.

Based on the financial documentation submitted by Prospect and the representations of its management and other representatives, the company has the financial resources to fund this transaction, including the \$50 million in long-term capital commitments. Prospect capacity to meet future capital commitments could be constrained if the company enters into other transactions that (in total) exceed its available financial resources and/or its ability to access capital. Future commitments could also be constrained by a deterioration of financial performance or a material change in market conditions.

Given the opinion of Carris, absent any exigent circumstances or, as aptly pointed out by Carris, any acquisition plan or other commitments that would over-extend Prospect, it currently appears to have the financial ability to fund the Proposed Transaction.

b. Mandatory Conditions

Among the changes to the Hospital Conversions Act in 2012 was the imposition of mandatory conditions on for-profit acquirors. *See* R.I. Gen. Laws § 23-17.14-28. The Legislature crafted eight (8) such conditions for DOH with a wide variety of topics. *See* R.I. Gen. Laws § 23-17.14-28(b). As for the Attorney General, one such condition was imposed, namely: "the acquiror's adherence to a minimum investment to protect the assets, financial health, and well-being of the new hospital and for community benefit." *See* R.I. Gen. Laws § 23-17.14-28(c). With regard to these pre-determined conditions, if either Department deems them "not appropriate or desirable in a particular conversion," such Department must include rationale for not including the condition. *See* R.I. Gen. Laws § 23-17.14-28(b) and (c). The Attorney General finds that to the extent that such condition is applicable, the Transacting Parties have satisfied it by the obligations contained in the Asset Purchase Agreement and no additional condition will be added other than those already imposed.

c. Use of Monitor

Another change to the Hospital Conversions Act in 2012 was to include a requirement that a for-profit acquiror file reports for a three (3) year period. *See* R.I. Gen. Laws § 23-17.14-28(d)(1). In addition, such section requires that the Attorney General and DOH “monitor, assess and evaluate the acquiror's compliance with all of the conditions of approval.” *See* R.I. Gen. Laws § 23-17.14-28(d)(2). Further, there shall be an annual review of “the impact of the conversion on health care costs and services within the communities served.” *Id.* The costs of these reviews will be paid by the acquiror and placed into escrow during the monitoring period. *See* R.I. Gen. Laws § 23-17.14-28(d)(3). No Initial Application can be approved until an agreement has been executed with the Attorney General and the Director of the DOH for the payment of reasonable costs for such review. *Id.* The Transacting Parties have executed a Reimbursement Agreement dated, January 24, 2014. The Attorney General’s conditions will be monitored by an individual or entity chosen by the Attorney General and paid for by Prospect. An agreement with such monitor and Prospect will be drafted and executed prior to the Closing on the Proposed Transaction.

d. Health Planning

As during the course of any HCA review, there has been some discussion in the health care community about the continuing role of CCHP in the Rhode Island health care system, post-acquisition, particularly since the Existing Hospitals will become for profit entities. The Attorney General notes that the Hospital Conversions Act in its present form is not a health planning tool. Although there has been much talk about creating a so-called state health plan, that goal has not yet been reached. Therefore, it is not the position of the Attorney General to

use the Hospital Conversion Act to effectuate health planning that should be properly done elsewhere with input from a variety of groups. The Hospital Conversion Act contains a set of criteria, it does not allow for the Attorney General to opt for a different model or to suggest a different suitor for CCHP. However, the question to be answered by this review is whether this particular transaction meets the criteria of the Hospital Conversions Act.

V. CONCLUSION

While the Act is no guarantee that a hospital will not be sold to an entity with a different plan in mind than what the surrounding community may value, the Act at the very least provides a minimum framework for review of a hospital transaction. The Attorney General hopes that Prospect CharterCARE, LLC becomes everything it has promised to be for the citizens of Rhode Island. As with all of the Attorney General's reviews pursuant to the Hospital Conversions Act, this Decision represents this Department's best efforts and a careful review of the Proposed Transaction given the information available.

Wherefore, based upon the information provided above in this Decision, the Proposed Transaction is **APPROVED WITH CONDITIONS**. These conditions are outlined below.

VI. CONDITIONS

1. There shall be no board or officer overlap between or among the CCHP Foundation, CCHP, and Heritage Hospitals.
2. There shall be no board or officer overlap between or among the Prospect entities and the CCHP Foundation, CCHP and the Heritage Hospitals.
3. Complete appointment of board members for Prospect CharterCARE, LLC and its Subsidiaries, and for CCHP Foundation, CCHP and Heritage Hospitals, within sixty (60) days after the close of the transaction, and provide final notice to the Attorney General of the identities of such appointees, along with a description of their experience to serve as board members.
4. For the next three (3) years following the close of the transaction, provide the Attorney General the names, addresses and affiliations of all members appointed to any board of

Prospect CharterCARE, LLC and its Subsidiaries, CCHP Foundation, CCHP and the Heritage Hospitals.

5. For the next three (3) years following the close of the transaction, Prospect CharterCARE, LLC and its Subsidiaries, and CCHP Foundation, CCHP and the Heritage Hospitals shall provide corporate documents to the Attorney General to evidence compliance regarding board composition as required by this Decision. In addition, the aforementioned entities shall provide to the Attorney General any proposed amendments to their corporate documents 30 days prior to amendment.
6. For the next three (3) years following the close of the transaction, upon any change in what was represented by the Transacting Parties in the Initial Application and supplemental responses in connection with the approval of this transaction, reasonable prior notice shall be provided to the Attorney General.
7. For the next three (3) years following the close of the transaction, provide reasonable prior notice to the Attorney General identifying any post closing contracts between any of the Transacting Parties and any of the current officers, directors, board members or senior management.
8. That (a) a proposed opening balance sheet for the CCHP Foundation and the Heritage Hospitals as of the close of the transaction identifying the source and detail of all charitable assets to be transferred to the CCHP Foundation be provided to the Attorney General promptly following the close of the transaction; (b) a proposed *Cy Pres* petition satisfactory to the Attorney General be prepared promptly following the close of the transaction allowing certain charitable assets to be transferred to the CCHP Foundation and requesting that other charitable assets remain with the Heritage Hospitals, in each case for disbursement in accordance with donor intent, with such proposed modifications as agreed to by the Attorney General, and (c) the approved *Cy Pres* petition be filed with the Rhode Island Superior Court.
9. That the transaction be implemented as outlined in the Initial Application, including all Exhibits and Supplemental Responses.
10. That all unexecuted agreements provided in support of the Initial Application and Supplemental Responses be executed by the Transacting Parties in the form and substance presented.
11. Promptly after the 180th day following the close of the transaction, brief in an interview with the Attorney General the terms of the final Prospect CharterCARE, LLC's Strategic Plan adopted by the Board. In the event the Attorney General requires a copy of such plan, Prospect CharterCARE, LLC may seek a court order protecting the confidentiality thereof.
12. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notices provided to or received by a party under the Asset

Purchase Agreement.

13. For the next three (3) years following the close of the transaction, provide the Attorney General with a copy of any notice(s) out of the ordinary course; e.g., Office of Inspector General, Securities and Exchange Commission, Internal Revenue Service and Centers for Medicare and Medicare Services, received by the Transacting Parties from any regulatory body.
14. That the Transacting Parties comply with applicable state tax laws.
15. All CCHP entities being acquired (e.g. not CCHP, CCHP Foundation or the Heritage Hospitals) shall be wound down and dissolved and all necessary documents must be filed with applicable state agencies, including, but not limited to the Secretary of State and the Division of Taxation.
16. That all costs and expenses due from the Transacting Parties pursuant to the Reimbursement Agreement dated, January 24, 2014, be paid in full prior to close of the transaction.
17. That PMH guarantee the full amount of Prospect East's financial obligations contained in the Asset Purchase Agreement pursuant to the form of guaranty approved by the Attorney General.
18. Prospect CharterCARE, LLC shall report annually to the Attorney General on the proposed form submitted to the Attorney General concerning the funding of its routine and non-routine capital commitments under the Asset Purchase Agreement until the long term capital commitment as defined in the Asset Purchase Agreement has been satisfied.
19. That Prospect provide information on a timely basis requested by the Attorney General to determine its compliance with the Asset Purchase Agreement and the Conditions of this Decision.
20. The Transacting Parties shall enter into an amendment to the Reimbursement Agreement dated January 24, 2014 for retention by the Attorney General of expert(s) to assist the Attorney General until all matters relating to the approval of the Initial Application are fully and finally resolved.
21. That Prospect complies with the Reimbursement Agreement dated, January 24, 2014, for retention by the Attorney General of an expert to assist the Attorney General with enforcing compliance with these Conditions. Further, Prospect shall enter into an additional agreement outlining the terms of its obligations regarding cooperation with the Attorney General and any expert retained to assist the Attorney General with enforcing compliance with these Conditions.

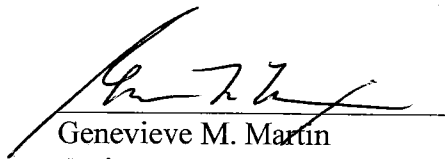
22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.
23. For the next three (3) years following the close of the transaction, notify the Attorney General of any actions out of the ordinary course taken in connection with the SJHSRI pension or any material changes in its operation and/or structure.
24. For the next three (3) years following the close of the transaction, provide the Attorney General notice of a proposed change of ownership of Prospect East or PMH.
25. For the next three (3) years following the close of the transaction, provide CCHP Foundation, CCHP and the Heritage Hospitals with a right of first refusal to match the price to acquire any asset comprised of a line of business or real estate of Prospect CharterCARE, LLC and its Subsidiaries that it proposes to sell.
26. For the next three (3) years following the close of the transaction to the extent there is a sale of any Purchased Assets comprised of a line of business or real estate, the associated sale proceeds shall remain within Prospect CharterCARE, LLC for the benefit of the operation of the Newco hospitals.
27. The Transacting Parties shall provide a Tax Certificate from the State of Rhode Island that the transaction is proper under state tax laws prior to closing.
28. In connection with a sale of assets as defined in paragraph 26 above, if at the time of such a sale Prospect CharterCARE, LLC's membership interest has been diluted to less than fifteen (15%) percent, then fifteen (15%) of the net sales proceeds from the transaction shall go to CCHP to restore its membership interest up to fifteen (15%) percent. Said monies shall be credited against any future member distributions made to CCHP by Prospect CharterCARE, LLC.
29. Anyone subject to the Ethics Commission shall not be eligible to be a board member.
30. Within three (3) years of the closing of this Transaction, provide notice to the Attorney General of any complaints received from OIG, CMS or state agencies.

All of the above Conditions are directly related to the proposed conversion. The Attorney General's APPROVAL WITH CONDITIONS is contingent upon the satisfaction of the Conditions. The Proposed Transaction shall not take place until Conditions 10, 14, 16, 17, 20, 21 and 27 have been satisfied. The Attorney General shall enforce compliance with these

Conditions pursuant to the Hospital Conversions Act including R.I. Gen. Laws § 23-17.14-30.



Peter F. Kilmartin
Attorney General
State of Rhode Island



Genevieve M. Martin
Assistant Attorney General

NOTICE OF APPELLATE RIGHTS

Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in the Superior Court.

CERTIFICATION

I hereby certify that on this 16th day of May, 2014, a true copy of this Decision was sent via electronic and first class mail to counsel for the Transacting Parties:

Patricia K. Rocha, Esq.
Adler Pollack & Sheehan
One Citizens Plaza -8th Floor
Providence, RI 02903

W. Mark Russo, Esq.
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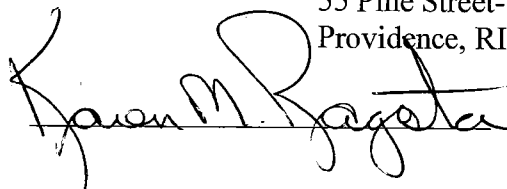


EXHIBIT B

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

C.A. No. KM – 2015-0035

**ORDER ON PETITION FOR APPROVAL OF
DISPOSITION OF CHARITABLE ASSETS**

This matter came before the Court on April 6, 2015 on CharterCARE Health Partners Foundation (“CCHP Foundation”), Roger Williams Hospital (“RWH”) and St. Joseph Health Services of Rhode Island’s (“SJHSRI”) Petition for Approval of Disposition of Charitable Assets Including Application Of The Doctrine Of *Cy Pres* (the “Petition”), and after review of the Petition, and Responses by the Attorney General for the State of Rhode Island (the “Attorney General”), and Trustee Bank of America, N.A. (the “Trustee”), as well as argument by counsel for the Petitioners, the Attorney General, and the Trustee, it is hereby ORDERED:

The Petition is granted as set forth herein, referencing fund amounts as of July 31, 2014:

1. As set forth in paragraph 20 of the Petition, *cy pres* approval is granted for CCHP Foundation to use the funds in the amount of \$17,465.79, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission.
2. As set forth in paragraphs 21, 22 and 23 of the Petition, *cy pres* approval is granted for the transfer of the following RWH funds to CCHP Foundation, to be used as close to the original donors’ intent as possible, at the discretion of CCHP Foundation’s Board of Directors, to serve the Foundation mission:
 - Temporarily restricted funds in the amount of \$284,710.34

- Permanently restricted funds in the amount of \$4,209,522.00
- Temporarily restricted earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24 of the Petition, approval is granted for RWH to use the following funds:

- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25 of the Petition, *cy pres* approval is granted for RWH to use the following funds:

- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.
- Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B of the Petition to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26 of the Petition, *cy pres* approval is granted for the transfer of the following SJHSRI funds to CCHP Foundation, to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission:

- \$258,961.61 in restricted cash
- \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
- \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

6. As set forth in paragraph 28 of the Petition, (a) approval is granted for RWH to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to SJHSRI after such RWH liabilities have been satisfied and to transfer such annual income or principal distributions to CCHP Foundation after the Outstanding Pre and Post Closing Liabilities of SJHSRI have been satisfied.

7. As set forth in paragraph 29 of the Petition, approval is granted for RWH to use the trust funds that it will receive, if any, upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval is granted for RWH and/or the Trustee (or any successor Trustee) to transfer the trust funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraphs 28 through 30 of the Petition, (a) approval is granted for SJHSRI to use the annual income or principal distributions from the perpetual trusts identified therein to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf, and (b) *cy pres* approval is granted for SJHSRI and/or the Trustee (or any successor Trustee) to transfer such annual income or principal distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31 of the Petition, *cy pres* approval is granted to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation, to be used as close to the donors' intent as

possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation mission.

10. At least sixty (60) days prior to the completion of the wind-down period for RWH and SJHSRI, respectively, RWH and SJHSRI shall give written notice to the Trustee of such status.

11. CCHP Foundation shall comply with the following reporting requirements:

1. CCHP Foundation shall submit a report to the Health Care Advocate at the Rhode Island Department of Attorney General of the expenditures of the funds transferred to the CCHP Foundation (the "Report").
2. The Report shall include the amount of funds expended, the purpose of the expenditure, the beneficiary of the funds, and the name and contact information for such beneficiary.
3. The Report shall be submitted annually, with a copy of CCHP Foundation's IRS Form 990 ("990"), five business days after the date the 990 is filed with the IRS, commencing with the 990 filing for the fiscal year ending September 30, 2015. A report shall also be submitted if an expenditure of over \$200,000 occurs more than ninety (90) days after the reporting date, or more than ninety (90) days prior to the reporting date, whichever occurs first.
4. If, at any time, CCHP Foundation decides to relinquish custody and control and transfer the funds to another charitable institution for administration of such funds, regardless of the amount, notice of said transfer shall be provided to the Health Care Advocate at the Rhode Island Department of Attorney General, at least thirty (30) days prior to the transfer. Notice shall precede the

transfer and contain the amount of funds transferred and the name of the institution receiving the funds, and the contact information for the person(s) managing the funds.

5. If and when any assets of the charitable trusts are transferred to CCHP Foundation, it shall provide to the Trustee (or any successor Trustee) copies of all reports and notices under this paragraph when submitted to the Health Care Advocate at the Rhode Island Department of Attorney General.

ENTER:

/s/ Brian P. Stern

Stern, J. 4/20/15

PER ORDER:

/s/ Carin Miley

Clerk (Deputy)

Presented by:

CharterCARE Health Partners Foundation
Roger Williams Hospital
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha
PATRICIA K. ROCHA (#2793)
JOSEPH AVANZATO (#4774)
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Providence, RI 02903
Tel: 401-274-7200
Fax: 401-351-4607
procha@apslaw.com
Dated: April 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 2015

- I electronically filed and served this document through the electronic filing system on the following parties:

Genevieve Martin, Esq.
Kathryn D. Enright, Esq.
Christianne Wyrzykowski, Esq.
Office of the Rhode Island Attorney General
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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

- I served this document through the electronic filing system on the following parties:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

- I mailed or hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

/s/ Patricia K. Rocha

EXHIBIT C

HEARING DATE: April 6, 2015; 3:30PM

**STATE OF RHODE ISLAND
KENT, SC.**

SUPERIOR COURT

In re: CHARTERCARE HEALTH PARTNERS :
FOUNDATION, ROGER WILLIAMS : C.A. KM-2015-0035
HOSPITAL and ST. JOSEPH HEALTH :
SERVICES OF RHODE ISLAND :

**ATTORNEY GENERAL’S RESPONSE TO THE
PETITION FOR DISPOSITION OF CHARITABLE
ASSETS INCLUDING APPLICATION OF
DOCTRINE OF CY PRES**

Now comes Attorney General Peter F. Kilmartin (“Attorney General”) and hereby responds to the Petition for Disposition of Charitable Assets, Including Application of Doctrine of *Cy Pres* (the “Petition”) filed by CharterCARE Health Partners Foundation (the “CCHP Foundation” or “Petitioners”). This Response will address the Petitioners’ request for the use and disposition of two types of charitable assets: the institutional charitable assets¹ and the charitable trusts.² Additionally, this Response proposes reporting requirements in connection with the funds at issue. Petitioners have reviewed and agree to the reporting requested by the Attorney General.

I. Background

On June 20, 2014, a closing on the transaction approved by the Attorney General and the Department of Health³ occurred in which certain of the assets of CharterCARE Community

¹ These assets are referenced at Paragraphs 21-23 and 26 of the Petition.

² These assets are referenced at Paragraphs 27-30 of the Petition.

³ The transaction was approved by a Decision of the Attorney General on May 16, 2014 (“Attorney General’s Decision” or “HCA Decision”) and by the Department of Health on May 19, 2014. The approvals followed extensive reviews performed pursuant to the Hospital Conversions Act, R.I. Gen Laws §§ 23-17.14-1, et seq. (“HCA”).

Board, formerly known as CharterCARE Health Partners (“CCCB”), Roger Williams Hospital (“RWH”), formerly known as Roger Williams Medical Center, and St. Joseph Health Services of Rhode Island (“SJHSRI”) were transferred to the newly formed for-profit joint venture between CCCB and Prospect Medical Holdings, Inc. (“PMH”) known as Prospect CharterCARE, LLC, and its affiliates (the “Joint Venture”). In addition, the Joint Venture contemplated the transfer, subject to Court approval, of certain charitable assets to CCHP Foundation and the use of certain of the charitable assets during the wind down of RWH and SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities.

Prior to the Joint Venture, CCHP Foundation’s mission included raising funds for the benefit of CCCB, including Roger Williams Medical Center and SJHSRI. After the closing, the mission of the CCHP Foundation was changed because the charitable assets at issue in the Petition could no longer be used for the benefit of the for-profit entities that now comprise Prospect CharterCARE, LLC. The new mission reflects a community based benefit to provide responsive health care and health care related services. The current mission statement is as follows:

Such purposes shall include serving as a community resource to provide accessible, affordable, and responsive health care and health care related services including, without limitation, disease prevention, education and research grants, scholarship, clinics and activities within the communities previously served by St. Joseph Health Services of Rhode Island and Roger Williams Hospital in order to facilitate positive changes in the health care system. Petitioners’ Exhibit A.

II. Charitable Assets

A. Charitable Funds

The Petitioners have filed the instant Petition requesting that the Honorable Court allow CCHP Foundation to use charitable funds which can no longer be used in accordance with original donor intent, for the benefit of the new CCHP Foundation mission as outlined in Section I. The Attorney General agrees that because of the formation of the Joint Venture, the funds cannot be used for the benefit of the for-profit hospitals and therefore agrees to the *cy pres* of these funds. However, given the Attorney General's statutory and common law duties to protect charitable assets, the Attorney General has proposed, and CCHP Foundation has assented, to certain reporting requirements described in further detail below at Section III.

B. Charitable Trust and *Cy Pres*

Similarly, the Attorney General has no objection to the *cy pres* of charitable trusts assets as outlined in the Petition. Pursuant to the HCA Decision (pp 24-28), the Attorney General permitted pre and post-closing liabilities be paid with RIFEPA income from the trusts because the funds being used are income funds that are not restricted and therefore are usable for the general purposes of the operations of the hospitals. These charitable trusts are referenced by Petitioners in paragraphs 28 of the Petition (the Brown, Knight, Flint, Horton and Steinert Trusts) and at Paragraph 29 of the Petition (the Boyden Trust). Additionally, the use of these trust funds was permitted by the trustees as outlined in R.I. Gen. Laws § 18-4-2, "Powers of Trustees", which provides:

- (a) every trust, inter vivos or testamentary, previously or subsequently effective, in which no provision is made to the contrary, shall be deemed to give to the trustees or trustee under the trust for the time being, in addition to any other power they may lawfully have, full power in there, his, or her discretion, or if a corporation in the discretion of its duly authorized officer or committee:

- (a)(4) to participate in, assent to, or disapprove any plan for the reorganization, recapitalization, consolidation, merger, winding up, or readjustment of the

indebtedness of any corporation or association, and to take any and all action required by reason of participation in the plan;...."

While the Attorney General has agreed to the use of such charitable assets, the Attorney General requests, and CCHP Foundation has agreed, that the reporting requirements incorporated herein at Section III also be required if and when any assets of the charitable trusts are transferred to CCHP Foundation.

Additionally, it should be noted that Bank of America ("BOA"), trustees of the Perpetual Trusts identified in the Petition, have received notice of these proceedings and a copy of the Petition. BOA has provided a written response to this Court, stating that they have no objection to the requests made by Petitioners with respect to the Perpetual Trusts identified in Paragraphs 27-30 of the Petition.

III. Reporting Requirements

1. The CCHP Foundation shall submit a report to the Health Care Advocate at the Rhode Island Department of Attorney General of the expenditures of the funds transferred to the CCHP Foundation as set forth herein.
2. The report shall include the amount of funds expended, the purpose of the expenditure, the beneficiary of the funds, and the name and contact information for such beneficiary.
3. The report shall be submitted annually, with a copy of CCHP Foundation's IRS Form 990 ("990"), five business days after the date the 990 is filed with the IRS, commencing with the 990 filing for the fiscal year ending September 30, 2015.⁴ A

⁴ CCHP Foundation's fiscal year runs from October 1 – September 30. The 990 filing is due by the 15th day of the fifth month after the close of a charity's fiscal year (February 15) with an automatic three month extension (May 15) and a second discretionary three month extension (August 15).

report shall also be submitted if an expenditure of over \$200,000 occurs more than ninety (90) days after the reporting date, or more than ninety (90) days prior to the reporting date, whichever occurs first.

4. If, at any time, CCHP Foundation decides to relinquish custody and control and transfer the funds to another charitable institution, regardless of the amount, notice of said transfer shall be provided to the Health Care Advocate at the Rhode Island Department of Attorney General, within thirty (30) days prior to the transfer. Notice shall precede the transfer and contain the amount of funds transferred and the name of the institution receiving the funds, and the contact information for the person(s) managing the funds.

IV. Enforcement

Should the CCHP Foundation fail to comply, the Attorney General shall invoke its common law and statutory duty, including, but not limited to, the authority granted to the Attorney General pursuant to R.I. General Laws §§18-9-9, 18-9-10 and 18-9-11, to protect charitable assets within the State of Rhode Island.

V. Conclusion

The Attorney General has reviewed the Petition and the affected charitable assets. Based on that review, the Attorney General and the CCHP Foundation have agreed that CCHP Foundation shall report to the Attorney General regarding the expenditure of certain charitable assets. The Office of Attorney General seeks the following relief:

- (1) An order granting the Petition incorporating the reporting requirements requested herein and agreed to by the Parties; and
- (2) any additional relief that is equitable and just.

Respectfully submitted,

STATE OF RHODE ISLAND
BY ITS ATTORNEY,

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ATTORNEY GENERAL

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/s/ Chrisanne Wyrzykowski
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2015 I filed and served this document through the electronic filing system and via e-mail on the following parties: The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

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/s/ Chrisanne Wyrzkowski

EXHIBIT D

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

C.A. No. KM-2015-0035

**TRUSTEE BANK OF AMERICA, N.A.'S RESPONSE TO PETITION FOR APPROVAL
OF DISPOSITION OF CHARITABLE ASSETS INCLUDING APPLICATION OF
DOCTRINE OF *CY PRES***

Now comes Bank of America, N.A. (“BOA”), in its capacity as trustee of certain perpetual trusts,¹ and responds to the Petition for *Cy Pres* (the “Petition”) filed by CharterCARE Health Partners Foundation (the “CCHP Foundation”), Roger Williams Hospital (“RWH”), and St. Joseph Health Services of Rhode Island (“SJHSRI”) regarding the proposed affiliation of RWH and SJHSRI in a new joint venture under the management of Prospect CharterCARE, LLC (“Prospect”). As stated in the Petition, the Petitioners seek to apply the distributions from the perpetual trusts toward Outstanding Pre and Post Closing Liabilities of RWH and SJHSRI before ultimately transferring the distributions to the CCHP Foundation. See Petition ¶ 27.

¹ The trusts at issue are: (1) The Trust under Will of Sarah S. Brown dated June 21, 1911 (Relevant Beneficiary: RWH); (2) The Trust under Will of C. Prescott Knight dated November 14, 1932 (Relevant Beneficiary: RWH); (3) The Trust under Will of George Luther Flint dated June 25, 1935 (Relevant Beneficiary: RWH); (4) The Miriam C. Horton Trust dated August 9, 1948, as amended in its entirety and restated on June 12, 1963 and modified by a Memorandum of Understanding dated June 24, 2004 between Fleet National Bank (now BOA), RWH and Brown University (Relevant Beneficiaries: RWH is a specified discretionary beneficiary under Article FIFTH C of the trust. Discretionary distributions under Article FIFTH D are determined on an annual basis based on input of an advisory committee. Historically RWH has also received distributions pursuant to Article FIFTH D.); (5) The Trust under Will of Albert K. Steinert dated July 11, 1927 (Relevant Beneficiaries: RWH and SJHSRI); (6) The Trusts under the Will of George E. Boyden dated April 12, 1932, as amended by codicils dated February 10, 1933 and June 13, 1934 (Relevant Beneficiary: RWH upon death of great-granddaughter Barbara S. Boyden), and under the Will of Lydia M. Boyden, dated September 25, 1930, as amended by codicil dated June 13, 1934 (Relevant Beneficiary: RWH upon death of great-granddaughter Barbara S. Boyden); (7) Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement dated November 18, 1971 (Relevant Beneficiary: SJHSRI). See Petition ¶¶ 27-30.

The doctrine of *cy pres* may be applied in situations where it becomes impossible to carry out a charitable gift as directed by the donor:

Under the ‘*cy pres*’ doctrine, when it becomes impossible, impracticable, or illegal to carry out the particular purpose designated by the settlor due to changed circumstances and the settlor has manifested a general charitable intent, a court will not allow the trust to fail but will redirect the application of the property to some other charitable purpose, as near as may be to the fulfillment of the original charitable intent.

15 Am. Jur. 2d *Charities* § 144. Rhode Island specifically authorizes the application of the *cy pres* doctrine by statute. R.I. Gen. Laws § 18-4-1 (“Application of *cy pres* doctrine -- In all cases of charitable gifts of real or personal estate, whether by deed or will, where the purposes of the donor cannot be literally carried into effect, a complaint may be filed for a *cy pres* application of the trust property; and at that time all proceedings, orders, and decrees shall be had and taken in the suit, to carry out the intents of the donor as near as may be, that the charity may not fail . . .”).

BOA has reviewed the relevant trust documents and has concluded (1) that each trust instrument demonstrates a general charitable intent, (2) that it has become impossible to carry out the literal terms of the trusts, and (3) that the proposed redirection of charitable assets is consistent with the intent of the donors. In particular, BOA observes that each of the trusts demonstrates an intent to promote the provision of healthcare services in Rhode Island through the support of Rhode Island hospitals.² Thus, BOA does not oppose the Petition because it believes the donors’ intent is achieved under the Petitioners’ proposal and files this Response to memorialize this position and to address two discrete issues: (1) the impact of the heritage

² In fact, all but one of the trusts name other Rhode Island hospitals and/or healthcare providers as beneficiaries in addition to RWH and/or SJHSRI. The only trust that does not name an additional hospital or healthcare provider as a beneficiary—the Horton trust—directs its trustee to make distributions “for the use and benefit of such public, charitable, educational and religious purposes” as determined by a committee consisting of representatives from RWH, Brown University and BOA. Thus, BOA has concluded that in the case of each trust, the intent of the donor to further the provision of healthcare services in Rhode Island would be honored through the proposed distribution.

hospitals' religious affiliation or lack thereof; and (2) whether adequate measures will exist to ensure the payment of trust distributions to a recognized 501(c)(3) non-profit entity.

1. Consideration of Religious Affiliation or Lack Thereof

As stated in the Petition, “[a]fter RWH’s liabilities have been paid, RWH seeks *cy pres* approval to transfer the annual income or principal distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.” Petition ¶ 28. Further, “[a]fter SJHSRI’s non-pension and pension liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation.” *Id.* ¶ 30. BOA has considered whether these transfers might be contrary to the donors’ intent, and, specifically, whether the religious affiliation of SJHSRI and secular nature of RWH present any issues. After reviewing the affected trust documents, BOA understands that the primary intent of the donors was to support the provision of healthcare services at hospitals located in Rhode Island. BOA has not located any language in or documentation for the trusts that would prevent the use of RWH-designated distributions by a religiously affiliated hospital. Similarly, BOA is unaware of any prohibition on the transfer of SJHSRI-designated distributions to a charitable foundation that will support a secular hospital.³ Moreover, RWH and SJHSRI were first affiliated in 2009 through the creation of CharterCARE Health Partners (“Old CharterCARE”), which allowed both entities to be more cost efficient and to continue to operate. See Petition ¶ 8. Therefore,

³ While the Horton trust explicitly allows distributions to be used for religious purposes, it merely tracks the statutory language of the Internal Revenue Code for charitable deductions. Compare Horton Trust (“Pursuant to Article FIFTH, Paragraph D of the trust, the balance of the net income is to be distributed in such manner as a committee may determine for the use and benefit of such public, charitable, educational and religious purposes which would be deductible from the gross estate of a decedent under §2055 of the Internal Revenue Code. Section 2055 allows for a deduction for any bequest, legacy or devise to a 501(c)(3) organization.”), with 26 U.S.C. § 2055 (“Transfers for public, charitable, and religious uses.”). Therefore, BOA does not interpret this language to provide any insight into the donors’ intent with respect to religiously affiliated entities.

BOA considers the transfer of trust distributions from RWH to SJHSRI not to be inconsistent with the donors' intent.⁴

2. Ensuring Distribution from Trusts to a Non-Profit Entity

Among the conditions attached by the Rhode Island Department of Attorney General's ("AG") approval of the Petitioners' Hospital Conversion Application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, was that Petitioners must "seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, *because it would require that funds go to a successor, for-profit hospital.*" (emphasis added). Petition – Ex. B at 27. The AG went on to state that "Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation." *Id.* at 28. The exact date for the completion of the wind-down period for RWH and SJHSRI, as well as the transfer of funds to the CCHP Foundation, is unknown at this time. *See* Petition ¶ 17 ("It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes."). To avoid a for-profit successor entity inadvertently receiving distributions from the perpetual trusts, and consistent with the AG's earlier decision, Petitioners have agreed to provide BOA with advance written notice of the completion of the wind-down period. This will ensure that all distributions will be made to a 501(c)(3) non-profit entity consistent with the donors' intent and consistent with the charitable tax-status of the perpetual trusts.

3. Conclusion

⁴ BOA further notes that the Steinert Trust named both RWH and SJHSRI as beneficiaries in equal shares. *See* n. 1.

As stated above, BOA, in its capacity as trustee, has reviewed the Petition and the affected trust documents. Based on its review, BOA has no objections to the Petition for *Cy Pres* and the requested relief therein and submits its interests to the care and protection of the Court.

BANK OF AMERICA, N.A., in its capacity as trustee

By its Attorneys,

/s/ James J. Nagelberg
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Dated: February 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of February, 2015, I filed and served this document through the electronic filing system on the following counsel of record:

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The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ James J. Nagelberg

EXHIBIT E

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and :
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

C.A. No. PC14-_____

**PETITION FOR APPROVAL OF DISPOSITION OF CHARITABLE ASSETS
INCLUDING APPLICATION OF DOCTRINE OF *CY PRES***

PARTIES

1. Petitioner, CharterCARE Health Partners Foundation, is a Rhode Island 501(c)(3) non-profit corporation (“CCHP Foundation”). CCHP Foundation’s sole member is CharterCARE Community Board, formerly known as CharterCARE Health Partners (“CCCB”). Prior to June 20, 2014, the CCHP Foundation’s mission included raising funds for the benefit of CCCB and its affiliates, Roger Williams Hospital (“RWH”), formerly known as Roger Williams Medical Center, and St. Joseph Health Services of Rhode Island (“SJHSRI”). RWH and SJHSRI are collectively referred to as the “Heritage Hospitals” herein. On June 20, 2014, a closing on the transaction approved by the Rhode Island Department of Health (“DOH”) and Rhode Island Attorney General’s Office (“AG”) occurred in which certain of the assets of CCCB, RWH and SJHSRI were transferred to the newly formed for-profit joint venture between CCCB and Prospect Medical Holdings, Inc. (“PMH”) known as Prospect CharterCARE, LLC, and its affiliates (the “Joint Venture”). Subsequent to June 20, 2014 and in recognition that the charitable assets at issue in this Petition cannot be used for the benefit of the for-profit Joint Venture, the CCHP Foundation changed its mission to reflect service as a community resource to provide accessible, affordable and responsive health care and health care related services,

including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities the Heritage Hospitals previously provided services, to facilitate positive changes in the health care system (the “Foundation Mission”). A copy of the Amendment to CCHP Foundation’s Articles of Incorporation is attached at **Exhibit A**.

2. Petitioner, RWH, formerly known as Roger Williams Medical Center, is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 220-bed acute care community hospital located in Providence, Rhode Island.

3. Petitioner, SJHSRI is a Rhode Island 501(c)(3) non-profit corporation that, prior to the June 20, 2014 Joint Venture closing, owned and operated a 278-bed acute care community hospital located in North Providence, Rhode Island, known as Our Lady of Fatima Hospital.

4. CCCB is a Rhode Island 501(c)(3) non-profit corporation and the sole member of the CCHP Foundation, RWH and the controlling member of non-religious matters of SJHSRI, with religious matters in the control of the Roman Catholic Bishop of the Diocese of Providence, or his designee.

JURISDICTION

5. This Petition is brought pursuant to R.I. General Laws § 18-4-1 *et seq.* entitled “Application of Cy Pres Doctrine” § 18-9-1 *et seq.* entitled “Division of Charitable Assets” and § 18-12.1-1 *et seq.* entitled “Uniform Prudent Management of Institutional Funds Act” (“UPMIFA”).

6. Peter F. Kilmartin, in his capacity as Attorney General for the State of Rhode Island, and pursuant to his statutory and common law responsibilities with respect to the preservation and protection of charitable assets, has been given notice of this Petition.

7. Bank of America, N.A., the trustee of certain trusts referenced in paragraphs 27–30 herein, has been given notice of this Petition.

BACKGROUND

8. In 2008 and 2009, RWH and SJHSRI combined were losing in excess of \$8 million a year in operations alone. In an effort to stem those losses, those independent systems agreed to affiliate through the creation of CharterCARE Health Partners (“Old CharterCARE”). The purpose of the affiliation was to realize approximately \$15M in savings over five years, utilizing efficiencies created by the combined hospital systems, as well as to preserve and expand health care services to the existing hospitals’ communities. In 2009, the proposed affiliation was approved by the DOH and the AG. If Old CharterCARE had not been approved, the RWH and SJHSRI systems would have had difficulty operating independently. As part of the Old CharterCARE affiliation and in connection with the approval of a Petition for Cy Pres, In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822, the organizational documents of St. Joseph Health Services Foundation, Inc., originally created to hold and raise funds for the behalf of SJHSRI, were revised to change the entity’s name to CharterCARE Health Partners Foundation, to make CCCB its sole member and to change the mission to raise funds for the benefit of Old CharterCARE and its affiliates. On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501 (c) (3) of the Internal Revenue Code (IRC) and 2) a public charity under section 509 (a) (3) of the IRC.

9. As a result of the formation of Old CharterCARE, significant operational efficiencies were achieved based on operating revenue alone. Old CharterCARE reduced operating losses to approximately \$3 million per year. Although a significant improvement, the parties recognized that those continuing losses could not be sustained. Furthermore, although capital expenditures were made, the physical plants at the existing hospitals were aging and in need of upgrading. In addition, there were additional concerns regarding the SJHSRI pension funding. In fiscal year 2012, taking into consideration pension losses, Old CharterCARE sustained losses of over \$8 million. The parties recognized that such level of loss could not be maintained. Notwithstanding Old CharterCARE's laudable efforts to drastically reduce such losses, the parties recognized the need for access to additional capital to ensure that the existing hospitals could continue to provide high-quality, accessible services to the communities they served.

10. In an effort to ensure the continued viability of the existing hospitals, in December 2011, Old CharterCARE issued a Request for Proposal ("RFP") seeking a partner. The RFP process was comprehensive, transparent and evaluated a variety of partners who responded to the RFP, including PMH. In March 2013, after a joint meeting of the boards of Old CharterCARE and the existing hospitals, and with the aid of outside consultants who evaluated the different proposals, Old CharterCARE chose PMH's proposal. In March, 2013, the parties executed a Letter of Intent. After an extended period of due diligence, the parties executed an Asset Purchase Agreement on September 24, 2013 (the "APA").

11. Pursuant to the terms of the APA, PMH and Old CharterCARE would own an 85% and 15% interest, respectively, in the Joint Venture; however, the governing structure would include a "50/50 Board" with PMH and Old CharterCARE each appointing 50% of the

Prospect CharterCARE LLC board membership, ensuring that Old CharterCARE would have a significant stake in the continued governance of the hospitals. Accordingly, the existing hospitals would retain their local community mission and local leadership representation while, at the same time, receiving access to necessary capital and resources that PMH could provide. After the transaction, for tax purposes, Prospect CharterCARE LLC would be classified as a for-profit entity and the CCHP Foundation, CCCB, RWH and SJSHRI would each retain their status as tax-exempt organizations under Section 501(c)(3) of the Tax Code. Accordingly, the charitable assets held by the CCHP Foundation, RWH and SJHSRI, post closing, could not be used for the operations of the existing hospitals due to the change of the entities comprising Prospect CharterCARE, LLC and its affiliates to for-profit status.

12. In order to structure the Joint Venture with PMH (and ensure the continued viability of the hospitals to provide high quality, cost-effective, accessible services to the communities they serve) and to secure PMH's commitment to contribute funds at the closing and on a future basis for growth of the hospitals, it was necessary for each of the Heritage Hospitals at the closing to discharge various pre-existing liabilities incurred during the period the Heritage Hospitals provided services to their patients prior to the closing and satisfy outstanding pre and post closing liabilities during their subsequent wind-down period (the "Outstanding Pre and Post Closing Liabilities") as is more fully set forth in the APA.

13. On October 18, 2013, the transacting parties submitted the required Hospital Conversions Act ("HCA") Application to the DOH and the AG. During the HCA review, the transacting parties responded to numerous inquiries by DOH and the AG, including six sets of AG supplemental questions consisting of 213 questions. In addition, the AG conducted interviews of representatives of both Old CharterCARE and PMH.

14. On May 16, 2014 and May 19, 2014, both the AG and the DOH, respectively, approved the HCA Application with conditions. The AG decision discussed the proposed disposition of charitable assets at pages 23 through 32 having reviewed draft *cy pres* petition outlines submitted during the HCA review. Among other things, it approved the concept of (1) the transfer of certain of the charitable assets to the CCHP Foundation and (2) the use of certain of the charitable assets during the Heritage Hospitals' wind down to satisfy the Outstanding Pre and Post Closing Liabilities subject to *cy pres* approval from this Court. It also required the filing of this Petition to address such disposition of the charitable assets post closing. A copy of the charitable assets section of the Decision is attached as **Exhibit B**¹.

15. On June 20, 2014, the Joint Venture transaction was consummated. Accordingly, Prospect CharterCARE, LLC, the for-profit joint venture company, doing business as CharterCARE Health Partners, now operates Roger Williams Medical Center and Fatima Hospital. PMH and CCCB equally share seats on the Prospect CharterCARE LLC's eight-member governing board, with Edwin Santos, the former Chair of Old CharterCARE serving as the new Chair of the Board of Directors.

16. During the course of the AG HCA review, Old CharterCARE submitted a proposed Sources and Uses of Funds Analysis (the "Analysis") as of the closing date, and Estimated Opening Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, as well as outlines for the proposed *cy pres* petitions for RWH and SJHSRI, all of which were reviewed by the AG with the understanding that final Sources and Uses Analysis and Summary Balance Sheets would be submitted after closing. A comparison of the proposed and final

¹ None of the charitable assets at issue in this Petition are owned by CCCB. They are owned by CCHP Foundation, RWH and SJHSRI. CCCB's assets include its ownership interests in CCHP Foundation, RWH and SJHSRI. Accordingly, the only assets available to satisfy the Outstanding Pre and Post Closing Liabilities are those described in this Petition and identified in Exhibits C, D and E.

Sources and Uses of Funds Analyses as of the June 20, 2014 closing is attached as **Exhibit C**.

The final Summary Balance Sheets for CCHP Foundation and the Heritage Hospitals, respectively, are attached as **Exhibits D² and E**.

17. As set forth on Exhibit C, at the Joint Venture closing, certain obligations of RWH and SJHSRI were paid, i.e., bond, pension and account payable liabilities, using sales proceeds from PMH and unrestricted cash. In addition, the Outstanding Pre and Post Closing Liabilities remain to be paid, including, without limitation, malpractice insurance tail policies, third party payor obligations and worker's compensation payments. It is anticipated that the Outstanding Pre and Post Closing Liabilities will be paid during the wind-down period of RWH and SJHSRI over the next approximately three years. The SJHSRI pension funding obligation will continue after the wind-down period concludes.

18. As set forth in the AG Decision, during the course of the HCA review, the parties recognized that notwithstanding the expected proceeds that would be received by the Heritage Hospitals post-closing, including Medicare settlements, i.e., reconciliation of monies due and paid for the fiscal years 2011, 2012, 2013 and 2014, the liabilities of the Heritage Hospitals would exceed the available funds. Accordingly, Old CharterCARE, subject to Court approval, proposed that certain RWH and SJHSRI assets remain with the Heritage Hospitals during their wind-down period to satisfy the Outstanding Pre and Post Closing Liabilities.

19. The Petitioners bring this Petition for approval of the disposition of charitable assets including the application of the doctrine of *cy pres* because the charitable assets cannot be used for the benefit of the for-profit Joint Venture.

² As set forth further herein, the proposed \$8,410,287.66 transfer to CCHP Foundation exceeds the projected transfer of \$7,200,000 identified during the HCA review process.

CCHP FOUNDATION

20. CCHP Foundation requests that this Court grant *cy pres* approval for the use of the following remaining funds in the amount of \$17,465.79, at the discretion of the CCHP Foundation's Board of Directors to serve the Foundation Mission³:

Account No.	Description	Amount
11.2900.3076	Dental School Graduation Fund	\$2,888.00
11.2900.4007	Fatima Annual Campaign	\$75.00
11.2900.4008	2014 Golf Tournament	\$13,467.79
11.2900.4009	RWMC Campaign	\$1,000.00
11.2900.4018	Elmhurst Extended Care Campaign	\$35.00
	Total:	\$17,465.79

The underlying documentation for such accounts is included at **Tab 1** of the disk to be provided to the Court.

**ROGER WILLIAMS HOSPITAL
TRANSFER TO CCHP FOUNDATION**

21. RWH requests that this Court grant *cy pres* approval for the transfer of the temporarily restricted funds in the total amount of \$284,710.34 to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors to serve the Foundation Mission. A breakdown of such funds is attached as **Exhibit F** and the underlying documentation is included at **Tabs F1-F23** of the disk to be provided to the Court⁴.

22. RWH requests that this Court grant *cy pres* approval for the transfer of permanently restricted assets in the amount of \$4,209,523 to CCHP Foundation with annual

³ The \$17,465.79 was raised to provide direct support for the Heritage Hospitals. As a result of the Joint Venture for-profit status, the funds cannot be used for the existing hospitals.

⁴ By way of example, and without limitation, such funds may be used for cancer and arthritis research and support.

income therefrom, to be used as close to the original donors' intent as possible⁵, at the discretion of the CCHP Foundation's Board of Directors' to serve the Foundation Mission as follows:

Wanebo Surgical Oncology	\$ 146,791
Free Care	\$ 348,421
General Use	<u>\$3,714,310</u>
Total:	\$4,209,522

A breakdown of the permanently restricted assets is attached as **Exhibit G** and the underlying documentation is included at **Tabs G1-G47** of the disk to be provided to the Court. The average annual income from the permanently restricted assets referenced above is \$210,000.

23. RWH requests that this Court grant *cy pres* approval for the transfer of \$2,242,366 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to be used at the discretion of the CCHP Foundation's Board of Directors to serve the Foundation Mission.

TO REMAIN WITH RWH

24. RWH requests that this Court grant approval to use the \$12,288,848⁶, reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA, to satisfy the Outstanding Pre and Post Closing Liabilities as and when due, as more fully described in Exhibit C.

25. RWH requests that this Court grant *cy pres* approval to use \$326,660.04 in temporarily restricted funds, including Continuing Medical Education ("CME") funds in the amount of \$26,310.29 and Dedicated Funds in the aggregate amount of \$300,349.75 as follows:

⁵ By way of example, and without limitation, income from permanently restricted assets designated for free care at the Heritage Hospitals may be used for free health care services to those in need and funds designated for scholarships to the former St. Joseph School of Nursing may be used for scholarships for community nursing school students.

⁶ Although the \$12,288,848 exceeds the seven percent calculation set forth in RIGL §18-12.1-4(d), it is prudent under the circumstances to use such funds to satisfy the Outstanding Pre and Post Closing Liabilities.

A) The CME Funds, with a balance of \$26,310.29, maintained annual registration fees and a variety of program expenses for CME programs for medical staff at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to support CME for the medical staff at RWMC over and above the routine, budgeted costs of necessary CME at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

B) The Dedicated Funds identified below, in the aggregate amount of \$300,349.75, were established to provide surgical oncology training and academic and research programs for on-staff physicians and fellows at RWMC. RWH requests that this Court grant *cy pres* approval to use these funds to enhance surgical oncology training and academic and research programs over and above the routine, budgeted cost of necessary training and academic and research programs for on-staff physicians and fellows at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

- Account No. 24.2750.1801
Name: Dedicated Fund Somasundar
Balance: \$43,485.60
- Account No. 24.2750.1802
Name: Dedicated Fund Katz
Balance: \$8,486.50
- Account No. 24.2750.1803
Name: Dedicated Fund Koness
Balance: \$51,060.66
- Account No. 24.2750.1806
Name: Dedicated Fund Dr. Espat
Balance: \$193,618.40
- Account No. 24.2750.1807
Name: Dedicated Fund Baldwin
Balance: \$3,698.59

The underlying documentation for the CME and Dedicated Funds is included at **Tabs F24-F28** of the disk, to be provided to the Court.

SJHSRI
TRANSFER TO CCHP FOUNDATION

26. SJHSRI requests that this Court grant *cy pres* approval for the transfer of the following funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

- 1) \$258,961.61 in restricted cash,
- 2) \$196,496 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254 and temporarily restricted endowment interest in the amount of \$120,242) and
- 3) \$1,200,765 in permanently restricted scholarship and endowment funds (\$134,484.00 in scholarships and \$1,066,281.00 in endowments)

A breakdown of such funds is attached as **Exhibit H** and the underlying documentation is included at **Tabs H1-H82** of the disk to be provided to the Court.

TRUST INSTRUMENTS

27. RWH and SJHSRI are the beneficiaries of certain perpetual trusts providing annual income or principal distributions as described further herein. RWH seeks approval for the use of such annual distributions to pay the Outstanding Pre and Post Closing Liabilities on its behalf and after such payments are made in full, RWH seeks *cy pres* approval to transfer such annual distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its

behalf.⁷ Likewise, SJHSRI seeks approval to use such annual distributions to pay the Outstanding Pre and Post Closing Liabilities (both non-pension and pension) on its behalf and when such liabilities have been paid, to transfer use of such annual distributions to the CCHP Foundation. The underlying documentation for the trusts identified in paragraphs 28-30 herein is included at **Tabs G48-G54** of the disk to be provided to the Court.

RWH

28. RWH, consistent with the trusts' language, requests approval for the continued use of the annual income or principal distributions from the five trusts identified below to pay the Outstanding Pre and Post Closing Liabilities on its behalf. The average annual income or principal distributions is \$160,000 with trust corpus value of \$4,410,154⁸.

- The Trust under Will of Sarah S. Brown dated June 21, 1911
Beneficiary: RWH – 9.5% of total trust's funds

Pursuant to Article Tenth of the Will and a subsequent Superior Court order dated June 20, 1972, the trustee is to distribute all income in equal shares to Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the use of these two organizations in carrying out the work for which they were incorporated and organized. The trust language includes provision to:

distribute...said net income in quarterly payments, share and share alike, equally between the Rhode Island Hospital in Providence and the Homeopathic Hospital of Rhode Island in Providence, both being corporations organized under the laws of Rhode Island, *for the use of said corporations in carrying on the work for which they were created and organized.*
(emphasis added)

- The Trust under Will of C. Prescott Knight dated November 14, 1932

⁷ Pursuant to the 2009 Old CharterCARE affiliation, RWH and SJSHRI as affiliates of Old CharterCARE shared the same mission; namely, to foster an environment of collaboration among its partners, medical staff and employees that supported high quality, patient focused and accessible care that was responsive to the needs of the communities they served. In addition, the Old CharterCARE Board had reserved powers to make decisions regarding the sale and/or merger of the assets of both RWH and SJSHRI. In order to ensure the success of the Joint Venture, the Old CharterCARE Board approved the use of RWH funds for the benefit of SJSHRI to be used towards payment of the Outstanding Pre and Post Closing Liabilities.

⁸ The total trust corpus value including the value of the Boyden trusts described in paragraph 29 is \$4,493,495.

Beneficiary: RWH – 3.3% of total trust’s funds

Pursuant to Article Twelfth, paragraph 1 of the Will, the trustee is to pay all income of the trust share set aside for RWH (originally Homeopathic Hospital) for its general uses and purposes. The trust language provides:

...the net income from said trust fund to be paid over by said trustee to said Homeopathic Hospital of Rhode Island and to be used by it *for the general charitable uses and purposes of said corporation.* (emphasis added)

- The Trust under Will of George Luther Flint dated June 25, 1935
Beneficiary: RWH – 4.9% of total trust’s funds

Pursuant to the Article SECOND of the Will, the trustee is to split the net income between Rhode Island Hospital and RWH (originally Homeopathic Hospital) for the general uses and purposes of each. The trust language provides:

...to pay the income...in equal parts, one-half (1/2) part to Rhode Island Hospital located in the City and County of Providence, in the State of Rhode Island, such income to be used for the general uses and purposes of said Hospital, and the other one-half (1/2) part paid to Homeopathic Hospital located in said Providence, *for the general uses and purposes of said Hospital.* (emphasis added)

- The Miriam C. Horton Trust dated August 9, 1948, as amended by its entirety and restated on June 12, 1963 and modified by a Memorandum of Understanding dated June 24, 2004 between Fleet National Bank (now Bank of America, N.A.), RWH and Brown University
Beneficiary: RWH – 22.3% of total trust’s funds

Pursuant to Article FIFTH, Paragraph C, a sum of up to Five Thousand Dollars (\$5,000) of the net income is to be paid, every third year, to RWH for the upkeep and maintenance of a memorial room in the memory of Harry M. Horton, the husband of Miriam C. Horton. Pursuant to Article FIFTH, Paragraph D of the trust, the balance of the net income is to be distributed in such manner as a committee may determine for the use and benefit of such public, charitable, educational and religious purposes which would be deductible from the gross estate of a decedent under §2055 of the Internal Revenue Code. Section 2055 allows for a deduction for any bequest, legacy or devise to a 501(c)(3) organization. Pursuant to Article FIFTH, Paragraph E of the trust, the committee consists of the Superintendent of RWH, the President of Brown University, and the President of Bank of America, N.A. (formerly Industrial National Bank of Providence). Pursuant to Article FIFTH, Paragraph F of the trust, if the

committee does not make a decision three (3) months after the close of the calendar year, the trustee can direct a distribution that is consistent with the terms of the trust. The language of the trust provides:

...the net income of the fund...shall be expended annually by the Trustee in such manner as said committee shall direct *for the use and benefit of such public, charitable, educational and religious purposes* as, under the provisions of Section 2055 of the Internal Revenue Code...would be the kind or type of public, charitable, educational or religious purpose to which devises, bequests, or legacies are deductible from the gross estate of a decedent; (emphasis added)

On June 24, 2004, the committee agreed by Memorandum of Understanding that beginning in 2005, the trustee would submit to the committee a proposal for distribution of net trust income on an annual basis. Absent the written objection of two or more committee members, the trustee may commence the income distributions as outlined in such proposal. In the event that two or more committee members object, the committee shall meet to determine the income distributes for that year.

- The Trust under Will of Albert K. Steinert dated July 11, 1927
Beneficiary: RWH – 0.5% of total trust’s funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and Brown University for a scholarship.

RWH seeks approval to use its annual income or principal distributions identified above to pay the Outstanding Pre and Post Closing Liabilities on its behalf consistent with the language in the respective trust documents. After RWH’s liabilities have been paid, RWH seeks *cy pres* approval to transfer the annual income or principal distributions to SJHSRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf. Copies of the underlying documentation are included in **Tabs G48-G52** of the disk to be provided to the Court.

29. RWH, consistent with the language of the trusts under the wills of George E. Boyden and Lydia M. Boyden, described below, requests approval to use the trust funds it will receive upon the death of Barbara S. Boyden, currently valued at \$83,341.02, to pay the Pre and Post Closing Outstanding Liabilities on its behalf. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, RWH seeks *cy pres* approval to transfer the funds to SJHSRI to satisfy the Pre and Post Closing Outstanding Liabilities on its behalf. Copies of the underlying documentation are included in **Tab G53** of the disk to be provided to the Court.

- The trusts under the Will of George E. Boyden dated April 12, 1932, as amended by codicils dated February 10, 1933 and June 13, 1934, and under the Will of Lydia M. Boyden, dated September 25, 1930, as amended by codicil dated June 13, 1934.

Article THIRD, Paragraph 4 of George Boyden's Will provides, *inter alia*, that upon the death of his great-granddaughter, Barbara S. Boyden, 20% of the balance of the trust goes to RWH (originally, Homeopathic Hospital of Rhode Island) for its "general purposes." Article SECOND and FIFTH of Lydia Boyden's Will provides, *inter alia*, that upon the death of her great-granddaughter, Barbara S. Boyden, 25% of the balance of the trust goes to RWH (formerly, Homeopathic Hospital of Rhode Island) for its "general purposes."

SJHSRI

30. SJHSRI, consistent with the trust language described below, requests approval for the continued use of the annual income from the following trusts to pay outstanding liabilities. The average annual income is \$284,000 with trust corpus value of \$6,473,365.

- Herbert G. Townsend Trust dated January 2, 1929, as restated on June 14, 1949, as amended on October 6, 1955, and as modified by agreement dated November 18, 1971
Beneficiary: St. Joseph's Health Services of Rhode Island – 59% of combined trusts' funds

Pursuant to Article 1 of the trust and the agreement dated November 18, 1971 between Industrial National Bank of Rhode Island (now Bank of

America, N.A.), as trustee, and Rhode Island Hospital, Providence Lying-in Hospital, and SJHSRI, as beneficiaries, the trustee is to distribute to the beneficiaries, on an annual basis, a sufficient amount of income and principal to avoid taxes and penalties under § 4942 of the Internal Revenue Code. Such distributions shall be made in equal shares to the foregoing beneficiaries to support the charitable work carried on by them.

- The Trust under Will of Albert K. Steinert dated July 11, 1927
Beneficiary: SJHSRI – 0.5% of combined trusts' funds

Pursuant to Article THIRTEENTH of the Will, the trustee is to pay income as follows:

one-sixth to Rhode Island Hospital, one-sixth to Miriam Hospital, one-sixth to SJHSRI, one-sixth to RWH (originally Homeopathic Hospital) one-sixth to Lying-In Hospital and one-sixth to be split between Wellesley College for a scholarship and to Brown University for a scholarship.

After SJHSRI's non-pension and pension liabilities have been paid, SJHSRI seeks *cy pres* approval to transfer use of its annual income to CCHP Foundation. Copies of the underlying documentation are included in **Tabs G54** and **G52**, respectively, of the disk to be provided to the Court.

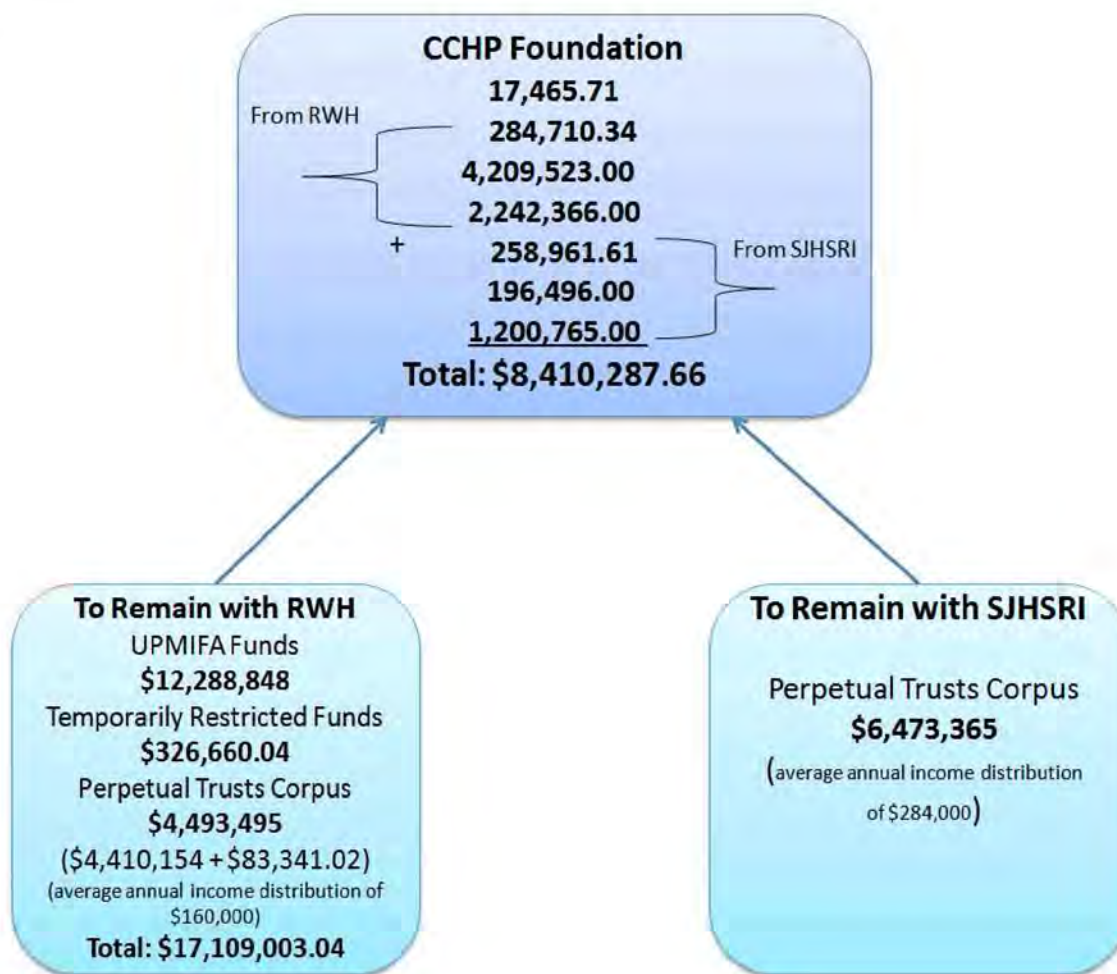
UNKNOWN AND FUTURE CHARITABLE GIFTS

31. RWH and SJHSRI seek *cy pres* approval for any unknown charitable gifts and future charitable gifts that have been or may become known after the June 20, 2014 closing date. At this time, charitable bequests may have already been made naming RWH or SJHSRI as the beneficiary. However, due to the fact that, at times, during the administration of a trust or estate a charity may not be contacted until distributions are ready to be made, RWH or SJHSRI may not be aware of these donations. Also there may be documents already in existence that name RWH or SJHSRI as a charitable beneficiary, but the gift will not vest until the occurrence of some future event. In addition, charitable gifts could be made in the future. RWH and SJHSRI seek *cy pres* approval for the transfer of these unknown and future charitable gifts to CCHP Foundation, if in the discretion of either RWH, SJHSRI or CCCB the gift cannot be used for its

stated purpose, to be used as close to the donors' intent as possible, in the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission at such time any bequest becomes known by either RWH, SJHSRI or CCCB.

CONCLUSION

32. Accordingly, the Petitioners seek approval from this Court for use of the charitable assets as described in paragraphs 16 through 31 above and illustrated in the chart⁹ below:



⁹ This chart includes only the charitable assets identified in this Petition and does not include the other assets identified in Exhibit E, the disposition of which does not require Court approval, i.e., operating cash, board designated funds and funds held for collateral. As set forth in Exhibit E, the total assets for RWH and SJHSRI are \$23,322,597 and \$12,102,083, respectively.

WHEREFORE, the Petitioners respectfully request that this Court grant this Petition including the following relief:

1. As set forth in paragraph 20, *cy pres* approval for CCHP Foundation to use the remaining funds identified therein, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission.

2. As set forth in paragraphs 21, 22 and 23, *cy pres* approval for the transfer of the following RWH funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of the CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- Temporarily restricted funds in the amount of \$284,710.34
- Permanently restricted funds in the amount of \$4,209,522.00
- Temporarily restricted UPMIFA earnings in the amount of \$2,242,366.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets.

3. As set forth in paragraph 24, approval for RWH to use the following funds as follows:

- \$12,288,848.00 reflecting unrestricted accumulated earnings from RWH permanently restricted assets subject to UPMIFA to satisfy the Outstanding Pre and Post Closing Liabilities as and when due.

4. As set forth in paragraph 25, *cy pres* approval for RWH to use the following funds as follows:

- Continuing medical education funds in the amount of \$26,310.29 to support continuing medical education for the medical staff at RWMC over and above the routine budgeted cost of necessary continuing medical education at RWMC to the extent that RWH is satisfied that such expenditure provides a community benefit.

- Dedicated funds in the aggregate amount of \$300,349.75 as more fully identified in paragraph 25B to enhance surgical oncology physician and fellow training and education over and above the routine budgeted costs of necessary academic and research programs at RWMC to the extent that RWH is satisfied that such expenditures provide a community benefit.

5. As set forth in paragraph 26, *cy pres* approval for the transfer of the following SJHSRI funds to CCHP Foundation to be used as close to the original donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission:

- \$258,961.61 in restricted cash
- \$196,496.00 in endowment investment earnings (temporarily restricted scholarship funds in the amount of \$76,254.00 and temporarily restricted endowment interest in the amount of \$120,241.00)
- \$1,200,765.00 in permanently restricted scholarships and endowments (\$1,066,281.00 in endowments and \$134,484.00 in scholarships)

6. As set forth in paragraph 28, approval for RWH to use its annual income or principal distributions from the perpetual trusts identified in paragraph 28 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to SJHSRI after such RWH liabilities have been satisfied.

7. As set forth in paragraph 29, approval for RWH to use the trust funds that it will receive upon the death of Barbara S. Boyden to pay the Outstanding Pre and Post Closing Liabilities. To the extent such obligations have been paid prior to receipt of the trust funds or are fully paid thereafter, *cy pres* approval to transfer the funds to SJSHRI to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf.

8. As set forth in paragraph 30, approval for SJHSRI to use its annual income or principal distributions from the perpetual trusts identified in paragraph 30 to satisfy the Outstanding Pre and Post Closing Liabilities on its behalf and *cy pres* approval to transfer such annual income distributions to CCHP Foundation after such liabilities have been satisfied.

9. As set forth in paragraph 31, *cy pres* approval to transfer any unknown charitable gifts and future charitable gifts that may become known at a later date on behalf of RWH and SJHSRI to CCHP Foundation to be used as close to the donors' intent as possible, at the discretion of CCHP Foundation's Board of Directors, to serve the Foundation Mission.

10. Such other and further relief as this Court deems appropriate.

Dated: January 13, 2015

CharterCARE Health Partners Foundation
Roger Williams Hospital
St. Joseph Health Services of Rhode Island

By their attorneys,

/s/ Patricia K. Rocha
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CERTIFICATE OF SERVICE

I hereby certify that, on January 13, 2015:

I electronically filed and served this document through the electronic filing system on the following parties:

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I served this document through the electronic filing system on the following parties:

The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

I mailed or hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name and address are:

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/s/ Patricia K. Rocha

Exhibit A

CHARTERCARE HEALTH PARTNERS FOUNDATION

ID NO. 161987

EXHIBIT A
TO
ARTICLES OF AMENDMENT

The following amendment to the Articles of Incorporation was adopted by the corporation:

1. Article 3 of the Articles of Incorporation is hereby amended in its entirety to read as follows:

“3. The specific purpose or purposes for which the corporation is organized are: This Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and regulations promulgated thereunder. Such purposes shall include serving as a community resource to provide accessible, affordable, and responsive health care and health care related services, including, without limitation, disease prevention, education and research grants, scholarships, clinics and activities within the communities previously served by St. Joseph Health Services of Rhode Island and Roger Williams Hospital in order to facilitate positive changes in the health care system. In addition, the Corporation may conduct such other activities as may be carried out by a corporation organized under the Rhode Island Nonprofit Corporation Act and described in Section 501(c)(3) of the Code.”

Exhibit B

**STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL**

May 16, 2014

DECISION

Re: Initial Hospital Conversion Application of Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect East Hospital Advisory Services, LLC, Prospect CharterCARE, LLC, Prospect CharterCARE RWMC, LLC, Prospect CharterCARE SJHSRI, LLC, and Roger Williams Medical Center, St. Joseph Health Services of Rhode Island, CharterCARE Health Partners

The Department of Attorney General has considered the above-referenced application pursuant to R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act. In accordance with the reasons outlined herein, the application is **APPROVED WITH CONDITIONS**.

D. CHARITABLE ASSETS

The Attorney General has the statutory and common law duty to protect charitable assets within the State of Rhode Island.⁵⁶ In addition, the Hospital Conversions Act specifically includes provisions dealing with the disposition of charitable assets in a hospital conversion generally to ensure that the public's interest in the funds is properly safeguarded.⁵⁷ With regard to the charitable assets of CharterCARE, currently they are held by three entities: the CCHP Foundation, Roger Williams Medical Center and St. Joseph Health Services of Rhode Island.⁵⁸

⁵⁶ See e.g., R.I. Gen. Laws § 18-9-1, *et seq.*

⁵⁷ See, R.I. Gen. Laws § 23-17.14-7(c).

⁵⁸ Initial Application, Response to Questions 28 and 29.

1. Disposition of Charitable Assets

In the Initial Application, the Transacting Parties were asked to identify and account for all charitable assets held by the Transacting Parties.⁵⁹ Voluminous detail was provided which will not be detailed herein, but was thoroughly reviewed. Certain information regarding these assets is outlined below. This requirement has been satisfied by the Transacting Parties pursuant to the Hospital Conversions Act. In addition, it was represented that Prospect CharterCARE, LLC has no plans to change or remove the names associated with former gifts to the Existing Hospitals.⁶⁰

In addition, the Transacting Parties were required to provide proposed plans for the creation of the entity where all charitable assets held by the non-profit entities would be transferred.⁶¹ With regard to restricted funds, pursuant to the Hospital Conversions Act, in a hospital conversion involving a not-for-profit corporation and a for-profit corporation, it is required that any endowments, restricted, unrestricted and specific purpose funds be transferred to a charitable foundation.⁶² In furtherance of that requirement, CCHP indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation,⁶³ which will use the funds in accordance with the designated purposes. At the outset, the only change in the mission and the purpose of the CCHP Foundation will be that charitable assets will not be used for the operations of what would have become the Newco Hospitals due to their for-profit status. The mission and purpose of the CCHP Foundation would be to ensure use of charitable assets consistent with the historical donors' intent and community based needs. It would continue to serve as a community resource to provide accessible,

⁵⁹ Id.

⁶⁰ Response to Supplemental Question S-42

⁶¹ Initial Application, Question 29, R.I. Gen. Laws § 23-17.14-7(c)(25) and §23-17.14-22(a).

⁶² R.I. Gen. Laws § 23-17.14-22(a).

⁶³ See Initial Application, Response to Questions 28 and 29.

affordable and responsive health care and health care related services including disease prevention, education and research, grants, scholarships, clinics and activities within the community to facilitate positive changes in the health care system.⁶⁴ The strategic planning process for CCHP Foundation is ongoing.

Historically, a *Cy Pres* petition to the Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied, and if not, to determine the next best alternative to honor the donor's intent. Because of the change of control of the Existing Hospitals and proposed transfer of their charitable assets to the CCHP Foundation, it was contemplated that a simple *Cy Pres* acknowledging that each Existing Hospital has charitable assets and that post conversion, the CCHP Foundation will honor the intent of the donors, would be the appropriate vehicle. However, as the financial situation of the Existing Hospitals, including with respect to the SJHSRI pension liability, continued to deteriorate during the regulatory review of the Initial Application, CCHP revised its plan as set forth in the Initial Application to reflect a more staggered process with respect to its restricted funds which required some adjustments to the basic form *Cy Pres* described above.

Due to the extent of the Existing Hospitals' liabilities, CCHP proposed that certain RWMC and SJHSRI restricted assets, in addition to unrestricted cash, would remain with the Heritage Hospitals during their wind-down period rather than transferring directly to the CCHP Foundation. Specifically, a total of approximately \$19.6 million dollars in restricted assets would be held by the Foundation (\$7.2 million dollars) and the Heritage Hospitals (\$12.4 million dollars). The revised *Cy Pres* plan was set forth in an outline of the proposed *Cy Pres* petition for each of the Heritage Hospitals with accompanying estimated opening summary balance

⁶⁴ Initial Application Response to Question 28.

sheets for both the Heritage Hospitals and the CCHP Foundation, provided to the Attorney General, and is described below.

A multi-year wind-down process is typical in the dissolution of a hospital corporation due to the time it typically takes to settle government cost reports and the like. It is particularly appropriate where the expected hospital's liabilities are projected to exceed the amount of the unrestricted assets available at the time of closing but where there is also an expectation that additional unrestricted assets will be available in the future, as is the case here. The corporation retains during the wind-down process those restricted charitable assets that provide unrestricted earnings which can be used to address its remaining liabilities, and the corporation remains open until such time as it is concluded that it has completed the winding-down of its affairs.

With respect to the period of time after the close of the Proposed Transaction when the Heritage Hospitals remain open, CCHP proposes to carry out the above-described process as follows:

CCHP Foundation

As a threshold matter, CCHP's *Cy Pres* petition would address any needed change in the CCHP Foundation mission to reflect the broader, community health oriented foundation focus. The *Cy Pres* petition will request approval for the transfer of charitable funds to the CCHP Foundation comprised of approximately \$7.2 million dollars in restricted assets comprised of restricted cash, endowment and earnings on endowment of approximately \$6.9 million dollars from RWMC and \$318,000 from SJHSRI.

The RWMC endowments contained within the sum being transferred to the Foundation total approximately \$4.2 million dollars. The *Cy Pres* petition will address the use of the RWMC endowment income for appropriate charitable purposes. The estimated annual income on such

amount is estimated at approximately \$210,000 annually assuming existing investment policy and allowing for a 5% distribution, within the 7% recommended maximum distribution.

CCHP also will seek *Cy Pres* approval to use approximately \$12.9 million dollars of the total accumulated temporarily restricted earnings on the RWMC endowment of approximately \$15.3 million dollars to satisfy RWMC's liabilities. The balance of approximately \$2.4 million dollars also would be moved to the CCHP Foundation for charitable purposes as it deems appropriate. The estimated annual income from the temporarily restricted endowments is approximately \$118,000 assuming the existing investment policy allowing for a 5% distribution, within the 7% recommended maximum distribution. There are no expected changes in the investment managers during the wind-down period.⁶⁵

RWMC also has a number of temporarily restricted funds whose purpose will not be fully expended before the closing of the Proposed Transaction. It is estimated that approximately \$285,000 in such restricted cash funds will be transferred to the CCHP Foundation. The purposes of these funds will be reviewed and adjusted to meet as close to the original donor intent as possible.

Finally, CCHP intends to request that approximately \$108,000 in SJHSHR temporarily restricted scholarship and endowment funds, and approximately \$209,000 in other temporarily restricted assets be transferred to the CCHP Foundation. The purposes of transferred funds will be similarly reviewed and adjusted to meet as close to the original donor intent as possible.

Heritage Hospitals

CCHP proposes to retain approximately \$24.3 million dollars of assets within the Heritage Hospitals for the time being, including approximately \$12.4 million dollars in restricted

⁶⁵ Response to Supplemental Question 3-30.

assets comprised of perpetual trusts, endowments and scholarships and temporarily restricted assets, as follows:

First, CCHP intends to seek *Cy Pres* approval to change the purpose of the approximately \$1.2 million dollars in SJHSRI's permanently restricted scholarship and endowment funds to be used to partially satisfy SJHSRI's liabilities, including but not limited to potential future funds and expenses relating to the pension plan.

Second, each of the Heritage Hospitals will each retain their respective right to the receive distributions from approximately \$10.8 million dollars in perpetual trusts, which will be used to pay their respective wind-down expenses. In addition, CCHP intends to seek trustee and *Cy Pres* approval to use the perpetual trust income received by RWMC to partially satisfy the payment of SJHSRI expenses, if needed, after all of RWMC's liabilities have been paid.

Finally, the *Cy Pres* petition will include a request that RWMC retain approximately \$421,000 in funds dedicated to expenses unique to RWMC. These include funds restricted for continuing medical education and surgical and oncology academic and research program for which RWMC will seek limited approval to pay only for the costs of such program at Newco RWMC that are over and above the routine, budgeted cost of operating these programs going forward.

To summarize, the *Cy Pres* disposition addressing the transfers to the CCHP Foundation on the one hand and adjustments to funds retained within the Heritage Hospitals on the other, as described above, will ensure that the Existing Hospital charitable assets are used for their intended purposes when that is consistent with law, and will seek court approval for an appropriate, comparable charitable use when the intended use would no longer be consistent with law, for example, because it would require that funds go to a successor, for-profit hospital.

In addition, at one or more future dates, upon confirmation that perpetual trust distributions and endowment earnings are no longer needed to address the liabilities of one or both Heritage Hospitals, one or more additional *Cy Pres* disposition(s) of any remaining restricted and unrestricted charitable assets of the Heritage Hospitals will take place to transfer funds to the CCHP Foundation. Trustee approval also will be required to re-direct future perpetual trust distributions to the CCHP Foundation.

With appropriate agreements with the CCHP Foundation, the Heritage Hospitals and CCHP that are approved by the court in *Cy Pres* proceedings to manage the restricted assets, the Attorney General finds that the Proposed Transaction will not harm the public's interest in the property given, devised or bequeathed to the Existing Hospitals for charitable purposes.⁶⁶

Promptly following the closing of the Proposed Transaction, CCHP will close the books on SJHSRI and RWMC and seek preliminary approval from the Attorney General as to the form and content of the post-closing *Cy Pres* petition described above. Thereafter, the RI Superior Court's consideration of said initial petition will take place within a reasonable period following closing of the Proposed Transaction.

Lastly, inasmuch as none of the existing CCHP entities are trustees for any of the holdings, they are not responsible for completing annual filings as required by R.I. Gen. Laws §18-9-13. See R.I. Gen. Laws §23-17.14-7(c)(26).

2. Maintenance of the Mission, Agenda and Purpose of The Existing Hospitals

The Hospital Conversion Act at R.I. Gen. Laws § 23-17.14-7(c)(16) and R.I. Gen. Laws § 23-17.14-7(c)(25)(iii) requires consideration of the following:

- Whether the proposed conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the

⁶⁶ R.I. Gen. Laws § 23-17.14-7(c) (1).

traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary; and

- Whether the mission statement and program agenda will be or should be closely related with the purposes of the mission of the existing hospital.

RWMC and SJHSRI share the same mission; namely, “as an Affiliate of the System shall be to foster an environment of collaboration among its partners, medical staff and employees that supports high quality, patient focused and accessible care that is responsive to the needs of the communities it serves.”⁶⁷ CCHP “is organized and shall be operated exclusively for the benefit of and to support the charitable purposes of Roger Williams Hospital, St. Joseph Health Services of Rhode Island and Elmhurst Extended Care Services, Inc.”⁶⁸ CCHP Foundation finds its origins in the SJ Foundation, formed on February 27, 2007 “to hold and administer charitable donations on behalf of SHHSRI.”⁶⁹ In December of 2011, a Petition for Cy Pres, *In Re: CharterCARE Health Partners Foundation, P.B. No. 11-6822*, was filed and granted by the Rhode Island Superior Court (Silverstein, J.) allowing the transfer of the restricted funds that were raised by the SJ Foundation to SJHSRI.⁷⁰ “Subsequent to and as part of the CCHP affiliation, on August 25, 2011, the organizational documents of SJ Foundation were revised to change its name to CharterCARE Health Partners Foundation and to make CCHP its sole member.”⁷¹ “On September 9, 2011, CCHP Foundation secured from the IRS a determination that it was 1) exempt from tax under section 501(c)(3) of the Internal Revenue Code (IRC), and 2) a public charity under section 509(a)(3) of the IRC.”⁷²

While implied in Prospect’s for-profit status that profit is an issue that will be considered, Prospect has committed that Prospect CharterCARE, LLC “will adopt, maintain and adhere to

⁶⁷ Initial Application, Exhibit 10(C)(D), *See also* Response to Supplemental Question S5-2.

⁶⁸ Initial Application, Exhibit 10(B), *See also* Response to Supplemental Question S5-2.

⁶⁹ Initial Application, Response to Question 29.

⁷⁰ Initial Application, Response to Question 28.

⁷¹ *Id.*

⁷² *Id.*

CCHP's policy on charity care and or adopt policies and procedures that are at least as favorable to the indigent, uninsured and underserved as CCHP's existing policies and procedures."⁷³ It has further stated that, should a conflict arise between the charitable purposes of the Existing Hospitals and profit-making that the charitable purposes of the Existing Hospitals shall prevail.⁷⁴ The Attorney General finds that R.I. Gen. Laws §23-17.14-7(c)(16) of the Hospital Conversions Act has been satisfied.

The Attorney General has also considered that Prospect has purchased eight other hospitals over the course of its existence, some of which have included distressed hospitals⁷⁵, and has stated that it has never closed or sold any of its hospitals.⁷⁶ Although there is no evidence that the Proposed Transaction will differ significantly from the stated purposes of the Existing Hospitals, it is necessary that a *Cy Pres* be filed and granted both to ensure the proper utilization of the remaining restricted funds and because this hospital conversion includes the conversion of two non-profit entities' assets for use by for-profit entities.

Further, Rhode Island law requires that all licensed hospitals, whether non-profit or for-profit, provide unreimbursed health care services to patients with an inability to pay.⁷⁷ Therefore, Prospect will be required even as a for-profit hospital to provide a certain amount of charity care and has agreed to do so.⁷⁸

Finally, in consideration of whether the new entity will operate with a similar purpose, pursuant to Section 13.15 of the Asset Purchase Agreement entitled "Essential Services" Prospect has agreed to maintain the Newco Hospitals as acute care hospitals with a "full

⁷³ Initial Application Response to Question 59(c).

⁷⁴ Exhibit 18 to Initial Application, Asset Purchase Agreement, Section 13.14; see also Response to S3-14.

⁷⁵ Interview of Thomas Reardon.

⁷⁶ Response to Supplemental Question 4-25.

⁷⁷ R.I. Gen. Laws §§ 23-17.14-15(a)(1), (b) and (d).

⁷⁸ See Initial Application Exhibit 18, Asset Purchase Agreement, Article 13.14 and Management Agreement.

complement of essential clinical services for a period of at least five years immediately following the Closing Date.”⁷⁹ In addition, Prospect has stated that there are no current plans to discontinue any CCHP systems services, accreditations, and certifications, including those of the CCHP affiliates.⁸⁰ These include health care and non-healthcare community benefits.⁸¹ As with any acquisition, it is likely that some changes will take place after Prospect takes over the Existing Hospitals. In fact, Prospect has indicated that it will be undertaking strategic initiatives collaboratively to improve services rendered to patients.⁸² Further, as part of its long term capital commitment to CCHP, Prospect has also committed to making improvements of a bricks and mortar nature to the Existing Hospitals.⁸³ Accordingly, the Proposed Transaction does include a potential that some changes will occur at the Existing Hospitals.

3. Foundation for Proceeds

In addition to addressing charitable assets, the Hospital Conversions Act requires an independent foundation to hold and distribute proceeds from a hospital conversion consistent with the acquiree's original purpose.⁸⁴ With regard to the Proposed Transaction, the Asset Purchase Agreement does not include a purchase price that will produce traditional proceeds as it is structured upon payment of certain obligations and commitment to future investments in the hospital. Accordingly, R.I. Gen. Laws § 23-17.14-22 does not require a foundation for receipt of proceeds. Nonetheless, CCHP Foundation is an existing publicly supported foundation which stands ready to receive the restricted funds associated with the Heritage Hospitals in accordance with the plan described above. It is anticipated that the amount of such funds are sufficient for

⁷⁹ See Asset Purchase Agreement Article 13.15; Initial Application Response to Questions 53, 57 and 59.

⁸⁰ Response to Supplemental Question S3-53.

⁸¹ See e.g. Exhibit S3-19; Exhibit S4-20, and Final Supplemental Response 4-20.

⁸² Initial Application, Exhibit 18 Asset Purchase Agreement Article 13.13.

⁸³ Initial Application, Response to Question 1.

⁸⁴ R.I. Gen. Laws § 23-17.14-22(a) and R.I. Gen. Laws § 23-17.14-7(c)(16).

the operation of an independent community health care foundation. However, should the CCHP Foundation board determine in the future that it would be more cost effective to do so, it may seek *Cy Pres* approval to transfer the restricted assets to an independent foundation consistent with the Hospital Conversions Act.

E. TAX IMPLICATIONS

There are three criteria in the Hospitals Conversions Act that deal with the tax implications of the Proposed Transaction.⁸⁵ Currently, CCHP and the Existing Hospitals are non-profit corporations organized pursuant to Rhode Island law. Upon the purchase of their assets by Prospect, the resulting entities will be for-profit entities and no longer immune from certain tax obligations. Clearly, this has an impact on the tax status of these entities.⁸⁶ This transaction represents the second hospital conversion transaction in Rhode Island where nonprofit hospitals are changing to for-profit entities. Review of the Initial Application indicates that this decision to become for-profit entities was made after careful consideration by CCHP that the terms of this transaction were the best available to CCHP among the proposals from the remaining interested parties.⁸⁷ Accordingly, the wisdom of choosing a for-profit company to purchase a non-profit hospital is not a matter that warrants in-depth consideration given the circumstances.

With regard to tax implications, one of Prospect's conditions of closing the transaction with CharterCARE stated in the Initial Application referenced that the closing is contingent upon property tax stabilization/exemption ordinances with the host communities of Providence and

⁸⁵ See R.I. Gen. Laws §§ 23-17.14-7(c)(20), (21) and (25)(ii).

⁸⁶ The question posed by R.I. Gen. Laws § 23-17.14-7(c)(21) is whether the tax status of the existing hospital is jeopardized." This characterization does not apply to the Proposed Transaction as not only is it jeopardized, it is knowingly being changed from non-profit to for-profit.

⁸⁷ See Initial Application, Response to Request 55.

Exhibit C

Sources and Uses of Funds Analysis-Revised

Closing Sources and Uses:		
Sources of Funds:		
Permanently Restricted Funds		16,377,148
Temp Restricted Funds		15,615,508
Proceeds from Sales		45,000,000
Funds held with Bond Trustee		297,501
Unrestricted Cash remaining		3,335,622
Unrestricted Cash used at Closing Prospect		5,269,944
Unrestricted Cash used at closing-Cain Brother		676,109
Board Designated Funds		6,898,296
Funds Held in Workers Comp Trust Account		270,539
	Subtotal : Sources	93,740,667
Uses of Funds:		
N/P Inter-parish SJLC, plus interest		638,838
SJHSRI RIHEBC Tax Exempt Revenue Bonds - Series 1999	payoff amount	14,590,778
RWMC RIHEBC Tax Exempt Revenue Bonds - Series 1998	payoff amount	10,082,033
Citizen Bank - Finance Redemption		1,541,879
SWAP Liability		173,000
RWR Mortgage Note Payable		6,093,413
Operating Loss Loan	paid off prio to close	-
Debt Interest - included in payoff amounts above		-
RT Note Payable plus interest		650,595
Closing /Affiliation Shared Costs		371,803
Cain Brothers		676,109
Interim Management Fee (plus expenses)		427,605
Insurance Tail Policies		-
Pension Liability		14,000,000
Working Capital True-up		-
Proceeds from Sale of Joint Venture Ownership		1,700,000
Permanently Restricted Funds Transferred to Foundation		4,209,522
Permanently Restricted Funds Transferred to Foundation		1,200,765
Permanently Restricted Funds remaining in Heritage Hospitals		10,966,860
Temporarily Restricted Funds remaining in Heritage Hospitals		326,660
Temp Restricted Funds Transferred to Foundation		3,000,000
	Subtotal : Uses	70,649,861
	Excess/(shortage)	23,090,806

Sources and Uses of Funds Analysis-Original

Closing Sources and Uses:		
Sources of Funds:		
Permanently Restricted Funds	16,190,569	
Temp Restricted Funds	15,905,632	
Proceeds from Sales	45,000,000	
Funds held with Bond Trustee	4,301,096	
Unrestricted Cash remaining	5,735,560	
Unrestricted Cash used at Closing Prospect	-	
Unrestricted Cash used at closing-Cain Brother	-	
Board Designated Funds	6,666,874	
Funds Held in Workers Comp Trust Account	839,630	
	Subtotal : Sources	94,639,361
Uses of Funds:		
N/P Inter-parish SJLC	622,566	
Revenue Bonds - Series 1999	16,550,000	
Revenue Bonds - Series 1998	11,062,500	
Citizen Bank - Finance Redemption	1,597,222	
SWAP Liability	192,836	
RWR Mortgage Note Payable	5,864,253	
Operating Loss Loan	291,462	
Debt Interest	863,762	
RT Note Payable	625,000	
Closing Costs (Cain/Prospect)	820,000	
Insurance Tail Policies	7,943,098	
Pension Liability	14,000,000	
Working Capital True-up	2,500,000	
Proceeds from Sale of Joint Venture Ownership	1,700,000	
Permanently Restricted Funds Transferred to Foundation	4,209,522	
Permanently Restricted Funds Transferred to Heritage Hospitals	1,200,514	
Permanently Restricted Funds remaining in Heritage Hospitals	10,780,533	
Temp Restricted Funds Transferred to Foundation	3,000,000	
	Subtotal : Uses	83,823,268
	Excess/(shortage)	10,816,093

Post Close Sources and Uses:		
Sources of Funds:		
Excess cash from closing/Funds held in WC Trust		23,090,806
Split Dollar Policy Premium refunds		1,147,433
	Subtotal : Sources	24,238,239
Uses of Funds:		
Working Capital Adjustment		2,125,407
Insurance Tail Policies		7,199,497
Workers Comp Reserve		443,296
Unassumed Affiliation Liabilities		1,890,309
Insurance Deductible (W/C & Mal)RWMC		300,000
Third Party Settlements		6,218,991
Unassumed Contracts:		
Diagnostic Imaging:		
	Physician Contract	1,031,611
	Billable to JV	(318,750)
Physician Advisor-SJ		14,400
Transition Agreement work		225,000
Foundation Employees		125,000
Acting Fees		50,000
	Subtotal : Uses	19,304,761
	Excess/(shortage)	4,933,478
Collateral Requirement for W/C - Cash not not be used		1,800,000
	Adjusted Excess/shortage	3,133,478

Post Close Sources and Uses:		
Sources of Funds:		
Excess cash from closing/Funds held in WC Trust	10,816,093	
Medicare Settlement	335,000	
Insurance Premium refund (net)	527,500	
	Subtotal : Sources	11,678,593
Uses of Funds:		
Working Capital Adjustment	0	
Insurance Tail Policies	-	
Workers Comp Reserve	496,582	
Unassumed Affiliation Liabilities	1,029,786	
Insurance Deductible	300,000	
Third Party Settlements	7,700,000	
	Subtotal : Uses	9,526,368
	Excess/(shortage)	2,152,225

*There is a dispute between the Joint Venture and CCCB regarding the disposition of the split dollar policy premium refunds, a non-charitable asset, that may result in a reduction in the Adjusted Excess/Shortage Amount of \$3,133,478 to \$2,229,781. However, an additional \$567,053 from a recent Medicaid disproportionate share of hospital (DSH) audit is expected to increase the Adjusted Excess/Shortage Amount to \$2,796,834. Additional third party settlements may likewise impact the Adjusted Excess/Shortage Post Close Amount. The dispute between the Joint Venture and CCCB is a separate legal matter, as to which CCCB has its own legal counsel. If those two parties do not resolve this dispute between themselves, the dispute will be resolved, as expeditiously as possible, pursuant to the dispute resolution procedure set forth in the Asset Purchase Agreement.

Exhibit D

**CHARTERCARE FOUNDATION
 ESTIMATED OPENING
 SUMMARY BALANCE SHEET ***

	<u>Foundation</u>	<u>FATMA</u>	<u>RWMC</u>	<u>Foundation TOTAL</u>
Restricted Cash	17,466	258,962	284,710	561,138
Endowment investments		1,200,765	4,209,523	5,410,288
Endowment investment earnings -		196,496		196,496
Endowment investment earnings			2,242,366	2,242,366
Total assets	17,466	1,656,223	6,736,599	8,410,288
Net Assets				
All Other donor	17,466	258,962	284,710	561,138
Endowment Interest		120,242	2,242,366	2,362,608
Scholarships		76,254		76,254
Temp Restricted:	17,466	455,458	2,527,076	3,000,000
Endowments	-	1,066,281	4,209,523	5,275,804
Scholarships		134,484	-	134,484
Perm Restricted:		1,200,765	4,209,523	5,410,288
Total Net Assets	17,466	1,656,223	6,736,599	8,410,288

* Amounts have been rounded up.

Exhibit E

Heritage Hospitals
ESTIMATED OPENING
REVISED SUMMARY BALANCE SHEET

	FATIMA	RWMC	EEC	TOTAL
Cash - operating - unrestricted	458,850	2,144,081	107,079	2,710,010
Restricted Cash -Temp Restricted	625,612	326,660		952,272
Assets Whose Use is Limited:				
Funds held by trustee		297,501		297,501
Perpetual Trusts	6,473,365	4,493,495		10,966,860
Board Designated	3,700,000	1,398,296		5,098,296
Funds Spending Policy		12,288,848		12,288,848
Funds Held as Collateral		1,800,000		1,800,000
Funds Held for Insurance	270,539			270,539
Intercompany Receivable		-		
Insurance Policy Premium Rec	573,717	573,717		1,147,433
Total assets	12,102,093	23,322,597	107,079	35,531,769
Current Liabilities				
-Accounts Payable/Accrued Expenses	708,820	1,158,626	22,863	1,890,309
Intercompany Payable				
- Third Party Payor	1,080,564	5,054,211	84,216	6,218,991
- unassumed contracts	-	1,127,261		1,127,261
- workers compensation (TPA)	403,296	40,000		443,296
- Working Capital Adjustment liability	1,062,704	1,062,704		2,125,407
- Insurance Tails	3,544,645	3,654,852		7,199,497
-other Liabilities		300,000		300,000
	6,800,029	12,397,654	107,079	19,304,761
Long Term Liabilities				
- pension liability	62,410,940	-		62,410,940
Net Assets				
Unrestricted	(63,582,251)	(6,184,059)	(0)	(69,766,311)
Temp Restricted donor accounts		12,615,508		12,615,508
Grants	-			-
Temp Restricted:		12,615,508		12,615,508
Perpetual Trusts	6,473,365	4,493,495		10,966,860
Endowments				
Scholarships				
Perm Restricted:	6,473,365	4,493,495	-	10,966,860
Total Net Assets	(57,108,886)	10,924,944	(0)	(46,183,942)
Total Liabilities & Net Assets	12,102,093	23,322,597	107,079	35,531,769

Exhibit F

Exhibit F

Fund Number	Fund Name	Description	Amount as of 7/31/14	Exhibits
24.2750.1706	Cancer Center	Donations are for Cancer	1,377.47	F1
24.2750.1710	Dr. Michael Macko Fund	RWH doctor who died and memorial was set up in his honor	27,586.14	F2
24.2750.1715	Alice Harvey Memorial Fund		1,155.00	F3
24.2750.1719	Medical Students	Donations in support of medical students	1,827.63	F4
24.2750.1721	Goss memorial	Temp Restricted – Cancer Research. Grant award for Cancer Research – We receive annual disbursement from Goss for roughly \$300	1,019.00	F5
24.2750.1727	Surgical Oncology	Surgical Oncology donation	12,587.97	F6
24.2750.1728	Breast Cancer Research	Breast Cancer Research	1,984.15	F7
24.2750.1729	Day Treatment Room	General Day Treatment Room. Prior to the Cancer Center the Day Treatment Center was used. There is no Day Treatment Center today but it likely these donations are for cancer support	7,500.00	F8
24.2750.1733	Dept of Psychiatry		29.97	F9
24.2750.1734	Sarcoma Symposium	In support of Cancer Research	93,801.85	F10
24.2750.1736	Stroke Center		.08	F11
24.2750.1739	OR Construction	Temp Restricted – new OR	59,435.41	F12
24.2750.1741	Millar Alcohol	No documentation can be found – donation given prior to 1997. It is believed the donations were made in memory of a patient to be used for the Alcohol treatment program.	4,088.26	F13

Exhibit F

Fund Number	Fund Name	Description	Amount as of 7/31/14	Exhibits
24.2750.1747	Beauregard Memorial Fund	Temp restricted – Cancer Research – Donation made prior to 1997. Balance unchanged until 2006.	3,863.45	F14
24.2750.1751	Whitmarsh		47,582.80	F15
24.2750.1752	Other VFR Reserve Funds	Funds were received prior 1997. No documentation available	5,902.07	F16
24.2750.1756	Interfaith Chapel		310.90	F17
24.2750.1767	Arthritis Fund	Restricted – Arthritis Research – no change since 1997	545.43	F18
24.2750.1778	Horton Health Library	Used for maintenance of the Miriam Horton family room	575.41	F19
24.2750.1795	Decof Cancer Center		3,760.06	F20
24.2750.2923	Paolino Memorial	Cancer Research – Unchanged since 2000	5,139.46	F21
24.2750.8125	Research Colvin	Restricted – Donations were made to support research being conducted by Colvin. Physician has left the Hospital.	178.66	F22
24.2800.2804	Champlin Fund (Second Century)		4,459.17	F23
Total Temporary Restricted Fund Balances			\$284,710.34	

Exhibit F

CY PRES PETITION – DEDICATED FUNDS

Fund	Exhibit
Dedicated Fund Somasundar	F24
Dedicated Fund Katz	F25
Dedicated Fund Koness	F26
Dedicated Fund Dr. Espat	F27
Dedicated Fund Baldwin	F28

Exhibit G

Exhibit G

Wanebo:

Fund Name	Description	Year	Amount as of 7/31/14	Exhibit
Wanebo	Surgical T&R	2007	\$146,791	G1

Free Care:

*CPI calculations begin in the year of 1913, these items have establish dates before 1913

Fund Name	Description	Year	Amount as of 7/31/14	Exhibit
Elise Rice*	Free Bed	1911	5,000	G2
Tito & Louisa Tirocchi	Free Bed		2,000	G3
Olive Aborn	Free Bed	1946	5,000	G3
John Aldrich	Free Bed	1937	4,000	G4
Frances Knight Atwood	Free Bed	1937	4,000	G3
Lillie Atwood	Free Bed	1937	4,000	G3
Dr Walter Bongartz	Free Bed	1940	4,000	G5
George & Anna Bunce	Free Bed	1961	5,000	G6
Elizabeth Burdick	Free Bed	1914	4,000	G7
Edwin H & Eliza Burlingame	Free Bed	1958	5,000	G3
Arthur Burrington	Free Bed	1922	5,000	G3
Ira Calef	Free Bed	1915	4,000	G3
Rev William Chapin	Free Bed	1922	5,000	G3
Hester Cheek	Free Bed	1953	5,000	G3
Mr. Cornstock	Free Bed		5,000	G3
Fredric Cooper	Free Bed	1933	2,000	G8
Edward Dart	Free Bed	1941	5,000	G3
Katherine Farnum	Free Bed	1929		G9

			4,000	
Jeffrey Hawes	Free Bed	1942	5,000	G3
William Henderson	Free Bed	1913	4,000	G3
Cottrell & Mary Hoxsie	Free Bed	1947	5,000	G3
Sylvester & Mary Jackson*	Free Bed	1896	9,760	G10
Franklin Jewett	Free Bed	1948	5,000	G11
Caroline Keith	Free Bed	1947	5,000	G12
James Dean Kimball	Free Bed		10,000	G3
Lucy Fenner Knight	Free Bed	1937	4,000	G3
Stephen A Knight	Free Bed	1948	5,000	G11
Juliet Lathrop*	Free Bed	1897	4,000	G13
George A Lindvall	Free Bed	1940	12,746	G14
A Louise Mathewson	Free Bed	1945	5,000	G15
William W, Phoebe and Walter Maxfield	Free Bed	1955	5,000	G3
Dr John McVickar*	Free Bed	1909	4,000	G3
Giles M & Betsy Nichols	Free Bed	1946	5,000	G16
Hezekiah Palmer*	Free Bed	1905	4,000	G17
George Parks	Free Bed	1935	5,000	G18
Charles & Mary Phillips	Free Bed	1939-41	4,800	G19
Helen Pierce & John Paine	Free Bed	1938	5,000	G20
Catherine Durfee Pike	Free Bed	1939-40	10,000	G21
Charles Potter	Free Bed	1948	5,000	G22
Helen Potter	Free Bed	1948	5,000	G23

Ferdinand Potter	Free Bed	1948	5,000	G3
Judge Elmer Rathburn	Free Bed	1957	5,000	G24
J R Rathom	Free Bed	1922	5,000	G3
Joseph William Rice*	Free Bed	1911	4,000	G2
Mary Wilkinson & Martha Fessenden Sayles*	Free Bed	1895	16,000	G3
Walter Simpson	Free Bed		10,000	G3
Scott Smith	Free Bed	1927	5,000	G3
Theodore Burgess Smith	Free Bed	1925	5,000	G25
Smith S Sweet*	Free Bed	1899	4,000	G3
Mary Abby Tefft	Free Bed	1954	5,000	G26
James Edward Thompson	Free Bed	1956	4,000	G27
George H & Margaret Thurston	Free Bed	1937	5,000	G28
A C Tiffany	Free Bed		5,000	G3
Mary B Tourtellot	Free Bed	1928	5,000	G29
Dr William VonGottschalck	Free Bed	1940	4,000	G30
Emily Waterman*	Free Bed	1886	3,000	G3
Hattie Carpenter Webb	Free Bed	1946	5,000	G31
Samuel Augustus Wesson	Free Bed	1940	4,000	G32
Charles J Wheeler*	Free Bed	1897	4,000	G33
Lulu White	Free Bed	1926	4,500	G3
Dr H A Whitmarsh	Free Bed	1920	4,000	G34
Harriet Wilcox*	Free Bed	1896	4,000	G3
Ruth Scott Estate	Free Bed	1971		G35

(11/22/71)			6,250	
Lillian Lake Horton (2/27/76)	Free Bed	1976	15,000	G36
William F Goff	Free Bed	1965	5,000	G3
Annie Peckham	Neurology	1954	2,000	G37
Loutit Charitable Fund	Maternity	1954	240	G3
Charlotte Pritchard	Blood Bank		<u>125</u>	G3
	Fund Balance:		\$348,421	

General Use:

Fund Name	Description	Year	Amount as of 7/31/14	Exhibit
Georgiana Barnes		1956	500	G3
Sarah Barnes		1956	500	G3
Ira C Calef	Endowment gift in 1916	1916	4,000	G3
D M Dennis		1958	100	G3
Joseph E & Laura S Farnham	Joseph E. C. and Laura S Farnham Fund - Permanent endowment fund with income used for the purposes of the hospital	1933	3,887	G38
Estate of Percy A Harden	Permanent endowment fund with income used for the purposes of the hospital	1953- 1955	37,135	G39
Louise J Hathaway	William A. Hathaway and Louise J. Hathaway Fund	1954	7,500	G40

Julia M Hill		1928	2,500	G3
Estate of Webster Knight		1934	50,000	G3
Mabel Muney			8,000	G3
Elizabeth N J Olds		1956-1957	26,426	G3
Charles A Russell	Add to permanent fund income to be for the general purposes	1941	1,000	G41
A E Winkleman	Money to be added to the endowment fund	1954	100	G42
Unidentified			40,000	G3
Maude P Morrissey (8/13/71)	Endowment fund with income used for the purposes of the hospital	1971	200,000	G43
Maude P Morrissey (5/19/72)	Endowment fund with income used for the purposes of the hospital	1972	40,000	G43
Robert Rothman (3/1/72)		1972	675	G3
Maude P Morrissey (10/26/72)		1972	40,000	G43
Robert Rothman (1/17/73)		1973	667	G3
Robert Rothman (2/7/74)		1974	820	G3
L Levin Foundation (9/30/74)		1974	620	G3
Robert Rothman (2/10/75)		1975	1,000	G3
L Levin Foundation (1/15/76)		1976	1,775	G3
Annie Weeden Trust (12/6/76)		1976	20,000	G3
Frank Hazard (12/6/76)		1976		G3

			10,000	
Robert Rothman (12/22/76)		1976	825	G3
Reinhardt Scholar (12/13/77)		1977	333	G3
Carolann & Co (1/17/80)		1980	800	G3
Maude Morrissey (11/10/81)		1981	3,393	G43
Calista Lamberton Memorial Fund		1965	5,000	G44
Samuel M & Rose Magid			500	G3
Specific Purpose Fund (1971)		1971	3,000	G3
Specific Purpose fund (1975)		1975	21,975	G3
W Waite Trust 1992	William H. and Mary J. Waite Fund. Income to be used for its uses and purposes	1992	500,000	G45
William F Goff	Radium		5,000	G3
Charlotte Pritchard	Cancer Res		4,000	G3
Nursing Education Scholarship	Scholarship	1935	1,000	G3
Estate of T. Hammond (1988)	Income only for its uses and purposes	1988	25,000	G46
Florence E & Clarence Owen	Children's Ward	1956	14,059	G47
	Fund Balance:		\$3,714,310	

Exhibit G

CY PRES PETITION – TRUST DOCUMENTATION

Trust	Exhibit
The Trust under Will of Sarah S. Brown dated June 21, 1911	G48
The Trust under Will of C. Prescott Knight	G49
The Trust under Will of George Luther Flint dated June 25, 1935	G50
The Miriam C. Horton Trust Dated August 9, 1948, as amended by its entirety and restated on June 12, 1963	G51
The Trust under Will of Albert K. Steinert dated July 11, 1927	G52
George & Lydia Boyden Will	G53
Herbert G. Townsend Trust dated January 2, 1929, as amended on June 14, 1949	G54

Exhibit H

Exhibit H

- \$258,962 restricted cash

Fund Number	Fund Name	Description	Amount as of 7/31/14	Exhibit
01.2900.3002	Health Fair SJF Restr-Oncology	Annual community outreach event donations	67.95	H1
01.2900.3072	Pingatore Mem FD	Furniture/equipment for outpatient oncology at Fatima	118.47	H2
01.2900.3549	SJH Blanche Walsh Charity-DRC	For diabetes resource center patient needs	91.83	H3
01.2900.3537	SJF Amica Companies Foundation	Support of the Diabetes & APC clinics	376.00	H4
01.2900.3085	Fatima Statue Fund	Donations for Fatima Statute refurbishment	420.00	H5
01.2900.3004	Andrew W. Rotelli-Memorial Fund	Donations for hyperbaric medicine program	462.94	H6
01.2900.3553	SJH Fatima Health Center-Equipment (Bristol County Savings)	Health center equipment grant	602.25	H7
01.2900.3049	Critical Care Unit	Donations for CCU patient & staff needs	738.04	H8
01.2900.3506	RIDOH-WCSP SCH of Cytotech	School of Cytotechnologist needs	1,000.00	H9
01.2900.3018	Employee Assistance Fund	To assist employees experience undue hardship (ie fire)	1,060.87	H10
01.2900.3091	Performance IMP DPT Staff ED		1,094.00	H11
01.2900.3074	SJF K. Jordan Memorial Fund-CCU	Restricted to CCU needs only	1,592.69	H12
01.2900.3001	Nursing Department	For any unmet nursing needs	1,515.79	H13
01.2900.3039	Hyperbaric Medicine for Pedi & Young Adults	Hyperbaric medicine therapy for young burn victims	1,608.05	H14
01.2900.3036	SJ Center Psych Care/Lecture	Speaker series for Psych Department donations earmarked for Fatima	1,772.27	H15
01.2900.3034	School of Nursing	Alumni donations for SON general unmet	386.02	H16

Exhibit H

		needs @ discretion of the director		
01.2900.3073	Mulholland Fund		2,181.03	H17
01.2900.3017	H & H SVC. Single Mothers	Health center program for single mothers	2,216.66	H18
012900.3524	SJF Shriners of RI Dental Patient Care	Pediatric Dental Center care fund for annual dental graduation activities	30,539.64	H19
01.2900.3076	SJF Dental Graduation		2,844.74	H20
01.2900.3088	Restricted-Cardiology Education Fund	1/3 of Assent III clinical trials funding earmarked for Cardiology Department for education	2,525.10	H21
01.2900.3023	SNERC	Donations for Southern New England Rehab dept	1,331.63	H22
01.2900.3026	Children's Christmas Party	Donations for pedi patients/families holiday party @ SJHSC	2,600.54	H23
01.2900.3025	Pedi Dental Clinic	Donations for Pediatric Dental Clinic at SJHSC	8,396.22	H24
01.2900.3028	Harold Johnson Memorial Fund	ICU/4 th Pavillon waiting room enhancements	746.63	H25
01.2900.3051	Pastoral Care	Donations to pastoral care at Fatima & St. Joe's	676.35	H26
01.2900.3062	New England Tech/OT	Stipends/N.E. Tech Occupational Therapy Students	3,349.94	H27
01.2900.3058	Fatima Chapel Renovations	Donations only for chapel renovations	4,224.86	H28
01.2900.3092	SJH Chapel Fund	Chapel repairs	1,000.00	H29
01.2900.3093	Trivett	Fundraising for Book nook	7,153.69	H30
01.2900.3048	Breast Care Center Restricted	Donations for Breast Cancer programs	10,585.37	H31
01.2900.3514	Wal-Mart Foundation - ACC	Ambulatory Care Ctr for Pedi waiting room needs	202.39	H32
01.2900.3516	RIDOH Oral Health WF (2) - Dental	Government contract with RI Dept of Health	5,069.14	H33
01.2900.3546	SJH Episcopal	To purchase emergency	3,500.00	H34

Exhibit H

	Charities of RI	medications for diabetics		
01.2900.3528	Daisy Stride Memorial Foundation - SON	School of nursing equipment	600.00	H35
01.2900.3556	SJH John Clarke Trust – Pedi	Infant/toddler safety packet distribution thru Pedi Clinic	3,800.00	H36
01.2900.3557	SJH Episcopal Charity Fund/Asthma	Grant for asthma program/medications @ St. Joe's	1,609.12	H37
01.2900.3070	Buonanno Memorial Fund	Restricted; purpose to be determined by Dr. A. Buonanno	3,813.23	H38
01.2900.3059	Restricted-Medical Staff OME	Other medical education expenses	4,365.02	H39
01.2900.3535	SJF The Rite Aid Foundation SS	Spanish speaking cancer support group; no staff available	4,635.07	H40
01.2900.3513	SJF Cavanagh Company-DRC	Diabetes Resource Center patient needs	4,837.89	H41
01.2900.3020	Adult Primary Care-Educational Fund	Education programs for adults being treated at SJHSC Primary Care facility	1,539.78	H42
01.2900.3525	SJF Ida Ballou Memorial Trust	Diabetes medications for uninsured patients	7,064.00	H43
01.2900.3038	School of Nursing-Scholarship Fund	Alumni donations for School of Nursing Scholarships	8,333.78	H44
01.2900.3079	Annual Diabetes Fair	Annual community outreach & educational program	8,146.09	H45
01.2900.3033	Health Center	Donations for Health Center patient/staff needs	3,619.95	H46
01.2900.3016	Ed. Opportunities-Nursing Department	Educational programs for nurses	1,767.00	H47
01.2900.3012	Restructuring	Pediatric Dental Center and Stroke Center	12,726.00	H48
01.2900.3050	Mary Ronci Fund	Education funds for X-Ray technicians	12,884.91	H49
01.2900.3013	North Providence Communications System	Water tower lease caveat to benefit community programs	31,645.09	H50
01.2900.3035	SJH – Psychiatric	Donor dollars given for	<u>45,523.53</u>	H51

Exhibit H

	Unit	expansion of Psych Unit		
TEMPORARILY RESTRICTED ASSETS			<u>\$258,961.61</u>	

- \$196,496 (temporarily restricted scholarship funds \$77,811 and temporarily restricted endowment interest \$118,685)
- Total temporarily restricted scholarship funds

Fund Number	Fund Name	Description	Amount as of 7/31/14	Exhibit
01.2900.3300	Bishop McVinney Scholarship Fund-Interest	Investment income earned on endowment not yet distributed. Post graduate nursing education for SON alumni	37,909.10	H52
01.2900.3301	Kane Memorial Scholarship Fund-Interest	Investment income earned on endowment not yet distributed. Nursing scholarship.	244.56	H53
01.2900.3302	Grace R. Felmann Memorial Scholarship-Interest	Investment income earned on endowment not yet distributed. Nursing scholarship.	2711.91	H54
01.2900.3303	Helen Morris Deblinger Memorial Scholarship-Interest	Investment income earned on endowment not yet distributed. Nursing scholarship.	8,250.37	H55
01.2900.3301	McLaughlin Fund-Interest	Interest earned for educational purposes at St. Joseph's Hospital	1,785.25	H56
01.2900.3305	Bill Pires Memorial Scholarship Fund	Pharmacy student scholarship for child of employee	418.56	H57
01.2900.3306	Farrar Memorial Scholarship Fund	Investment income earned on endowment not yet distributed.	1625.75	H58
01.2900.3307	Son E. Pinto Franko Scholarship	Nursing scholarship	221.49	H59
01.2900.3308	Dr. J. Migliori Scholarship Fund	Anesthesiology School scholarship	23,086.60	H60
01.2900.3405	Cardi School of	Investment income	<u>1,557.48</u>	H61

Exhibit H

	Nursing-Scholarship-Interest	earned on endowment not yet distributed. Nursing scholarship		
TOTAL TEM RESTRICTED SCHOLARSHIP FUNDS			\$77,811	

- Temporarily restricted endowment interest

Fund Number	Fund Name	Description	Amount as of 7/31/14	Exhibit
01.2900.3400	O'Connor-Interest	Investment earn on endowment not yet distributed. St. Joseph Children's Department at St. Joe's	31,674.29	H62
01.2900.3401	Dr. Sarni Endowment-Interest	Investment earned on endowment not yet distributed. Establish fund for family practice at St. Joseph Hospital for patient care.	4,267.28	H63
01.2900.3402	Dr. Buonanno Endowment-Interest	Investment earn on endowment not yet distributed. Establish fund for orthopaedic services or equipment for uninsured Fatima patients only	2,929.88	H64
01.2900.3403	Colagiovanni-Interest	Investment earn on endowment not yet distributed. Urology related services, equipment and education at Fatima and name a pavilion for Marco Colagiovanni, MD	54,386.25	H65
01.2900.3404	Deceased Medical Staff & Families Endowment-Interest	Investment earn on endowment not yet distributed. Memorial donations for deceased members of	1,590.99	H66

Exhibit H

		medical staff and families.		
01.2900.3406	Hammond Trust	Income is unrestricted	20,643.65	H67
01.2900.3408	SJF DK Endowment Fund-Interest	Investment earn on endowment not yet distributed. Unmet patient needs, pedi dental	<u>3,192.96</u>	H68
TEMP RESTRICTED ENDOWMENT INTEREST			\$118,685	

Exhibit H

Account No.	Endowment Funds	Amount as of 7/31/14	Description	Exhibit
01.2900.3701	O'Connor Endowment Principal	272,303.65	SJHS Children's Dept	H69
01.2900.3702	Sarni Endowment Principal	36,684.41	Family practice at SJHS	H70
01.2900.3703	Buonanno Endowment Principal	25,188.12	Orthopedic services for uninsured patients	H71
01.2900.3704	Colagiovanni Fund	467,357.50	Urologic patient services/uninsured patients	H72
01.2900.3705	Deceased Medical Staff Endowment	4,225.76	Memorial donations re dec. family members	H73
01.2900.3801	Bishop McVinny Endowment	4,000.00	Graduate nursing education	H74
01.2900.3802	Kane Memorial Scholarship	4,953.00	Nursing scholarship	H75
01.2900.3803	Felmann Memorial Scholarship	17,275.66	Nursing scholarship	H76
01.2900.3804	Deblinger Scholarship	76,000.00	Nursing scholarship at St. Joe's	H77
01.2900.3805	McLaughlin Fund	5,000.00	Educational purposes	H78
01.2900.3807	Alphonso & Cardi Endowment	10,000.00	Nursing scholarship at St. Joe's	H79
01.2900.3808	Farrar Memorial Scholarship	17,255.00	Will bequest for St. Joe's Hospital	H80
01.2900.3706	Hammond trust	** 234,010.38	Will bequest for St. Joe's Hospital	H81
01.2900.3707	Daniel J. Kane, DMD Fund	26,511.00	Unmet needs/pedi dental	H82
	Total Principal	1,200,764.48		