

HEARING DATE: OCT. 10, 2018 9:30 AM

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH HEALTH SERVICES)
OF RHODE ISLAND)

v.)

C.A. No. PC-2017-3856

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

**CORRECTED OBJECTION OF CHARTERCARE FOUNDATION
TO RECEIVER’S PETITION FOR SETTLEMENT INSTRUCTIONS¹**

INTRODUCTION AND SUMMARY OF ARGUMENT

CharterCARE Foundation (“CCF”) now files this objection to the Receiver’s Petition for Settlement Instructions (the “Settlement Petition”), which requests that this Court approve a Settlement Agreement executed by the Receiver and several individually named participants in the St. Joseph’s Health Services of Rhode Island (“SJHSRI”) Retirement Plan (the “Plan”) (collectively, “Plaintiffs”), on the one hand, and SJHSRI, Roger Williams Hospital (“RWH”), and CharterCARE Community Board (“CCCB”) (collectively, the “Settling Defendants”), on the other hand.

In this objection, CCF further develops the arguments that it previewed to this Court in the four-page *Objection to Receiver’s Petition and Emergency Cross-Motion to Postpone September 13, 2018 Hearing* that it filed on September 5, 2018. CCF also responds herein to the arguments that the Receiver asserted in its September 6, 2018 *Memorandum in Support of*

¹ This corrected version corrects certain typos in CCF’s September 27, 2018 filing, including typos that confused “CCF” and “CCCB” in the second full paragraph of page 4.

Objection to CharterCARE Foundation's Emergency Motion to Postpone September 13, 2018 Hearing, and then presented in Court on September 7, 2018.

At that September 7, 2018 hearing, the Receiver challenged whether CCF has standing. As set forth below, CCF does indeed have standing to object to those portions of the Settlement Agreement pertaining to CCF. Because there is no Rhode Island Supreme Court decision addressing standing in the receivership context, this Court should consult the Bankruptcy Code and federal case law for guidance. That case law provides that standing turns upon whether one qualifies as a “party in interest.” In re Torres Martinez, 397 B.R. 158, 164 (B.A.P. 1st Cir. 2008). CCF qualifies as a “party in interest” because the Settlement Agreement has a direct impact on CCF’s pecuniary and legal rights. The Settlement Agreement impairs CCF’s rights because it would require its purported sole member, CCCB, to discharge all CCF’s directors and irrevocably assign CCF’s charitable trust assets to the Receiver.² That would put CCF out of business. Without question, CCF has a compelling interest in opposing a Settlement Agreement that would do so. If that type of legal and pecuniary interest is not sufficient to confer standing, then it is difficult to conceive of what would be sufficient.

Turning next to the substantive standard governing whether this Court should approve the Settlement Agreement, the Receiver asks this Court to put on blinders and consider *only* whether the settlement is a “good deal” for the debtor (the Plan) and the creditors of the debtor (the Plan

² CCF herein refers to CCCB as its “purported sole member” because, in the four-plus years since the closing of the 2014 Asset Purchase Agreement involving Prospect, CCCB has not taken any action whatsoever to supervise, monitor, or control CCF in any way. CCCB never participated in any of CCF’s Board of Directors meetings, or took any action to control who would be appointed to that Board. If CCCB indeed believed that it owned and controlled CCF, its inaction was a very odd way of expressing such a belief. Moreover, since 2014, CCCB has made certain affirmative representations to governmental agencies that are inconsistent with any claim to a membership interest in CCF. CCF maintains that CCCB has no rights to act as CCF’s “sole member” because CCCB long ago waived or abandoned its former membership interest in CCCB. See 18 C.J.S. Corporations § 390 (Sept. 2018 update). CCF acknowledges, however, that this receivership action is not the proper forum in which the parties should be litigating the merits of the abandonment issue. CCF intends to litigate that issue in a separate forum.

participants). Again, this Court should turn to federal bankruptcy case law for guidance on this question. That case law makes clear that “the Court may not approve a settlement that would violate applicable law, regardless of whether it is a ‘good deal’ for a debtor.” In re Capmark Financial Group Inc., 438 B.R. 471, 476 (Bkrctcy. D. Del. 2010). A Rhode Island court should neither endorse, nor enforce, any settlement agreement that violates Rhode Island law. See Power v. City of Providence, 582 A.2d 895, 900 (R.I. 1990).

Here, the Settlement Agreement provisions respecting CCF would violate Rhode Island law for several reasons. *First and foremost*, the Settlement Agreement would violate Rhode Island common law and the Charitable Trust Act by effectuating a diversion of charitable trust assets from CCF, which administers those assets consistent with the original donors’ charitable intent, to the Receiver, who would use those assets to benefit only the Plan participants. Restricted charitable trust assets instead must be administered in accordance with the terms of their trust, i.e. the donors’ original intent. See R.I. Gen. Laws § 18-9-1 et seq.; see generally Congregation Jeshuat Israel v. Congregation Shearith Israel, 186 F. Supp. 3d 158, 188 (D.R.I. 2016) rev’d on other grounds by 866 F.3d 53 (1st Cir. 2017).

Second, and relatedly, the Settlement Agreement’s contemplated transfer of charitable trusts assets to the Receiver would violate conditions of a final and binding administrative order, namely, the Attorney General’s 2014 Hospital Conversions Act (“HCA”) approval (hereinafter, the “AG HCA Approval”) (attached at **Tab A**). CCCB is one of the “Transacting Parties” directly subject to the conditions of the AG HCA Approval. Condition No. 8 required a *cy pres* transfer of restricted charitable assets to CCF, an independent foundation, so that those assets would be disbursed “in accordance with donor intent.” The Settlement Agreement, however, would require CCCB to unwind the *cy pres* transfer, and place those assets in the hands of the

Receiver, who would not disburse them “in accordance with donor intent.” That would violate Condition No. 8. CCCB may not lawfully enter into a Settlement Agreement in which it promises to violate a condition of a final, binding administrative order in this manner.

Third, the Settlement Agreement requires parties to violate the express terms of two prior Orders that this Court entered in the so-called 2015 *Cy Pres* Action. The first is the April 20, 2015 *Cy Pres* Order that authorized the transfer of charitable trust assets to CCF. (**Tab B**). The second is the June 29, 2018 “stand-still” Order that requires CCF to preserve its charitable trust assets unless and until the Receiver’s claim to such assets is “finally adjudicate[d]” in a court of competent jurisdiction. (**Tab C**). Both Orders remain valid and binding unless and until they are vacated through some proper judicial process. That has not happened.

Fourth, the Settlement Agreement is unlawful for the additional reason that it would require CCCB to violate Condition No. 1 of the AG HCA Approval. Condition No. 1 prohibits board or officer overlap between CCF and CCCB. The clear intent of Condition No. 1 was to ensure that CCF was an “independent foundation,” i.e. one that could not be controlled by parties acquiring a stake in the new for-profit joint venture with Prospect Medical Holdings, Inc. (“Prospect”), such as CCCB. In violation of Condition No. 1, the Settlement Agreement would require CCCB to exercise purported rights to replace CCF’s current Board of Directors with three new directors selected by CCCB. Any such action would violate both the letter and spirit of the AG HCA Approval.

For all the foregoing reasons, this Court should expressly disapprove of those portions of the Settlement Agreement concerning CCF because they violate Rhode Island law.

FACTUAL AND PROCEDURAL BACKGROUND

CCF will not repeat the full history of this dispute because this Court already is immersed in those details, having reviewed voluminous briefing in connection with the recently-decided intervention motion in the 2015 *Cy Pres* Action. CCF now focuses on two aspects of the factual and procedural background that bear directly on this Court’s consideration of the Settlement Petition. Those are the 2014 AG HCA Approval, and the Settlement Petition filed in this receivership proceeding on September 4, 2018.

I. THE 2014 ATTORNEY GENERAL HCA APPROVAL.

On May 16, 2014, the Attorney General issued a 55-page decision approving, with conditions, the sale of certain SJHSRI and RWH health care assets to Prospect, a for-profit acquirer, pursuant to the HCA. (Tab A).

Section I, titled “Background,” identified the “Transacting Parties” that had submitted the application for HCA approval to the Attorney General. (Id., p. 1). All three of the current Settling Defendants – SJHSRI, RWH, and CCCB (f/k/a CharterCARE Health Partners) – were “Transacting Parties” directly subject to the terms of the AG HCA Approval. (Id. at pp. 1-2).

Section II recited the applicable HCA review criteria enumerated at R.I. Gen. Laws § 23-17.14-7(c). Those review criteria required the Attorney General to consider the following.

(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;

...

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

...

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

...

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

...

(Tab A, pp. 3-6).

Section IV.D was titled “Charitable Assets.” (Id. at p. 22). Therein, the Attorney General recited that the Transacting Parties had submitted “[v]oluminous detail” documenting all their charitable assets, which the Attorney General then “thoroughly reviewed.” (Id. at p. 23). In Section IV.D(1), titled “Disposition of Charitable Assets,” the Attorney General accurately stated as follows.

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. In furtherance of that requirement, CCHP [n/k/a CCCB] indicated in the Initial Application that it intends to transfer all currently held specific purpose and restricted funds to the CCHP Foundation [n/k/a CCF], which will use the funds in accordance with the designated purposes.

(Id. at p. 23) (emphasis added). That discussion went to the issue of “[w]hether 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” R.I. Gen. Laws § 23-17.14-7(c).

Section IV.D(3), titled “Foundation for Proceeds,” went on to address CCF specifically. (Id. at p. 31). It contained the following language making clear that CCF was to be “independent.”

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.

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.³ Nonetheless, CCHP Foundation [n/k/a CCF] 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 the operation of an **independent community health care foundation**.

(Id. at pp. 31-32) (emphasis added). That discussion went to the issue of “[w]hether the board of any new or continuing entity will be **independent** from the new hospital.” R.I. Gen. Laws § 23-17.14-7(c)(25)(vi) (emphasis added).⁴

Section VI set forth the “Conditions” of the Attorney General’s HCA Approval. For present purposes, Conditions Nos. 1 and 8 are the most significant. Condition No. 1 mandated that: “There shall be no board or officer overlap between or among the CCHP Foundation [n/k/a CCF], CCHP [n/k/a CCCB], and Heritage Hospitals [i.e. SJHSRI and RWH].” (Tab A, p. 51). That condition continued indefinitely, unlike other approval conditions that expired after three years (e.g. condition nos. 4-7, 12-13, 23-26, 30). Condition No. 8 mandated that:

³ That sentence disposes of the Receiver’s newly threatened claim that CCF’s Board of Directors is comprised of “usurpers” because the presiding justice of the Superior Court did not appoint those directors pursuant to R.I. Gen. Laws § 23-17.14-22(b)(1). That issue (or more accurately, non-issue) came up during the September 7, 2018 hearing to consider whether CCF, the Attorney General, and Prospect should have additional time to brief their objections to the Settlement Petition. During that hearing, CCF’s counsel handed this Court a copy of R.I. Gen. Laws § 23-17.14-22 to illustrate how the HCA required CCF to be an independent entity, free of CCCB’s control. Upon further review of the AG’s HCA Approval and the statute itself, it is now clear to CCF’s counsel that the Attorney General correctly determined that R.I. Gen. Laws § 23-17.14-22 did not apply to CCF. For the sake of clarity, CCF now withdraws any prior argument or suggestion that R.I. Gen. Laws § 23-17.14-22 applies to CCF, although CCF certainly continues to maintain that the AG’s HCA Approval (as distinct from R.I. Gen. Laws § 23-17.14-22) did indeed require CCF to be an “independent” foundation.

⁴ The AG HCA Approval required CCF to be an “independent foundation.” CCCB was among the “Transacting Parties” subject to that requirement. To fulfill that requirement, CCCB should have taken a formal vote in 2014 to relinquish its membership interest in CCF going forward because any continued claim that it owned or controlled CCF would clearly subvert the intent that CCF be an “independent foundation.” For reasons that remain unclear to CCF, CCCB did not take that formal action back in 2014.

. . . (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 [n/k/a CCF] 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.

(Id. at p. 52).

In a concluding section titled “Notice of Appellate Rights,” the Attorney General gave the “Transacting Parties” notice that “this decision constitutes a final order of the Department of Attorney General.” (Id. at p. 55). None of the Transacting Parties appealed from that final administrative order.

II. THE SETTLEMENT PETITION.

The Settlement Petition recites that the Settling Defendants have agreed to pay the Receiver a lump sum payment of \$11,150,000. (Settlement Petition, ¶ 14(a)). That provides the most significant and immediate benefit to Plan participants, and CCF has no objection to that settlement term.

The Receiver, however, chose to greatly complicate matters by also insisting that the Settlement Agreement include problematic terms calling for a “[t]ransfer to the Receiver of the Settling Defendants’ rights in CharterCARE Foundation.” (Id. ¶ 14(c)). The Settlement Agreement would effectuate that transfer through a two-step process.

First, within five business days of the “Effective Date” of the Settlement Agreement, the Settling Defendants agree to deliver to Plaintiffs’ Counsel the document titled “Consent of CharterCARE Community Board as Sole Member of CharterCARE Foundation” (hereinafter the “Consent”), which is attached at Exhibit 12 to the Settlement Agreement. For ease of reference,

that Consent is attached hereto at **Tab D**.⁵ As stated therein, the Consent calls for CCCB to: (1) elect Attorney Arlene Violet, Attorney Christopher Callaci, and Attorney Jeffrey Kasle as “independent directors of CCF”; (2) amend CCF’s by-laws to permit assignment of CCCB’s purported interest in CCF and discharge all CCF’s current directors; and (3) amend CCF’s Articles of Incorporation to make the Receiver CCF’s new sole member. (Tab D).

Second, within ten business days of the “Effective Date” of the Settlement Agreement, the Settling Defendants then agree to deliver to Plaintiff’s Counsel “an irrevocable assignment . . . to the Receiver of all of CCCB’s Foundation Interests. . . .” (Settlement Agreement, ¶ 13).

“CCCB’s Foundation Interests” means all of the claims, rights and interests of CCCB against or in CharterCARE Foundation . . . , including but not limited to the right to recover funds transferred to CharterCARE Foundation in connection with the 2015 *Cy Pres* Proceeding, and any rights and interests appurtenant to CCCB’s present or former status as a member or sole member of CharterCARE Foundation.

(Id. ¶ 1(c)).

To summarize, the Settlement Agreement would require the Settling Defendants to set in motion a series of events that would irrevocably assign all CCF’s charitable trust assets to the Receiver, and terminate CCF’s current mission of honoring donor intent by using those assets to extend grants and scholarships to promote better health care in Rhode Island.

The Settlement Petition requests an Order:

- (i) approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants;
- (ii) authorizing and directing the Receiver to proceed with the Proposed Settlement; and
- (iii) granting such further relief as this Court may determine to be reasonable and necessary under the circumstances.

⁵ “‘Effective Date’ means the date upon which the Order Granting Final Settlement Approval is entered.” (Settlement Agreement, ¶ 1(m)). “‘Order Granting Final Settlement Approval’ means the order approving the Settlement 1) as fair, reasonable, and adequate, 2) as a good faith settlement under R.I. Gen. Laws § 23-17.14-35, 3) awarding attorneys’ fees to Plaintiffs’ Counsel, and 4) such other and further relief as *the Court* may direct.” (Id. ¶ 1(x)) (emphasis added). The Settlement Agreement defines the term “Court” as the United States District Court for the District of Rhode Island. (Id. ¶ 1(i)).

(Id., p. 13). For the reasons set forth below, this Court should neither approve the Settlement Agreement, nor authorize the Receiver to proceed with it. Instead, this Court should expressly disapprove the Settlement Agreement on the grounds that it violates Rhode Island law.

ARGUMENT

III. CCF HAS STANDING TO OBJECT TO THE RECEIVER’S REQUEST FOR JUDICIAL APPROVAL OF THOSE PORTIONS OF THE SETTLEMENT AGREEMENT RELATING TO CCF.

CCF first addresses the Receiver’s threshold argument that CCF does not have standing to object to the Settlement Agreement in this receivership proceeding. The Receiver does not cite to any Rhode Island Supreme Court decision that defines standing in the context of a receivership proceeding. CCF has not located any such Rhode Island appellate authority either.

“[W]here state receivership law provides minimal guidance, this Court instead ‘looks to the Bankruptcy Act and to decisions by the federal courts for guidance.’” Patel v Shivai Nehal Realty LLC, No. KB-2012-0301, 2012 WL 5380060, at *2 (R.I. Super. Oct. 26, 2012) (Stern, J.) (quoting Reynolds v. E & C Associates, 693 A.2d 278, 281 (R.I. 1997)); see also Brook v The Educ. Partnership, Inc., No. PB08-4185, 2010 WL 1456787, at *3 (R.I. Super. Apr. 08, 2010) (Silverstein, J.).

In the bankruptcy context, standing turns upon whether the objecting party qualifies as a “party in interest.” In re Torres Martinez, 397 B.R. at 164. “A party in interest is defined as one ‘whose pecuniary interests are directly affected by the bankruptcy proceedings.’” Id. (quoting In re Davis, 239 B.R. 573, 579 (B.A.P. 10th Cir. 1999)). “A party’s pecuniary interests are affected if the [bankruptcy court] order diminishes the appealing party’s property, increases its burdens, or detrimentally affects its rights.” In re Murphy, 288 B.R. 1, 4 (D. Me. 2002) (citing Kehoe v. Schindler (In re Kehoe), 221 B.R. 285, 287 (B.A.P. 1st Cir. 1998)).

Courts “must determine on a case by case basis whether the prospective party in interest has a sufficient stake in the proceeding so as to require representation.” In re High Voltage Engineering Corp., 403 B.R. 163, 166 (D. Mass. 2009). “Parties in interest include not only the debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” In re Kazis, 257 B.R. 112, 114 (Bkrtcy. D. Mass. 2001).

The Receiver, however, argues that only the debtor estate (the Plan) and its creditors (the Plan participants) have standing to support or oppose a proposed settlement.⁶ The bankruptcy courts, however, do not recognize such an inflexible rule. For example, in In re High Voltage Engineering Corp., a bankruptcy judge in the United States District Court for the District of Massachusetts held that a non-creditor had standing to object to a settlement proposed by the liquidating supervisor. 397 B.R. 579, 597-98 (Bkrtcy. D. Mass. 2008) aff’d by 403 B.R. 163 (D. Mass. 2009). That non-creditor indeed had standing because it was, among other things, the current owner of environmentally contaminated land formerly owned by the Chapter 11 debtor in question. Id. The non-creditor’s present ownership interest in the subject property was sufficient to confer standing. Id.

Likewise here, CCF has standing because it has a pecuniary interest in the property that is the subject of the objectionable settlement terms, i.e. the restricted charitable trust assets. As stated above, “[a] party’s pecuniary interests are affected if the [bankruptcy court] order diminishes the appealing party’s property, increases its burdens, or detrimentally affects its rights.” In re Murphy, 288 B.R. at 4. The Settlement Agreement certainly would diminish CCF’s property. In fact, it would call for an irrevocable assignment of all CCF’s charitable trust

⁶ That, of course, would mean that only the parties that signed this Settlement Agreement have standing to object to its approval, which they obviously will not be doing here.

assets to the Receiver. The Settlement Agreement also would discharge all of CCF's directors. Without question, that would "detrimentally affect[] [CCF's] rights." See id.

The Receiver nonetheless protests that it is "premature" for CCF to object to the loss of all its property, because the federal court, rather than this Court, has the final say regarding whether or not the Settlement Agreement should be approved. That argument highlights why the Receiver's request for an Order from this Court "approving the Proposed Settlement as in the best interests of the Receivership Estate, the Plan, and the Plan participants" is, at best, unnecessary. (Settlement Petition, p. 13). The Receiver's argument also rings hollow because he is asking this Court to stamp the Settlement Agreement with an imprimatur of state court approval – rather than simply asking for authorization to later present it to the federal court – in an apparent attempt to increase the chances that the federal court grants ultimate approval. These procedural steps are all designed to increase CCF's burdens and detrimentally affect its rights. See In re Murphy, 288 B.R. at 4. Those interests are sufficient to confer standing upon CCF here.

IV. THE COURT SHOULD NOT APPROVE THE SETTLEMENT TERMS RELATING TO CCF BECAUSE THEY VIOLATE RHODE ISLAND LAW.

Just as federal bankruptcy courts "will not approve settlement agreements that are 'illegal, a product of collusion, or against the public interest,'" this Court should not do so either. In re Health Diagnostic Laboratory, Inc., 588 B.R. 154, 162 (Bkrcty. E.D. Va. 2018) (quoting United States v. North Carolina, 180 F.3d 574, 581 (4th Cir. 1999)). "To the extent a proposed settlement includes provisions, the enforcement of which would be illegal or against public policy, it matters not whether the settlement is in the best interests of the estate." In re Telcar Group, Inc., 363 B.R. 345, 357 (Bkrcty. E.D.N.Y. 2007).

Settlement agreements are governed by general principles of contract law. See Furtado v. Goncalves, 63 A.3d 533, 538 (R.I. 2013). “Contracts entered into in contravention to a state statute . . . are illegal, and no contract rights are created thereby.” Power, 582 A.2d at 900 (holding that settlement agreement in which police department agreed not to force any officer to retire before age 70 was void because it violated the Providence Retirement Act, which mandated retirement of police officers at age 60).

Here, this Court should disapprove the Settlement Agreement terms concerning CCF because they violate Rhode Island law for the following four reasons.

- a. The Settlement Agreement Would Violate Common Law And The Charitable Trust Act By Diverting Charitable Trust Assets To Non-Charitable Purposes.

Pursuant to the AG HCA Approval and this Court’s April 20, 2015 *Cy Pres* Order, the Heritage Hospitals transferred restricted charitable assets to CCF. Those restricted charitable assets qualify as “charitable trust” assets. The term “charitable trusts” refers to “any fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it and subjecting the person by whom the property is held to equitable duties to deal with the property for charitable, educational, or religious purposes.” R.I. Gen. Laws §§ 18-9-4.

“Unlike private trusts, which must have specified beneficiaries, charitable trusts must have a public purpose. . . .” Congregation Jeshuat Israel, 186 F. Supp. 3d at 188.

A fundamental distinction between private and charitable trusts lies in the character of the benefits to flow from their administration. In private trusts money or money’s worth is to be distributed by way of gift to the beneficiaries or in satisfaction of an obligation of the settlor. In charitable trusts the benefits to be provided through the trust are to be intangible advantages to the public or to some significant class thereof which improve its condition mentally, morally, physically or in some similar manner. The trustees pay out money and other property not for the personal benefit of the donees, but rather to secure for society certain advantages.

Id. (quoting A. Hess, G. Bogert, & G. Bogert, The Law of Trusts and Trustees § 362 at 19-20 (3d ed. 2007)). Rhode Island courts are called upon to ensure that “a charitable gift for certain designated used [sic] will not be diverted or applied otherwise.” Pennsylvania Co. for Banking and Trusts v. Board of Governors of London Hospital, 83 A.2d 881, 885 (R.I. 1951). The Charitable Trust Act also invests the Attorney General with authority to supervise and prevent “breaches of trust,” and to investigate whether charitable trusts “are being administered in accordance with law and the terms and purposes of the trust.” R.I. Gen. Laws §§ 18-9-1, 18-9-9.

Because of these legal requirements, CCF is not at liberty to disburse charitable trust assets to any random organization that it chooses. If CCF unilaterally disbursed assets to a unrelated cause in a manner that was inconsistent with donor intent, that would breach the terms of the charitable trusts in question and violate the Charitable Trust Act. Just as CCF cannot unilaterally decide to violate the law, it cannot sign a contract (either directly or through its purported parent corporation) in which it promises to violate the law in the future. Settlement agreements are contracts, and contracts that require a party to violate the law are void. See Power, 582 A.2d at 900.

Here, the settlement term requiring CCCB to irrevocably assign “all of CCCB’s Foundation Interests” to the Receiver would call upon CCCB and CCF to violate the Charitable Trust Act and the Rhode Island common law principles discussed above. The Receiver, of course, has no interest in administering a “charitable trust” in accordance with the intent of the donors. Rather, the Receiver is looking to gain possession of those charitable trust assets in order to use them for the private benefit of Plan participants. That diversion would be unlawful because it plainly violates the terms of the charitable trusts in question. This Court should not

approve a Settlement Agreement that requires parties to so clearly violate the Charitable Trust Act and Rhode Island common law.

- b. The Settlement Agreement Is Unlawful Because It Requires CCCB to Violate Condition No. 8 of the AG HCA Approval, Which Required a *Cy Pres* Transfer of Restricted Charitable Assets to CCF.

As set forth above, the HCA expressly required the Attorney General to consider “[w]hether 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.” Supra at 5 (citing R.I. Gen. Laws § 23-17.14-7(c)(1)). In applying that review criterion here, the AG HCA Approval expressly held that:

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.

(Tab A at p. 23). To that end, Condition No. 8 of the AG HCA Approval required a *cy pres* transfer of restricted charitable assets from the Heritage Hospitals to CCF to ensure that funds were disbursed “in accordance with donor intent. . . .” (Id. at p. 52). CCCB was one of the “Transacting Parties” bound by Condition No. 8. Supra at 5. Because no appeal was taken, CCCB remains bound by Condition No. 8. See Pina v. Dos Anjos, 755 A.2d 838, 839 (R.I. 2000) (mem.). The Settlement Agreement would require CCCB to act in violation of Condition No. 8 by undoing the *cy pres* transfer and transferring assets to a Receiver who will not disburse those assets “in accordance with donor intent. . . .” (Id. at p. 52). This Court should not approve a Settlement Agreement that requires CCCB to violate conditions of a final administrative order to which it is bound.

c. The Settlement Agreement Would Violate the Terms of This Court’s Prior Orders In the 2015 *Cy Pres* Action.

Paragraphs 2 and 5 of this Court’s April 20, 2015 *Cy Pres* Order granted *cy pres* approval for the transfer of \$8,392,820.95 in SJHSRI and RWH restricted funds to CCF. (Tab B, ¶¶ 2, 5). Both paragraphs required such funds “to be used *as close to original donors’ intent as possible* . . .” (Id.) (emphasis added). In contrast, the Settlement Agreement calls for CCCB to cause CCF to transfer such funds to the Receiver, who will not use them “as close to original donors’ intent as possible.” CCF cannot transfer funds to the Receiver without violating this Court’s April 20, 2015 *Cy Pres* Order. While CCF fully appreciates that the Receiver has been permitted to intervene in the 2015 *Cy Pres* Action for the purpose of *seeking* to vacate that Order, it still remains a valid, binding Order.

For many of the same reasons, the Settlement Agreement also would call upon CCF to violate this Court’s June 29, 2018 “Order Preserving Assets Pending Litigation And Setting Schedule For Hearing On Motion to Intervene.” Paragraph 1 of that Order provides as follows.

All funds presently held by the Rhode Island Foundation (“RIF”) pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, “Fund Corpus”) shall continue to be held by RIF pursuant to such Instrument of Transfer until such time as this Court, or another Court of competent jurisdiction, finally adjudicates on the merits Proposed Intervenors’ claims to entitlement to the Fund Corpus and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.

(Tab C). CCF cannot directly or indirectly cause any transfer of funds from RIF to the Receiver without acting in violation of that June 29, 2018 Order.

In sum, unless and until the Court’s April 20, 2015 *Cy Pres* Order is vacated (CCF maintains that there is no basis to vacate that Order), and there has been a final adjudication on the merits of Plaintiffs’ claims to the *cy pres* funds, CCF cannot transfer any such funds to the

Receiver without violating this Court's Orders. (As this Court is aware, a party's willful violation of a valid, binding Court Order may be contemptuous.) Plaintiffs and the Settling Defendants cannot circumvent these Orders by signing a Settlement Agreement that requires CCCB take control of CCF and command CCF to violate those Orders.

This Court should not approve a Settlement Agreement that requires parties to engage in knowing violations of this Court's previously issued, valid and binding Orders.

- d. The Settlement Agreement Is Unlawful Because It Requires CCCB to Violate Condition No. 1 of the AG HCA Approval, Which Prohibits Board Overlap Between CCF and CCCB.

As set forth above, the HCA expressly required the Attorney General to consider [w]hether the board of any new or continuing entity will be independent from the new hospital." Supra at 5 (citing R.I. Gen. Laws § 23-17.14-7(c)(25)(vi)). Here, the "new hospital" referred to the newly created joint venture between CCCB and Prospect. The AG HCA Approval required CCF to be independent from CCCB and Prospect. To ensure CCF's independence, Condition No. 1 mandated that: "There shall be no board or officer overlap between or among the CCHP Foundation [n/k/a CCF], CCHP [n/k/a CCF], and Heritage Hospitals." (Tab A, p. 51).

The Settlement Agreement, however, requires CCCB to exercise purported rights to unilaterally discharge CCF's entire Board of Directors and replace them with a new slate of directors loyal to the Receiver. If CCCB indeed has the right to unilaterally select CCF's Board of Directors whenever it wishes, then Condition No. 1's prohibition against board overlap between CCF and CCCB is hollow and meaningless. If CCCB controls CCF's Board of Directors in this manner, then CCF ceases to be an "independent foundation" in compliance with the AG HCA Approval.

Again, this Court should not approve a Settlement Agreement that requires CCCB to violate conditions of a final administrative order to which it is bound.

CONCLUSION

CCF appreciates that the Receiver is seeking to move ahead expeditiously in order to realize a monetary recovery for Plan participants. CCF respectfully suggests, however, that this Court should distinguish between the Settling Defendants' fairly straightforward agreement to make a lump sum settlement payment to the Receiver of \$11,150,000, and the far more complicated settlement terms concerning CCF.

For all the reasons discussed above, the settlement terms concerning CCF deserve careful scrutiny. Even if this Court believes that the Settlement Agreement is, on balance, a "good deal" for the Plan, its participants, and the Settling Defendants, this Court cannot approve a Settlement Agreement that violates Rhode Island law in the manner discussed above.

CCF respectfully suggests that the Court has two options here. First, this Court can expressly rule that it disapproves of the Settlement Agreement terms concerning CCF because those terms violate Rhode Island charitable trust principles, the Charitable Trust Act, the Hospital Conversions Act, the terms of a final and binding administrative order from the Attorney General, and also the terms of this Court's prior Orders in the 2015 *Cy Pres* Action. On that basis, CCF submits that the Court should **DENY** Plaintiffs the right to proceed any further with seeking approval from the federal court.

Second, and in the alternative, if this Court is not inclined at this juncture to address CCF's objections to the legality of the Settlement Agreement terms regarding CCF, then this Court should make clear in its ruling that CCF's right to raise these objections is expressly reserved for subsequent determination by the federal court.

CHARTERCARE FOUNDATION,

By its attorneys,

/s/ Russell F. Conn

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Dated: September 28, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2018, I filed and served this document through the electronic filing system and via e-mail on the following parties:

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/s/ Andrew R. Dennington
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TAB 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 acquirer'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.

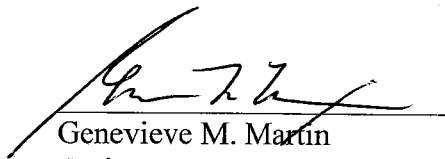
22. That Prospect CharterCARE, LLC and its affiliates shall provide any transition services to CCHP Foundation, CCHP and the Heritage Hospitals pursuant to separate agreements, terminable by the CCHP affiliate at will and provided by the Prospect affiliate at cost.
23. For the next three (3) years following 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

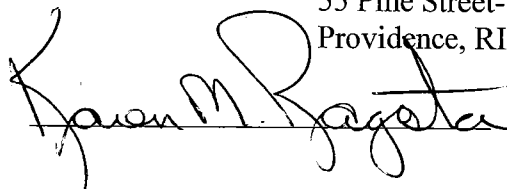
Under the Hospital Conversions Act, this decision constitutes a final order of the Department of Attorney General. Pursuant to R.I. Gen. Laws § 23-17.14-34, any transacting party aggrieved by a final order of the Attorney General under this chapter may seek judicial review by original action filed in 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.
Ferrucci Russo, P.C.
55 Pine Street- 4th Floor
Providence, RI 02903



TAB B

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

In re: CHARTERCARE HEALTH :
PARTNERS FOUNDATION, :
ROGER WILLIAMS HOSPITAL and : C.A. No. KM – 2015-0035
ST. JOSEPH HEALTH SERVICES OF :
RHODE ISLAND :

**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)
LESLIE D. PARKER (#8348)
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
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.
Chrisianne Wyrzykowski, Esq.
Office of the Rhode Island Attorney General
150 South Main Street
Providence, RI 02903

Paul A. Silver, Esq.
James Nagelberg, Esq.
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, #1500
Providence, RI 02903

And emailed a copy to the above listed counsel.

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

TAB C

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, INC. :

C.A. No: KM-2015-0035

**ORDER PRESERVING ASSETS PENDING LITIGATION
AND SETTING SCHEDULE FOR HEARING ON MOTION TO INTERVENE**

In accordance with the agreement of Proposed Intervenors and CharterCare Foundation (“CCF”), and for the reasons discussed at the hearing on June 28, 2018, the Court hereby orders as follows:

1. All funds presently held by the Rhode Island Foundation (“RIF”) pursuant to a so-called Instrument of Transfer (attached hereto at Exhibit A) dated April 14, 2015, or otherwise (such funds being, hereinafter, “Fund Corpus”) shall continue to be held, managed and administered by RIF pursuant to the terms of such Instrument of Transfer (including the annual administrative support fee) until such time as this Court, or another Court of competent jurisdiction,¹ finally adjudicates on the merits Proposed Intervenors’ claims to entitlement to the Fund Corpus² and either all appeals have been exhausted or the time for taking any appeals has expired without any appeals taken, with distributions only as provided in paragraph 2 below.
2. RIF may continue to make distributions to CCF, on an annual basis each December, on the Fund Corpus consisting of not more than 4.5% of the Fund Corpus (“Fund Corpus Income”) pursuant to the terms of the Instrument of Transfer. From the Fund Corpus Income, CCF may continue to pay the following: (1) expenses incurred in the ordinary course of business, including rent, salaries, utilities, insurance, usual accounting and legal fees, and the same types of expenses CCF has typically paid as part its operations; (2) its legal fees in this action and the Related Actions; and (3) its usual charitable grants as awarded by CCF each year. The forgoing payments and all other expenditures in total shall not exceed the Fund Corpus Income received each

¹ Besides proposing to intervene in the present action, the Proposed Intervenors have initiated suits in the United States District Court for the District of Rhode Island, Civil Action No. 18-cv-00328-WES-LDA, and in the Rhode Island Superior Court, Civil Action No. PC-2018-4386. The three actions together are called “the Related Actions.”

² As of April 30, 2018, CCF’s balance at RIF was \$8,783,572.83.

True Copy Attest




1
Office of Clerk of Superior Court
Counties of Providence & Bristol
Providence, Rhode Island

Filed PSC 6/29/18
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year by CCF from RIF, except as set forth in the second sentence of paragraph 3 below.

3. Payments received by CCF from the Malmstead Foundation will be paid by CCF to RIF and become part of the Fund Corpus. Miscellaneous charitable gifts, grants, or bequests received by CCF each year up to a grand total of \$25,000 annually may be retained and paid by CCF, and shall be excluded from the cap set forth in paragraph 2, and any excess shall be paid by CCF to RIF.
4. CCF will file its objection to the Motion to Intervene and its supporting memorandum by July 24, 2018. The Proposed Intervenor will file any reply by July 31, 2018. The Court will hear the motion soon thereafter.
5. This Order is entered (a) without prejudice to Proposed Intervenor's claim to a right to intervene herein; (b) without prejudice to Proposed Intervenor's claims herein or in another action (including the Related Actions) to the Fund Corpus; (c) without prejudice to CCF's denial that the Proposed Intervenor has a right to intervene herein; and (d) without prejudice to CCF's denial herein or in another action (including the Related Actions) that the Proposed Intervenor is entitled to the Fund Corpus.

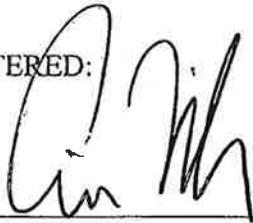
ORDERED:



Stern, J.

Dated: 6/29/18

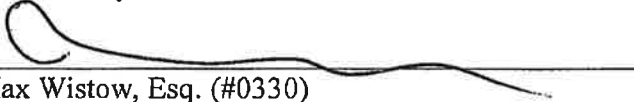
ENTERED:



Dep. Clerk

Dated: 6/29/18

Presented by:



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Stephen P. Sheehan, Esq. (#4030)
Benjamin Ledsham, Esq. (#7956)
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~~Russell Conn, Esq. (pro hac vice application pending)~~
~~Carol Starkey, Esq. (pro hac vice application pending)~~
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Exhibit A



RHODE ISLAND FOUNDATION

Lead, Transform, Inspire

RHODE ISLAND FOUNDATION INSTRUMENT OF TRANSFER CharterCARE Foundation Fund

Subject to the Option to Recover in Part II below, as of this 14th day of April, 2015, CharterCARE Health Partners Foundation ("Donor") hereby irrevocably transfers, conveys, assigns and pays over to the Rhode Island Foundation, a Rhode Island non-profit corporation (the "Foundation"), and the Foundation accepts, the property described in Exhibit A hereto, to create the **CharterCARE Foundation Fund**, (the "Fund"). The Fund shall be treated as an anonymous fund by the Foundation until further notice by the Donor. Additional contributions to the Fund may be made by us or others provided the contributed property is acceptable to the Foundation.

The Fund, together with any additions thereto, shall be held, managed and administered by the Foundation, either directly or through the use of an agency account, employing a corporate fiduciary or investment advisor, as the Foundation may deem appropriate, from time to time.

The assets hereby contributed shall be held by the Foundation, and the income and principal of the Fund shall be commingled with other Foundation assets held by the Foundation. The Fund assets shall be accounted for separately and any earnings from the common fund accruing to the Fund shall be credited to the account of the Fund.

Annual distributions from the Fund, as determined by the Foundation's spending rule in effect at that time, which at this time is 4.5% of the Fund's 16 trailing quarter average market balance, shall be paid to or for the support of Donor, a tax-exempt charitable organization under Internal Revenue Code §501(c)(3).

Notwithstanding the foregoing, Donor understands that the Articles of Association of the Foundation and applicable tax laws require that the Board of Directors of the Foundation have variance power over the assets donated to the Fund should "circumstances have so changed since the execution of this instrument as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of this instrument." It is also understood that no restrictions or conditions may be imposed upon the administration of the Fund which will prevent the Foundation from employing the transferred assets or income therefrom in furtherance of its exempt status. The Foundation also retains the power in the Foundation's sole discretion to modify or withhold any distribution of income or principal if such distribution would otherwise fail to qualify for a charitable purpose as defined in Section 170(c) of the Internal Revenue Code. It is the policy of the Foundation that with respect to the Fund, the Foundation will seek the approval of the Rhode Island Attorney General prior to exercising the foregoing variance power. In all respects the use of the Fund, together with any additions thereto contributed by the Donor or by any third-party, shall be in

accordance with the terms of this instrument, the charitable purposes of the Foundation, and subject to the approval of the Foundation's Board of Directors.

The provisions of this instrument directing distributions from the Fund to be made as determined by the Foundation's spending rule shall apply, irrespective of the provisions of any state's Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act, as currently in force or as hereinafter enacted, amended or superseded. The Foundation assumes no responsibility as to the ability of the Donor to access principal, either under the Uniform Prudent Management of Institutional Funds Act or any law. Donor shall indemnify the Foundation against any claims or damages relating to any violations of donor restrictions on any portion of the Fund.

Donor attests that this transfer has been duly approved by all appropriate corporate action, including without limitation Donor's Board of Directors as described in the attached Certificate of Secretary.

II. **Option to Recover:** Donor hereby acknowledges that the property transferred and contributed to the Foundation shall belong to the Foundation in perpetuity, subject to changes in circumstances under which the Donor in its discretion may terminate part or all of the Fund and to have part or all of the Fund paid as a distribution to Donor.

Donor acknowledges and accepts that, to encourage permanence, while still allowing flexibility, the following provisions shall apply with respect to any distribution of the principal of the Fund made to Donor at the direction of Donor.

(A) Directed distributions are allowed with ninety (90) days advance notice.

(B) In addition to the annual Foundation administrative support fee, a withdrawal fee shall apply as follows:

- (i) Year one: 5% of amount distributed.
- (ii) Year two: 4% of amount distributed.
- (iii) Year three: 3% of amount distributed.
- (iv) Year four: 2% of amount distributed.
- (v) Year five and thereafter: 1% of amount distributed.

III. All funds are subject to the Foundation's annual administrative support fee. Provided that the initial funding amount of the Fund from Donor shall be a minimum of eight-million dollars (\$8,000,000.00), the Foundation's annual administrative support fee on the Fund shall be .65% of the Fund's 16 trailing quarter average market balance. The initial funding amount as described in this paragraph shall be defined as all funds received by Donor for the Fund by September 30, 2015.

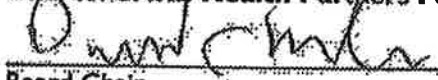
The following attachments are incorporated herein and made a part of this instrument:

- (A) The Foundation Investment Policy Statement, as currently in effect; and
- (B) The most recent quarterly report of Prime Buchholz, the Foundation's current investment consultant.

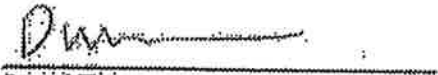
This instrument shall be construed and enforced in accordance with the laws of the State of Rhode Island and all provisions of the Articles of Incorporation and Bylaws of the Foundation as they may be amended from time to time.

Donor:

Charter CARE Health Partners Foundation


Board Chair

4/14/15
Date


Board Treasurer

4/14/15
Date


Executive Director

4/14/15
Date

Accepted:
Rhode Island Foundation


Neil D. Steinberg
President and CEO

4/17/15
Date

TAB D

CONSENT OF CHARTERCARE COMMUNITY BOARD AS SOLE MEMBER OF CHARTERCARE FOUNDATION

The undersigned CharterCARE Community Board (“CCCB”), in its capacity as sole member of CharterCARE Foundation (“CCF”), approves, authorizes and consents to the following actions, pursuant to CCCB’s inherent powers and R.I. Gen. Laws § 7-6-104:

1. CCCB hereby elects the following three persons as independent directors of CCF: Attorney Arlene Violet, Attorney Christopher Callaci, and Attorney Jeffrey Kasle;
2. CCCB hereby authorizes and approves amendment of the by-laws of CCF, effective immediately, by re-adopting the by-laws of CCF in the form amended as of October 8, 2013 (attached hereto as Exhibit A), with the following modifications:
 - (a) deleting the last three sentences of Section 2.01 in their entirety, and substituting the following:

CharterCARE Community Board’s membership in CharterCare Foundation may be assigned to Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan.
 - (b) deleting section 3.05 in its entirety and substituting the following:

SECTION 3.05. Term. All directors serving on the Board prior to August 2018 are removed, and offices of directors held prior to August 2018 are declared vacant. Each independent director elected by CharterCARE Community Board shall hold office until resignation or death, and a successor shall have been duly appointed and qualified.
 - (c) deleting all references to “CharterCARE Health Partners” and substituting therefor “CharterCARE Community Board”
 - (d) deleting all references to “CharterCARE Health Partners Foundation” and substituting therefor “CharterCARE Foundation”

3. CCCB hereby authorizes and approves amendment of the articles of incorporation of CCF, effective immediately, to delete subsection 3 of Article 4 of the Articles of Incorporation and substitute the following:

3. Meetings. The sole member of the Corporation shall be Attorney Stephen Del Sesto in his capacity as Receiver and Administrator of the St. Joseph Health Services of Rhode Island Retirement Plan. Meetings of the members of the Corporation may be held anywhere in the United States.

IN WITNESS WHEREOF, and upon due authorization, I have hereunto set my hand this ____ day of _____, in the year 2018.

[insert name]
[insert title]
CharterCARE Community Board

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

On this ____ day of _____, 2018, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the above instrument and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

NOTARY PUBLIC
My Commission Expires:

Exhibit A

REVISED
BY-LAWS
OF
CHARTERCARE HEALTH PARTNERS FOUNDATION

Adopted on August 22, 2011 and revised
on October 8, 2013*

By: 
Kenneth Belcher, Secretary

*This revision is to address a typographical error in Section 2.01 of the Bylaws which identified CharterCare Health Partners as "SJHSRJ" rather "CCHP" and is in furtherance of the resolution approved at a Meeting of the Sole Member and the Directors of St. Joseph Health Services Foundation dated August 22, 2011, that changed the name of the Foundation to "CharterCare Health Partners Foundation" and directed that its sole member be CharterCare Health Partners..

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ARTICLE I

GENERAL

SECTION 1.01. Name and Purpose. CharterCare Health Partners Foundation (the "Foundation") is a nonprofit corporation organized 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 the regulations promulgated thereunder. Such purposes are set out in Article Third of the Articles of Incorporation of the Foundation, from time to time in effect (the "Articles of Incorporation").

Notwithstanding any other provision of the Articles of Incorporation or these By-Laws, the Foundation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or corresponding section of any future federal tax code. No substantial part of the activities of the Foundation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided by Section 501(h) of the Code), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

SECTION 1.02. Powers. The Foundation shall have the power, either directly or indirectly, either alone or in conjunction and/or cooperation with others, to do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the Foundation is organized, and to aid or assist other organizations whose activities are such as to further accomplish, foster, or attain any of the Foundation's purposes. Notwithstanding anything herein to the contrary, the Foundation shall exercise only such powers as are in furtherance of the exempt purposes of organizations as set

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forth in Section 501(c)(3) and the Code and the rules and regulations promulgated thereunder.

SECTION 1.03. Nonprofit Status. The Foundation is not organized for profit and no part of the net earnings of the Foundation shall inure to the benefit of any director or officer. In the event of the liquidation of the Foundation, whether voluntary or involuntary, no director or officer shall be entitled to any distribution or division of the Foundation's property or the proceeds thereof, and upon such liquidation, the balance of all money, assets and other property of the Foundation, after the payment of all its debts and obligations, shall be distributed pursuant to Section 8 of Article Fourth of the Articles of Incorporation.

SECTION 1.04. Principal Office. The principal office of the Foundation shall be located at 200 High Service Avenue, North Providence, Rhode Island. The Foundation may have such other offices or places of business, either within or outside the State of Rhode Island, as the business of the Foundation may require and as the Board of Directors may from time to time establish.

SECTION 1.05. Registered Office. The registered office of the Foundation shall be located 200 High Service Avenue, North Providence, Rhode Island. The registered office may be changed from time to time by the Board of Directors in compliance with the provisions of applicable law.

ARTICLE II

MEMBERSHIP

SECTION 2.01. Membership. The sole Member of the Foundation shall be CharterCare Health Partners ("CCHP"), a Rhode Island non-profit corporation qualifying as tax-exempt under Section 501(c)(3) of the Code. CCHP may from time to time designate a representative who shall act with the full power and authority of the Member. No membership may be assigned

or transferred or encumbered in any manner whatsoever, either voluntarily, involuntarily or by operation of law. Any proposed or attempted assignment, transfer or termination of membership shall be void. Notwithstanding the foregoing, any legally appointed successor to CCHP by way of corporate merger, acquisition or other similar event shall become the sole Member hereof.

SECTION 2.02. Enumerated Powers. The powers of the Members shall be limited to taking action on the activities enumerated below and those activities expressly requiring action of the Members pursuant to law or the Articles of Incorporation:

- (a) election of the independent directors;
- (b) authorization or approval of any amendment to the Articles of

Incorporation of the Foundation;

- (c) authorization or approval of any amendment to the By-Laws of the Foundation;
- (d) authorization or approval of any change to the name of the Foundation;
- (e) authorization or approval of any merger, consolidation, reorganization, or sale, transfer, disposition, pledge or hypothecation of all or substantially all of the assets of the Foundation;
- (f) authorization or approval of the establishment and the organizational documents (including any amendment, revision or repeal thereof), of any equity or contractual joint venture between the Foundation and any third party in which the Foundation will have more than a twenty percent (20%) interest in the revenues or profits of the joint venture, excluding contracts in the ordinary course of business;
- (g) authorization or approval of any plan of dissolution, liquidation,

- assignment for the benefit of creditors, petition for voluntary bankruptcy or appointment of a receiver, or any plan for winding up the affairs of the Foundation, or any liquidating distribution by the Foundation;
- (h) authorization or approval of the incurrence of any debt, loan, borrowing, debt guarantee, whether as primary obligor or co-obligor, pledge, lien, hypothecation, security interest or encumbrance on any of the property or assets of the Foundation;
 - (i) authorization or approval of any acquisition or lease of, or interest in, real estate, by the Foundation;
 - (j) authorization or approval of undertaking any expenditure outside of the annual budget whether by contract or otherwise, in excess of \$25,000;
 - (k) authorization or approval of entering into any contract or commitment which involves aggregate payments in excess of \$50,000 in any year; and
 - (l) authorization or approval of the settlement of any litigation or other dispute involving the Foundation.

SECTION 2.03. Annual Meeting. The annual meeting of the Members shall be held on such date and at such place and time as the Board may designate. If such meeting is for any reason not held on the date determined in accordance with this section, a special meeting, as defined below, in lieu of the annual meeting may be held with the same force and effect of the annual meeting.

SECTION 2.04. Special Meetings. A special meeting of the Member may be called at any time by the President, the Board of the Foundation, or by the Member.

SECTION 2.05. Notice. Notice of the annual meeting or any special meeting shall be

given by the Secretary to the Member at the Member's address on file with the Secretary either by mail or electronic communication, at least seven (7) days prior to the meeting and in the case of a special meeting, stating the purpose thereof.

SECTION 2.06. Voting. The Member shall have one (1) vote on all matters on which the Member is entitled to vote.

SECTION 2.07. Action Without a Meeting. Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing and if such written consent is filed with the records of the Foundation. Such consents shall be treated for all purposes as a vote at a meeting.

ARTICLE III

BOARD OF DIRECTORS

SECTION 3.01. General Powers. The Foundation's property, affairs and business shall be managed by the Board and the Board shall have, and may exercise, all of the powers of the Foundation, except those reserved to the Members by law, the Articles or these By-Laws.

SECTION 3.02. Number; Qualification and Election. The members of the Board serving at the time CharterCARE Health Partners becomes the sole Member of the Foundation shall remain in office until a new Board is elected by the sole Member at its annual meeting or at a special meeting. Commencing with such election the Board shall consist of a total of fifteen (15) directors, which shall include two (2) individuals who shall be ex officio directors and the remaining thirteen (13) directors who shall be elected as set forth herein by the Member at its annual meeting or at a special meeting. Each member of the Board shall have equal voting authority. The two (2) ex officio members of the Board shall be the individuals then serving as the Chief Executive Officer ("CEO") and the Chief Financial Officer ("CFO") of CharterCARE

Health Partners and the thirteen (13) remaining members of the Board shall consist of four (4) individuals selected by the Member from among those individuals who are then serving as members of the CharterCARE Health Partners Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the Roger Williams Medical Center Board of Trustees, two (2) individuals selected by the Member from among those individuals who are then serving as members of the CharterCare Health Partners Board of Trustees and five (5) individuals who shall be independent directors. An ex officio director who is no longer serving as either the CEO or the CFO of CharterCARE Health Partner shall be immediately replaced by the individual then serving in that capacity and a director who was selected by the Member as set forth herein from among the members of the Board of Trustees of CharterCARE Health Partners, Roger Williams Medical Center or CharterCare Health Partners who is no longer serving in that capacity shall be immediately replaced by the individual then serving in that capacity.

SECTION 3.03. Nomination Process. The Nominating Committee of the Member shall serve as the Nominating Committee. At least fifteen (15) days prior to the Member's annual meeting or a special meeting called for the election or replacement of directors of the Foundation, the Nominating Committee shall provide to the Board of Trustees of the Member a list of nominees for election as independent directors and a list of nominees for election as directors from the members of the Boards of Trustees of CharterCARE Health Partners, Roger Williams Medical Center and CharterCare Health Partners. The Nominating Committee shall adopt such procedures, including procedures for the solicitation of potential nominees, as are necessary to carry out its duties.

SECTION 3.04. Increase and Decrease in Number. The number and designation of

directors of the Foundation may be modified from time to time by majority vote of the Board.

SECTION 3.05. Term. Each director, other than ex officio directors and other than as set forth herein, shall hold office for a three (3) year term, up to a maximum of two (2) terms, and until a successor shall have been duly appointed and qualified or until death, resignation or removal in the manner hereinafter provided and each ex officio director shall hold office so long as he or she is serving as either the CEO or the CFO of CharterCARE Health Partners. Terms of the initial directors elected after CharterCARE Health Partners becomes the sole Member at its annual meeting or at a special meeting shall be staggered such that each year the terms of a portion of the directors shall expire.

SECTION 3.06. Quorum and Voting. A majority of the total number of directors at the time in office shall constitute a quorum for the transaction of business at any meeting. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time without further notice until a quorum be had. Each director shall have one (1) vote on all matters addressed by the Board. The directors shall act only as a Board, and the individual director shall have no power as such.

SECTION 3.07. Place of Meetings. The Board may hold its meetings at any place within or without the State of Rhode Island as it may from time to time determine and shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 3.08. Action Without a Meeting. Any action required or permitted to be taken by the directors may be taken without a meeting if all of the directors consent in writing and if the written consents are filed with the Foundation's records. Such consents shall be treated for all purposes as a vote at a meeting.

SECTION 3.09. Telephonic Participation In Meetings. Directors may participate in their

respective meetings by means of telephone conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

SECTION 3.10. Annual Meetings. The annual meeting of the Board shall be held immediately following the Members' annual meeting. If any day in which the annual meeting is fixed shall be a legal holiday, then the meeting shall be held on the next succeeding business day that is not a legal holiday. If for any reason such annual meeting is omitted, a special meeting may be held in place thereof and any business transacted or elections held at such special meeting shall have the same effect as if transacted at the annual meeting. Purposes for which an annual meeting is to be held, in addition to those prescribed by law or these By-Laws, may be specified by the President or by a majority of the Board.

SECTION 3.11. Regular Meetings. Regular meetings of the Board shall be held as often as the Board shall determine from time to time by vote. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day that is not a legal holiday. Notice of regular meetings need not be given.

SECTION 3.12. Special Meetings; Notice. Special meetings of the Board shall be held whenever called by the President. Notice of each such meeting shall be given by the Secretary or the person calling the meeting by mailing such notice addressed to each director at his/her residence or usual place of business, or conveying such notice electronically, verbally by telephone or personally, at least twenty-four (24) hours before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting, but need not state the purpose thereof except as otherwise expressly provided in these By-Laws. A statement contained

in the minutes of any Board meeting over the signature of the Secretary to the effect that due notice of such meeting has been given shall be conclusive evidence that proper notice of such Meeting has been duly given.

SECTION 3.13. Waiver of Notice. Notice of the time, place and purpose (unless otherwise specified) of any Board meeting may be waived in writing by any director either before or after such meeting and attendance in person at a Board meeting or any meeting held in lieu thereof shall be equivalent to having waived notice thereof.

SECTION 3.14. Resignation of Directors. Any director may resign at any time by providing written notice to the Board, the President or the Secretary. Any director's resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.15. Removal of Directors. Subject to these By-Laws, any director may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 3.16. Vacancies. In the case of director vacancies caused by death, resignation, removal, disqualification or any other cause, the Board, by an affirmative vote of a majority of the directors then in office, shall use best efforts to elect a duly-qualified individual to serve the remainder of the departing director's term. Notwithstanding the foregoing, any actions taken at a meeting or as otherwise provided herein while such positions are vacant shall be valid so long as a quorum is then present.

SECTION 3.17. Compensation. No director shall receive any compensation for his/her services as a director of the Foundation.

ARTICLE IV

COMMITTEES

SECTION 4.01. Appointment. The Board may from time to time by vote create such committees of directors, officers, employees or other persons for the purpose of advising the Foundation's Board, officers and/or employees in all such matters as the Board shall deem advisable and with such functions and duties as the Board shall prescribe by vote. Each committee shall have a chairperson appointed by the President. Unless otherwise expressly required in these By-Laws, committee members shall be appointed by the President; provided, however, that any such appointment may be reversed by majority vote of the Board. Committee members may be but need not be directors. The Board shall have power to increase or decrease the number of members on any committee at any time and to discharge any such committee, either with or without cause, at any time.

SECTION 4.03. Meetings and Notice. Committee meetings may be called by the President or the committee chairperson. Each committee shall meet as often as necessary and appropriate to perform its duties. Notice of a meeting's date, time and place shall be given at such time and in such manner as to provide reasonable notice to committee members of the meeting. Each committee shall keep minutes of its proceedings.

SECTION 4.04. Removal and Vacancies. The President may remove any committee member or chairperson whose selection is not otherwise specified in the By-Laws. Vacancies in any committee's membership may be filled by appointments made in the same manner as provided for in the original appointments.

SECTION 4.05. Quorum. Unless otherwise provided in the Board's resolution designating a committee, each committee member shall have one (1) vote and a majority of the

whole committee shall constitute a quorum. The act of a majority of the members present at a committee meeting at which a quorum is present shall constitute the act of the committee.

SECTION 4.06. Rules. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with any roles adopted by the directors.

ARTICLE V

OFFICERS

SECTION 5.01. Enumeration. The officers of the Foundation shall consist of a President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time appoint. Each officer of the Foundation shall be a director.

SECTION 5.02. Election, Qualifications and Term of Office. The officers shall be elected by the Board at the annual meeting of the Foundation or special meeting held in lieu thereof. Each officer shall hold office for a one (1) year term and until a successor shall have been duly elected and qualified or until death, resignation, disqualification or removal in the manner hereinafter provided.

SECTION 5.03. Removal. Any officer may be removed, either with or without cause, by the vote of a majority of the directors at a special meeting called for said purpose.

SECTION 5.04. Resignation. Any officer may resign at any time by giving written notice to the Board or to the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified herein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 5.05. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term by the Board at any regular or special meeting.

SECTION 5.06. The President. The President shall act as chair of the Board and have general charge and supervision of the affairs of the Foundation. The President shall perform such other duties assigned to him/her by the Board.

SECTION 5.08. The Secretary. The Secretary shall record or cause to be recorded all the proceedings of Board meetings and meetings of all committees to which a secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of the records and of the Foundation's seal; and have such other powers and perform such other duties as the Board may from time to time prescribe.

SECTION 5.09. The Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all Foundation funds, credits and property, render a statement concerning the condition of the Foundation's finances at all regular meetings and, upon the Board's request, make a full financial report to the Board. The Treasurer also shall have charge of the Foundation's books and records of account, which shall be kept at such office of the Foundation as the Board shall from time to time designate; be responsible for the keeping of correct and adequate records of the Foundation's assets, liabilities, business and transactions and at all reasonable times exhibit the books and records of account to any of the directors; review the Foundation's budget annually; be responsible for monitoring the budget; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board or the President.

SECTION 5.10. Other Officers. Each other officer chosen by the directors shall perform such duties and have such powers as may be designated from time to time by the Board.

SECTION 5.11. Other Powers and Duties. Each officer shall, subject to these By-Laws

and in addition to the duties and powers specifically set forth in these By-Laws, have such duties and powers as are customarily incident to his/her office. The exercise of any power which by law, the Articles or these By-Laws, or in accordance with any vote of the Board, may be exercised by a Foundation officer only in the event of another officer's absence or any other contingency, shall bind the Foundation in favor of anyone relying therein in good faith, whether or not such absence or contingency existed.

SECTION 5.12. Bonding. Any officer, employee, agent or factor shall give such bond with such surety or sureties for the faithful performance of his/her duties as the Board may from time to time require.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 6.01. Indemnification. Subject to the exclusions hereinafter set forth, the Foundation will indemnify an Indemnified Person against and hold the Indemnified Person harmless from any Covered Loss or Covered Expenses.

SECTION 6.02. Advance Payment of Covered Expenses. The Foundation will pay the Covered Expenses of an Indemnified Person in advance of the final disposition of any Proceeding. The advance payment of Covered Expenses will be subject to the Indemnified Person's first agreeing in writing with the Foundation to repay the sums paid by it hereunder if it is thereafter determined that the Proceeding involved an Excluded Claim or that the Indemnified Person was otherwise not entitled to indemnity under this Article VI.

SECTION 6.03. Exclusions.

(a) The Foundation will not be liable to pay any Covered Loss or Covered Expense (an "Excluded Claim"):

- (i) With respect to a Proceeding, if the Foundation determines that the Indemnified Person (i) did not conduct himself or herself in good faith, (ii) engaged in intentional misconduct, and (iii) in the case of a criminal proceeding, knowingly violated the law;
- (ii) With respect to a Proceeding in which a final judgment or other final adjudication determines that the Indemnified Person is liable on the basis that personal benefit was improperly received by him or her;
- (iii) For which the Indemnified Person is otherwise indemnified or reimbursed;
or
- (iv) If a final judgment or other final adjudication determines that such payment is unlawful.

(b) With respect to a Proceeding by or on behalf of the Foundation in which the Indemnified Person is adjudged to be liable to the Foundation, the Foundation may indemnify the Indemnified Person for his or her Covered Expenses but shall not indemnify the Indemnified Person for his or her Covered Loss.

(c) Notwithstanding any other provisions herein, the Foundation shall indemnify an Indemnified Person for any Covered Expense in the event that the Indemnified Person is wholly successful, on the merits or otherwise, in the defense of any Proceeding under Section 6.03(a)(i).

SECTION 6.04. Notice to Foundation; Insurance. Promptly after receipt by the Indemnified Person of the notice of the commencement of or the threat of commencement of any Proceeding, the Indemnified Person will, if indemnification with respect thereto may be sought from the Foundation under this Article VI, notify the Foundation of the commencement thereof. If, at the time of the receipt of such notice, the Foundation has any directors' and officers'

liability insurance in effect, the Foundation will give prompt notice of the commencement of such Proceeding to the insurer in accordance with the procedures set forth in the policy or policies in favor of the Indemnified Person. The Foundation will thereafter take all necessary or desirable action to cause such insurer to pay, on behalf of the Indemnified Person, any and all Covered Loss and Covered Expense payable as a result of such Proceeding in accordance with the terms of such policies.

SECTION 6.05. Indemnification Procedures.

(a) Payments on account of the Foundation's indemnity against Covered Loss will be subject to the Foundation's first determining that the Covered Loss results from a claim which is not an Excluded Claim. Such a determination will be made by a majority vote of a quorum of Trustees not at the time parties to the Proceeding or by majority vote of the Members. The determination required by this Section 6.05 will be made within sixty (60) days of the Indemnified Person's written request for payment of a Loss, and if it is determined that the Covered Loss is not an Excluded Claim, payment will be made forthwith thereafter.

(b) Payment of an Indemnified Person's Covered Expenses in advance of the final disposition of any Proceeding will be made within twenty (20) days of the Indemnified Person's written request therefor. Any determination required as to the reasonableness of requested Covered Expenses shall be made in accordance with Section 6.05(a). From time to time prior to the payment of Covered Expenses, the Foundation may, but is not required to, determine (in accordance with Section 6.05(a) above) whether the Covered Expenses claimed may reasonably be expected, upon final disposition of the Proceeding, to constitute an Excluded Claim. If such a determination is pending, payment of the Indemnified Person's Covered Expenses may be delayed up to sixty (60) days after the Indemnified Person's written request therefor, and if it is

determined that the Covered Expenses are not an Excluded Claim, payment will be made forthwith thereafter.

SECTION 6.06. Settlement. The Foundation will have no obligation to indemnify the Indemnified Person under this Article VI for any amounts paid in settlement of any Proceeding effected without the Foundation's prior written consent. The Foundation will not unreasonably withhold or delay its consent to any proposed settlement. The Foundation may consent to a settlement subject to the requirement that a determination thereafter will be made as to whether the Proceeding involved an Excluded Claim or not.

SECTION 6.07. Rights Not Exclusive. The rights provided hereunder will not be deemed exclusive of any other rights to which the Indemnified Person may be entitled under the Act, any agreement, vote of disinterested directors or otherwise, both as to action in the Indemnified Person's official capacity and as to action in any other capacity while holding such position or office, and shall continue after the Indemnified Person ceases to serve the Foundation in an official capacity.

SECTION 6.08. Enforcement.

(a) The Indemnified Person's right to indemnification hereunder will be enforceable by the Indemnified Person in any court of competent jurisdiction and will be enforceable notwithstanding that an adverse determination has been made as provided in Section 6.05 above.

(b) In the event that any action is instituted by the Indemnified Person under this Article VI to enforce or interpret any of the terms of this Article VI, the Indemnified Person will be entitled to be paid all court costs and expenses, including reasonable attorneys' fees, incurred by the Indemnified Person with respect to such action, unless the court determines that each of the material assertions made by the Indemnified Person as a basis for such action was not made

in good faith or was frivolous.

SECTION 6.09. Successors and Assigns. This Article VI will be (a) binding upon all successors and assigns of the Foundation (including any transferee of all or substantially all of its assets); and (b) binding on and inure to the benefit of the heirs, executors, administrators, and other personal representatives of the Indemnified Person. If the Foundation sells or otherwise transfers all or substantially all of its assets to a third party, the Foundation will, as a condition of such sale or other transfer, require such third party to assume and perform the obligations of the Foundation under this Article VI.

SECTION 6.10. Amendment. No amendment of this Article VI will be effective as to an Indemnified Person without such Indemnified Person's written consent.

SECTION 6.11. Insurance. The Foundation shall have, to the fullest extent permitted by state and federal law, the power to purchase and maintain insurance on behalf of any Indemnified Person against any liability asserted against or incurred by an Indemnified Person arising out of his or her status as an Indemnified Person whether or not the Foundation would have the power to indemnify the Indemnified Person against such liability pursuant to this Article VI.

SECTION 12. Definitions.

"Covered Act" means any act or omission by an Indemnified Person in the Indemnified Person's official capacity as a member of the governing body, director, trustee, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other entity or enterprise, including entities and enterprises which are subsidiaries or affiliates of the Foundation, or employee benefit plan.

"Covered Expense" means any reasonable expense incurred by an Indemnified Person in connection with the defense of any claim made against the Indemnified Person for Covered Acts

including legal, accounting or investigative fees and expenses, including the expense of bonds necessary to pursue an appeal of an adverse judgment.

“Covered Loss” means any amount which an Indemnified Person is legally obligated to pay as a result of any claim made against the Indemnified Person for a Covered Act including judgment for, and awards of, damages, amounts paid in settlement of any claim, any fine or penalty or, with respect to an employee benefit plan, any excise tax or penalty.

“Excluded Claim” is defined in Section 6.03.

“Indemnified Person” means any individual who is or was a director or officer of the Foundation.

“Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE VII

CONFLICT OF INTEREST

SECTION 7.01. Policy Adoption. The Foundation is committed to pursuing its mission and to conducting its affairs in accordance with high professional, religious and ethical standards which include the avoidance of detrimental conflicts of interest. The Foundation believes that avoiding such conflicts is imperative in preserving the public’s trust. Persons who agree to serve the Foundation should not use their position for personal gain, or to expose the Foundation to potential harm as a result of conflict of interest.

The Foundation shall adopt and maintain a Conflict of Interest Policy which applies to Designated Persons, as defined below, and deliberations by the Board and its committees.

SECTION 7.02. General Principles. Any Designated Person has an obligation to:
(i) protect decisions involving the Foundation against conflicts of interest; (ii) maintain the

confidentiality of information obtained through service to the Foundation; (iii) assure that the Foundation acts for the benefit of the community as a whole rather than for the private benefit of a Designated Person; and (iv) fully disclose any personal business opportunities that are competitive with the Foundation or in which the Foundation would have an interest. In the furtherance of these obligations all Designated Persons shall exercise the utmost good faith in all transactions touching upon their duties to the Foundation or its property. In their dealings with and on behalf of the Foundation, they shall be held to a strict standard of honest and fair dealing. Designated Persons shall scrupulously avoid any conflict between their individual interests and the interests of the Foundation in any and all actions taken by them. They shall disclose any interests or activities in which they are involved or become involved, directly or indirectly, that could conflict with the interests or activities of the Foundation and shall obtain approval prior to commencing, continuing, or consummating any activity or transaction which raises a possible conflict of interest. Designated Persons are also obliged to disclose any potential conflict of interest arising from the interests and activities of their Immediate Family, as defined in the Policy. Failure to comply with the Conflict of Interest Policy may disqualify a person from serving as a Designated Person or, if already serving as a Designated Person, may, if the Designated Person is an employee of the Foundation, result in disciplinary action up to and including dismissal, subject to the terms of any applicable employment or collective bargaining agreement or, in the case of a Designated Person who is a Trustee, the Trustee shall be deemed to have resigned.

SECTION 7.03. Designated Persons. "Designated Persons" shall include the following:

- (a) Members of the Board of Directors of the Foundation;
- (b) Members of administration or senior management of the Foundation;

- (c) Committee Chairpersons or members of a Committee with Board delegated powers, who have a direct or indirect ability to influence the use of Foundation resources;
- (d) Persons and/or staff members with the authority to purchase, to select or to influence the purchase of goods or services on behalf of the Foundation; and
- (e) Any other person(s) and/or staff members whom the Board may from time to time designate.

ARTICLE VIII

FISCAL AUTHORITY

SECTION 8.01. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the directors may select.

SECTION 8.02. Gifts. The directors may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation.

SECTION 8.03. Budget. An annual budget shall be prepared at the President's direction for approval by the directors at their annual meeting.

ARTICLE IX

EXECUTION OF DOCUMENTS

SECTION 9.01. Contracts, etc., How Executed. Unless otherwise determined by the Board, the President or the Treasurer may enter into any contract or execute and deliver any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Foundation. The Board, except as otherwise provided in these By-Laws, may authorize any other or additional officer, officers, agent or agents of the Foundation

to enter into any contract or execute and deliver any contract or other instrument in the name and on behalf of the Foundation and such authority may be general or confined to specific instances. Unless authorized to do so by these By-Laws or by the directors, no officer, agent or employee shall have any power or authority to bind the Foundation by any contract or engagement or to pledge its credit or render it liable pecuniarily for any purpose or in any amount.

SECTION 9.02. Checks, Drafts, etc. All of the Foundation's checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness, bills of lading, warehouse receipts and insurance certificates shall be signed or endorsed by such of the Foundation's officer, officers, employee or employees as shall from time to time be determined by Board resolution.

SECTION 9.03. Shares Held by Foundation. Any shares of stock issued by any corporation and owned or controlled by the Foundation may be voted at such corporation's shareholders' meeting by the Foundation's President or the Treasurer.

ARTICLE X

SEAL

The seal of the Foundation shall be in the form of a circle and shall bear the Foundation's name and the state and year of its incorporation.

ARTICLE XI

FISCAL YEAR

Except as from time to time otherwise provided by the Board, the Foundation's fiscal year shall commence on the 1st day of October of each year.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Personal Liability. Directors and officers of the Foundation shall not be personally liable for any Foundation debt, liability or obligation. All persons, corporations or other entities extending credit to, contracting with or having any claim against the Foundation may look only to the Foundation's funds and property for the payment of any debt, damages, judgment or decree, or of any money that may otherwise become due or payable to them from the Foundation.

SECTION 12.02. Corporate Records. The original or attested copies of the Articles of Incorporation, these By-Laws, and records of all meetings of the Members and the Board and all of the Foundation's records, the names and the record addresses of all directors, Members and officers shall be kept in North Providence, Rhode Island, at the Foundation's principal office or at an office of its Secretary or Resident Agent. Said copies and records need not all be kept in the same office. They shall be available at all reasonable times for the inspection of any director or officer for any proper purpose, but not to secure a list or other information for the purpose of selling said list or information or copies thereof or of using the same for a purpose other than in the interest of the director or officer relative to the Foundation's affairs. Except as otherwise may be required by law, the Articles or these By-Laws, the Foundation shall be entitled to treat a director's, Member's or officer's record address as shown on its books as the address of such person or entity for all purposes, including the giving of any notices and it shall be the duty of each such person or entity to notify the Foundation of his/her/its latest post office address.

SECTION 12.03. Evidence of Authority. A certificate by the Secretary as to any action taken by a director, officer or representative of the Foundation shall be conclusive evidence of

such action as to all who rely thereon in good faith.

SECTION 12.04. Ratification. Any action taken on behalf of the Foundation by a director, officer or representative of the Foundation which requires authorization by the directors shall be deemed to have been duly authorized if subsequently ratified by the directors retrospectively if action by them was necessary for authorization.

SECTION 1.01. Articles of Incorporation. All references in these By-Laws to the Articles shall be deemed to refer to the Articles, as amended, and in effect from time to time.

ARTICLE XIII

AMENDMENTS

Alterations and repeal of the By-Laws, and new By-Laws not inconsistent with the laws of the State of Rhode Island or with the Articles of Incorporation, may be adopted by the Foundation upon the authorization or approval by the Member after such alteration, repeal or new By-Law is proposed by a majority vote of the Board at any meeting at which a quorum shall be present. The proposed alteration or repeal or of the proposed new By-Laws shall be included in the notice of such Board meeting at which such alteration, repeal or adoption is acted upon.

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